



Manual on human rights and the environment

**Principles emerging from the case-law
of the European Court of Human Rights**



Council of Europe Publishing
Editions du Conseil de l'Europe

**MANUAL
ON HUMAN RIGHTS
AND THE ENVIRONMENT**

**PRINCIPLES EMERGING FROM
THE CASE-LAW OF THE EUROPEAN COURT OF
HUMAN RIGHTS**

French edition: *Manuel sur les droits de l'homme et l'environnement – Principes tirés de la jurisprudence de la Cour européenne des Droits de l'Homme*

ISBN 13 - 978-92-871-5979-3

ISBN 10 -92-871-5979-3

Cover illustration: © 2006, Digital Vision/Getty Images

Illustrations: Alfonso de Salas

Council of Europe Publishing
F-67075 Strasbourg Cedex

ISBN 13 - 978-92-871-5980-9

ISBN 10 - 92-871-5980-7

© Council of Europe, 2006
Printed at the Council of Europe

CONTENTS

| | |
|---|-----------|
| Introduction | 7 |
| Part I – Principles from the Court’s case-law | 11 |
| Part II – Principles from the Court’s case-law accompanied by explanations | 19 |
| Chapter I: Right to life and the environment | 21 |
| Chapter II: Respect for private and family life as well as the home and the environment | 29 |
| Chapter III: Protection of property and the environment | 39 |
| Chapter IV: Information and communication on environmental matters | 45 |
| Chapter V: Decision-making processes in environmental matters and public participation in them | 53 |
| Chapter VI: Access to justice and other remedies in environmental matters | 57 |
| Appendices to the manual | 71 |
| Appendix I: Glossary | 73 |
| Appendix II: Judgments and decisions of the European Court of Human Rights relevant to the environment | 80 |
| Appendix III: Useful Web sites | 85 |

WHAT IS THE AIM OF THIS MANUAL?

The aim of this manual is to increase the understanding of the relationship between the protection of human rights under the European Convention on Human Rights (“the Convention”) and the environment and thereby to contribute to strengthening environmental protection at the national level. To achieve this aim, the manual seeks to provide information about the case-law of the European Court of Human Rights (“the Court”) in this field.

WHAT IS THE TARGET AUDIENCE OF THIS MANUAL?

The manual is intended to be of practical use for public authorities (be they national, regional or local), decision-makers, legal professionals and the general public.

IS THE ENVIRONMENT PROTECTED UNDER THE CONVENTION?

The Convention is not designed to provide a general protection of the environment as such and does not expressly guarantee a right to a sound, quiet and healthy environment. However, the Convention indirectly offers a certain degree of protection with regard to environmental matters, as demonstrated by the evolving case-law of the Court in this area. Indeed, the Court has increasingly examined complaints in which individuals have argued that a breach of one of their Convention rights has resulted from adverse environmental factors. Environmental factors may affect individual Convention rights in three different ways:

- Firstly, the human rights protected by the Convention may be directly affected by adverse environmental factors. In such cases, public authorities may be obliged to take measures to ensure that these rights are not seriously affected by adverse environmental factors.
- Secondly, adverse environmental factors may give rise to certain procedural rights for the individual concerned. The Court has established that public authorities must observe certain requirements as regards information and communication, as well as participation in decision-making processes and access to justice in environmental cases.
- Thirdly, the protection of the environment may also be a legitimate aim justifying interference with certain individual human rights. For example, the Court has established that the right to

peaceful enjoyment of one's possessions may be restricted if this is considered necessary for the protection of the environment.

WHICH RIGHTS OF THE CONVENTION CAN BE AFFECTED BY ENVIRONMENTAL FACTORS?

The Court has already identified in its case-law issues related to the environment which could affect the right to life (Article 2), the right to respect for private and family life as well as the home (Article 8), the right to a fair trial and to have access to a court (Article 6), the right to receive and impart information and ideas (Article 10), the right to an effective remedy (Article 13) and the right to the peaceful enjoyment of one's possessions (Article 1 of Protocol No. 1).

INTRODUCTION

The Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) was signed in 1950 by the founding States of the Council of Europe. This international organisation is based in Strasbourg and currently has 46 member States.¹ All member States have ratified the Convention and therefore accept the jurisdiction of the Court which ensures compliance with the Convention.

The strength of the Convention is based on the fact that it sets up an effective control system in relation to the rights and freedoms which it guarantees to individuals. Anyone who considers himself or herself to be a victim of a violation of one of these rights may submit a complaint to the Court provided that certain criteria set out in the Convention have been met.² The Court can find that States have violated the Convention and, where it does, can award compensation to the victims.

The Convention enshrines essentially civil and political rights and freedoms. Since the adoption of the Convention, other rights have been added by means of different protocols (Nos. 1, 4, 6, 7, 12 and 13), but none contains a right to the environment.

In 1950, the environment was not considered to be of the same political concern that it is today. At that time, the reconstruction of the economy and lasting peace were the first priorities. However, in the space of the subsequent half a century the environment has become a prominent concern. It is commonly accepted that the environment comprises a wide range of elements including the air, water, land, flora and fauna as well as human health and safety and that it is to be protected as part of the more global goal of ensuring sustainable development.

Legally binding instruments have been adopted in this field at the international and European levels, such as the Aarhus Convention.³ Human rights

1. Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine, United Kingdom.
2. Admissibility criteria are listed in Article 35 of the Convention.
3. The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted in Aarhus, Denmark, on 25 June 1998) was elaborated within the United Nations Economic Commission for Europe (UN/ECE). It has been ratified to date by 26 of the Council of Europe member States. It entered into force in 2001. For more information: <http://www.unece.org/env/pp/>

instruments such as the Revised European Social Charter have been interpreted as including obligations pertaining to the protection of the environment; Article 11 of the Charter on the right to the protection of health has been interpreted by the European Committee of Social Rights as guaranteeing the right to a healthy environment.⁴ At their Third Summit held in Warsaw in May 2005, the Heads of State and Government of the Council of Europe reaffirmed their commitment to promoting sustainable development.⁵

The case-law of the Court also increasingly reflects the idea that human rights law and environmental law are mutually reinforcing. The Court is not bound by its previous decisions, and in carrying out its task it adopts an evolutive approach. The interpretation of the rights and freedoms is not fixed but can take account of the social context and changes in society.⁶ As a consequence, even though no right to a sound environment is expressly included in the Convention or its protocols, the case-law of the Court has shown a growing awareness of a link between the protection of the rights and freedoms of individuals and the environment.

Conscious of this development, the Committee of Ministers of the Council of Europe⁷ decided, following a recommendation of the Parliamentary Assembly,⁸ that it is an appropriate time to raise awareness of this case-law, which has led to the drafting of this manual.

The Court has emphasised that the effective enjoyment of the rights which are encompassed in the Convention depends notably on a sound, quiet and healthy environment conducive to well-being. The subject-matter of the cases examined by the Court shows that a range of environmental factors may have an impact on individual Convention rights, such as noise levels from airports, industrial pollution, or town planning.

In the context of environmental matters, the principle of subsidiarity is particularly important. According to this principle, violations of the Convention should be prevented or remedied at the national level with the Court intervening only as a last

-
4. http://www.coe.int/T/E/Human_Rights/Esc/, see in particular the European Committee of Social Rights' Conclusions XV-2, 2001.
 5. Action Plan, 17 May 2005, Warsaw: Section II, Point 7.
 6. The Court often refers to the Convention as a "living instrument".
 7. Terms of reference to draft this manual were received by the Steering Committee for Human Rights (CDDH) – a body composed of governmental experts from the 46 member States – from the Committee of Ministers in a decision of 21 January 2004 (869th meeting). The CDDH entrusted this task to a subordinate intergovernmental body: the Committee of Experts for the Development of Human Rights (DH-DEV). Website: http://www.coe.int/T/E/Human_rights/cddh/
 8. Recommendation (2003)1614 of the Parliamentary Assembly, adopted on 27 June 2003.

resort. The Court has recognised that national authorities are best placed to make decisions on environmental issues, which often have difficult social and technical aspects. Therefore in reaching its judgments, the Court affords the national authorities in principle a wide discretion – in the language of the Court a wide “margin of appreciation” – in their decision-making in this sphere.

The manual aims at assisting people – at the local, regional or national level – in solving problems they encounter in pursuit of a sound, quiet and healthy environment without having to incur the time and expense of taking a case to the Court, thereby contributing to strengthening environmental protection at the national level.

The manual consists of two parts, the first devoted to the principles derived from the relevant existing case-law of the Court, the second recapitulating the same principles together with explanations. The explanations, which follow the principles in the second part, refer to concrete cases, illustrating the context against which the principles have been considered. The cases referred to are not exhaustive, although the drafters have sought to select those that are most relevant. In each of the two parts, the principles are divided into six thematic chapters. For the purpose of clarity the first chapters of each part deal with substantive rights (chapters I to III), while the following chapters cover procedural rights (chapters IV to VI).

Efforts have been made to keep the language as clear as possible, while at the same time remaining legally accurate and faithful to the Court's reasoning. In instances where technical language has proved unavoidable, the reader will find concise definitions in an appended glossary (Appendix I). A list of the most relevant judgments and decisions of the Court pertaining to environmental questions is also enclosed at the end of the manual (Appendix II).

Nothing in this manual seeks to add or subtract to rights under the Convention as interpreted by the Court in its case-law. It is simply a guide to the existing case-law at the time of publication.

More information regarding the Convention and the Court and notably the full text of the Convention as well as the practical conditions to lodge an application with the Court are to be found on the Court's Website at: <http://www.echr.coe.int/echr>. There is also a database (HUDOC) providing the full text of all the judgments of the Court and most of its decisions at: <http://hudoc.echr.coe.int/>.

Part I

Principles from the Court's case-law

CHAPTER I

RIGHT TO LIFE AND THE ENVIRONMENT

- (a) The right to life is protected under Article 2 of the Convention. This Article does not solely concern deaths resulting directly from the actions of the agents of the State, but also lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction.
- (b) The Court has found that this obligation may apply in the context of dangerous activities, such as nuclear tests, the operation of chemical factories with toxic emissions or waste-collection sites, whether carried out by public authorities themselves or by private companies. In general, the extent of the obligations of public authorities depends on factors such as the harmfulness of the dangerous activities and the foreseeability of the risks to life.
- (c) In the first place, public authorities may be required to take measures to prevent infringements of the right to life as a result of dangerous activities. This involves putting in place a legislative and administrative framework which includes:
 - making regulations which govern the licensing, setting-up, operation, security and supervision of such dangerous activities taking into account their special features and the level of potential risk to life;
 - placing particular emphasis on the public's right to information concerning such activities;
 - providing for appropriate procedures for identifying shortcomings in the technical processes concerned and errors committed by those responsible.
- (d) Secondly, where loss of life may be the result of an infringement of the right to life, the relevant public authorities must provide an adequate response, judicial or otherwise. They must ensure that the legislative and administrative framework is properly implemented and that breaches of the right to life are repressed and punished as appropriate.

This response by the State includes the duty promptly to initiate an independent and impartial investigation. The investigation must be capable of ascertaining the circumstances in which the incident took place and identifying shortcomings in the operation of the regulatory system. It must also be capable of identifying the public officials or authorities involved in the chain of events in issue.

If an infringement of the right to life is not intentional, civil, administrative or even disciplinary remedies may be a sufficient response. However, the Court has found that, where the public authorities knew of certain risks which might involve loss of life and did not take action, Article 2 may require that those responsible for endangering life be charged with a criminal offence or prosecuted.

CHAPTER II

RESPECT FOR PRIVATE AND FAMILY LIFE AS WELL AS THE HOME AND THE ENVIRONMENT

- (a) The right to respect for private and family life and the home are protected under Article 8 of the Convention. This right implies respect for the quality of private life as well as the enjoyment of the amenities of one's home.
- (b) Environmental degradation does not necessarily involve a violation of Article 8 as it does not include an express right to environmental protection or nature conservation.
- (c) For an issue to arise under Article 8, the environmental factors must directly and seriously affect private and family life or the home. In other words, the adverse effects must attain a certain minimum level. The assessment of that minimum depends on all the circumstances of the case, such as the intensity and duration of the nuisance and its physical or mental effects, as well as on the general environmental context.
- (d) While the object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, it may also imply in some cases an obligation on public authorities to adopt positive measures designed to secure the rights enshrined in this Article. This obligation does not only apply in cases where environmental harm is directly caused by State activities but also when it results from private sector activities. Public authorities must make sure that such measures are implemented so as to guarantee rights protected under Article 8. The Court has furthermore explicitly recognised that public authorities may have a duty to inform the public about environmental risks.
- (e) Where decisions of public authorities affect the environment to the extent that there is an interference with the right to respect for private or family life or the home, they must accord with the conditions set out in Article 8

paragraph 2. Such decisions must thus be provided for by law and follow a legitimate aim, such as the economic well-being of the country or the protection of the rights and freedoms of others. In addition, they must be proportionate to the legitimate aim pursued: for this purpose, a fair balance must be struck between the interest of the individual and the interest of the community as a whole. Since the social and technical aspects of environmental issues are often difficult to assess, the relevant public authorities are best placed to determine what might be the best policy. Therefore they enjoy in principle a wide margin of appreciation in determining how the balance should be struck. The Court may nevertheless assess whether the public authorities have approached the problem with due diligence and have taken all the competing interests into consideration.

- (f) In addition, the Court has recognised the preservation of the environment, in particular in the framework of planning policies, as a legitimate aim justifying certain restrictions by public authorities on a person's right to respect for private and family life and the home.

CHAPTER III

PROTECTION OF PROPERTY AND THE ENVIRONMENT

- (a) Under Article 1 of Protocol No. 1 to the Convention, individuals are entitled to the peaceful enjoyment of their possessions, including protection from unlawful deprivation of property. This provision does not, in principle, guarantee the right to continue to enjoy those possessions in a pleasant environment. Article 1 of Protocol No. 1 also recognises that public authorities are entitled to control the use of property in accordance with the general interest. In this context the Court has found that the environment is an increasingly important consideration.
- (b) The general interest in the protection of the environment can justify certain restrictions by public authorities on the individual right to the peaceful enjoyment of one's possessions. Such restrictions should be lawful and proportionate to the legitimate aim pursued. Public authorities enjoy a wide margin of appreciation in deciding what measures to implement in pursuance of the general interest. However, the measures taken by public authorities must strike a fair balance between the interests involved.

- (c) On the other hand, protection of the individual right to the peaceful enjoyment of one's possessions may require public authorities to ensure certain environmental standards. The effective exercise of this right does not depend merely on the public authorities' duty not to interfere, but may require them to take positive measures to protect this right. The Court has found that such an obligation may arise in respect of dangerous activities.

CHAPTER IV INFORMATION AND COMMUNICATION ON ENVIRONMENTAL MATTERS

Right to receive and impart information and ideas on environmental matters

- (a) The right to receive and impart information and ideas is guaranteed by Article 10 of the Convention. In the particular context of the environment, the Court has found that there exists a strong public interest in enabling individuals and groups to contribute to the public debate by disseminating information and ideas on matters of general public interest.
- (b) Restrictions by public authorities on the right to receive and impart information and ideas, including on environmental matters, must be prescribed by law and follow a legitimate aim. Measures interfering with this right must be proportionate to the legitimate aim pursued and a fair balance must therefore be struck between the interest of the individual and the interest of the community as a whole.
- (c) Freedom to receive information under Article 10 cannot be construed as imposing on public authorities a general obligation to collect and disseminate information relating to the environment of their own motion.

Access to information on environmental matters

- (d) Public authorities may be under a specific obligation to secure a right of access to information in relation to environmental issues in certain circumstances. This obligation arises from the rights protected by Articles 2 and 8 of the Convention. The Court has found that in the particular context of dangerous activities falling within the responsibility of the State, special emphasis should be placed on the public's right to information.

- (e) When public authorities engage in dangerous activities which they know involve adverse risks to health, they must establish an effective and accessible procedure to enable individuals to seek all relevant and appropriate information.
- (f) The Court has also recognised the importance to individuals of access to information that can allay their fears or enable them to assess the environmental danger to which they may be exposed. Public authorities must provide such information to persons when their rights to life under Article 2 and to respect for private and family life and the home under Article 8 are threatened.

CHAPTER V

DECISION-MAKING PROCESSES IN ENVIRONMENTAL MATTERS AND PUBLIC PARTICIPATION IN THEM

- (a) In the process of making decisions which relate to the environment, public authorities must take into account the interests of individuals who may be affected. In this context, it is important that the public be able to make representations to the public authorities.
- (b) Where public authorities have complex issues of environmental and economic policy to determine, the decision-making process must involve appropriate investigations and studies in order to predict and evaluate in advance the effects on the environment and to enable them to strike a fair balance between the various conflicting interests at stake. The Court has stressed the importance of public access to the conclusions of such studies and to information which would enable individuals to assess the danger to which they are exposed. However, this does not mean that decisions can be taken only if comprehensive and measurable data are available in relation to each and every aspect of the matter to be decided.

CHAPTER VI

ACCESS TO JUSTICE AND OTHER REMEDIES IN ENVIRONMENTAL MATTERS

- (a) Several provisions of the Convention guarantee that individuals should be able to commence judicial or administrative proceedings in order to protect

their rights. Article 6 guarantees the right to a fair trial, which the Court has found includes the right of access to a court. Article 13 guarantees to persons, who have an arguable claim that their rights and freedoms as set forth in the Convention have been violated, an effective remedy before a national authority. Moreover, the Court has inferred procedural requirements from certain provisions of the Convention, such as Articles 2 and 8. All these provisions may apply in cases where human rights and environmental issues are involved.

- (b) The right of access to a court under Article 6 will as a rule come into play when a “civil right or obligation”, within the meaning of the Convention, is the subject of a “dispute”. This right includes the right to see final and enforceable court decisions executed and implies that all parties, including public authorities, must respect court decisions.
- (c) The right of access to a court guaranteed by Article 6 applies if there is a sufficiently direct link between the environmental problem at issue and the civil right invoked; mere tenuous connections or remote consequences are not sufficient. In case of a serious, specific and imminent environmental risk, Article 6 may be invoked if the danger reaches a degree of probability which makes the outcome of the proceedings directly decisive for the rights of those individuals concerned.
- (d) Environmental associations which are entitled to bring proceedings in the national legal system to defend the interests of their members may invoke the right of access to a court when they seek to defend the economic interests of their members (e.g. their personal assets and lifestyle). However, they will not necessarily enjoy a right of access to a court when they are only defending a broad public interest.
- (e) Where public authorities have to determine complex questions of environmental and economic policy, they must ensure that the decision-making process takes account of the rights and interests of the individuals whose rights under Article 8 may be affected. Where such individuals consider that their interests have not been given sufficient weight in the decision-making process, they should be able to appeal to a court.
- (f) In addition to the right of access to a court as described above, Article 13 guarantees that persons, who have an arguable claim that their rights and

freedoms as set forth in the Convention have been violated, must have an effective remedy before a national authority.

- (g) The protection afforded by Article 13 does not go so far as to require any particular form of remedy. The State has a margin of appreciation in determining how it gives effect to its obligations under this provision. The nature of the right at stake has implications for the type of remedy which the State is required to provide. Where for instance violations of the rights enshrined in Article 2 are alleged, compensation for economic and non-economic loss should in principle be possible as part of the range of redress available. However, neither Article 13 nor any other provision of the Convention guarantees an individual a right to secure the prosecution and conviction of those responsible.

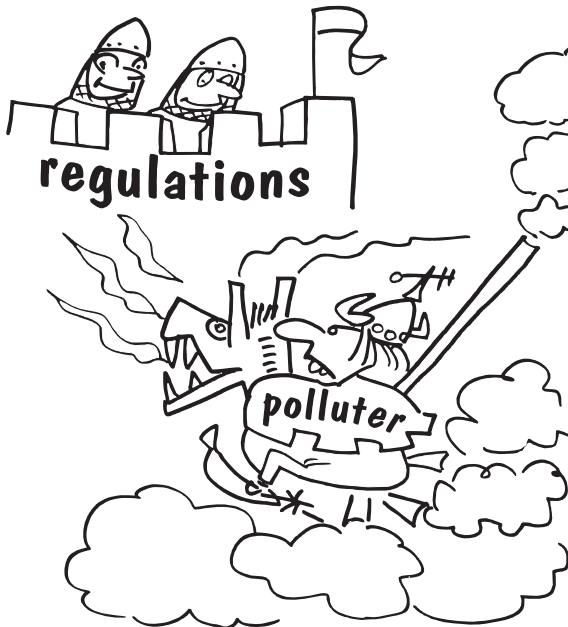
Part II
Principles from the Court's case-law
accompanied by explanations

Chapter I: Right to life and the environment



ARTICLE 2 RIGHT TO LIFE

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - a. in defence of any person from unlawful violence;
 - b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - c. in action lawfully taken for the purpose of quelling a riot or insurrection.



(a) The right to life is protected under Article 2 of the Convention. This Article does not solely concern deaths resulting directly from the actions of the agents of the State, but also lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction.⁹

(b) The Court has found that this obligation may apply in the context of dangerous activities, such as nuclear tests, the operation of chemical factories with toxic emissions or waste-collection sites, whether carried out by public authorities themselves or by private companies.¹⁰ In general, the extent of the obligations of public authorities depends on factors such as the harmfulness of the dangerous activities and the foreseeability of the risks to life.¹¹

1. The primary purpose of Article 2 is to prevent the State from deliberately taking life, except in the circumstances it sets out. This provision is negative in character, that is to say it aims to stop certain State actions. However, the Court has developed in its jurisprudence the “*doctrine of positive obligations*”. This means that in some situations Article 2 may also impose on public authorities a duty to take steps to guarantee the right to life when it is threatened by persons or activities not directly connected with the State. For example, the police should prevent individuals about to carry out life-threatening acts against other individuals from doing so, and the legislature should make any action of individuals deliberately leading to the loss of life a criminal offence. The Court’s case-law has shown that this obligation is not limited to law enforcement agencies. Given the fundamental importance of the right to life and the fact that most infringements are irreversible, this positive obligation of protection can apply in situations where life is at risk. In the context of the environment, Article 2 has been applied where certain activities endangering the environment are so dangerous that they also endanger human life.

9. *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, para. 36; *Paul and Audrey Edwards v. the United Kingdom*, judgment of 14 March 2002, para. 54; *Öneryıldız v. Turkey*, judgment of 30 November 2004 (Grand Chamber), para. 71.

10. *Öneryıldız v. Turkey*, para. 71.

11. *Öneryıldız v. Turkey*, para. 73; *L.C.B. v. the United Kingdom*, paras. 37-41.

2. It is not possible to give an exhaustive list of examples of situations in which this obligation might arise. It must be stressed however that cases in which issues under Article 2 have arisen are exceptional. In theory, Article 2 can apply even though loss of life has not occurred, for example in situations where potentially lethal force is used inappropriately.¹²

3. The Court has considered environmental issues in two cases brought under Article 2. In *L.C.B. v. the United Kingdom*, the applicant's father had been exposed to radiation whilst serving in the army during nuclear tests in the 1950s. The applicant herself was born in 1966. She later contracted leukaemia and alleged that the United Kingdom's failure to warn and advise her parents of the dangers of the tests to any children they might have, as well as the State's failure to monitor her health, were violations of the United Kingdom's duties under Article 2. The Court considered that its task was to determine whether the State had done all that could be required of it to prevent the applicant's life from being avoidably put at risk.¹³ It held that the United Kingdom would only have been required to act on its own motion to advise her parents and monitor her health if, on the basis of the information available to the State at the time in question, it had appeared likely that exposure of her father to radiation might have caused a real risk to her health. In the instant case, the Court considered that the applicant had not established a causal link between the exposure of her father to radiation and her own suffering from leukaemia. The Court therefore concluded that it was not reasonable to hold that, in the late 1960s, the United Kingdom authorities, on the basis of this unsubstantiated link, could or should have taken action in respect of the applicant. The Court thus found that there was no violation of Article 2.

4. On the other hand, the Court found a violation of Article 2 in the case of *Öneryıldız v. Turkey*. In this case, an explosion occurred on a municipal rubbish tip, killing thirty-nine people who had illegally built their dwellings around it. Nine members of the applicant's family died in the accident. Although an expert report had drawn the attention of the municipal authorities to the danger of a methane explosion at the tip two years before the accident, the authorities had taken no

12. E.g. *Makaratzis v. Greece*, judgment of 20 December 2004 (Grand Chamber), para. 49.

13. *L.C.B. v. the United Kingdom*, paras. 36 and 38.

action. The Court found that since the authorities knew – or ought to have known – that there was a real and immediate risk to the lives of people living near the rubbish tip, they had an obligation under Article 2 to take preventive measures to protect those people. The Court also criticised the authorities for not informing those living next to the tip of the risks they were running by living there. The regulatory framework in place was also considered to be defective. The findings of the Court in this judgment are the main basis for the elements contained in paragraphs (b) to (d) of this chapter.

(c) In the first place, public authorities may be required to take measures to prevent infringements of the right to life as a result of dangerous activities. This involves putting in place a legislative and administrative framework which includes:¹⁴

- making regulations which govern the licensing, setting-up, operation, security and supervision of such dangerous activities taking into account their special features and the level of potential risk to life;¹⁵
- placing particular emphasis on the public's right to information concerning such activities;¹⁶
- providing for appropriate procedures for identifying shortcomings in the technical processes concerned and errors committed by those responsible.¹⁷

5. In the *Öneryıldız* judgment the Court stated that this is the primary duty flowing from the positive obligation in Article 2. The legislative and administrative framework should provide effective deterrence against threats to the right to life. Although this has previously been applied in the context of law enforcement, the significance of the *Öneryıldız* judgment is that the Court stated that this also applies in the context of dangerous activities. Here the necessary legislative and administrative framework will usually require that the public authorities responsible make regulations concerning dangerous activities. In

14. *Öneryıldız v. Turkey*, para. 89.

15. *Öneryıldız v. Turkey*, para. 90.

16. *Öneryıldız v. Turkey*, para. 90.

17. *Öneryıldız v. Turkey*, para. 90.

modern industrial societies there will always be activities which are inherently risky. The Court said that regulation of such activities should make it compulsory for all those concerned to take practical measures to protect people whose lives might be endangered by the inherent risks.

(d) Secondly, where loss of life may be the result of an infringement of the right to life, the relevant public authorities must provide an adequate response, judicial or otherwise. They must ensure that the legislative and administrative framework is properly implemented and that breaches of the right to life are repressed and punished as appropriate.¹⁸

This response by the State includes the duty promptly to initiate an independent and impartial investigation. The investigation must be capable of ascertaining the circumstances in which the incident took place and identifying shortcomings in the operation of the regulatory system. It must also be capable of identifying the public officials or authorities involved in the chain of events in issue.¹⁹

If the infringement of the right to life is not intentional, civil, administrative or even disciplinary remedies may be a sufficient response.²⁰ However, the Court has found that, where the public authorities knew of certain risks which might involve loss of life and did not take action, Article 2 may require that those responsible for endangering life be charged with a criminal offence or prosecuted.²¹

6. The obligations which public authorities have in relation to the right to life are not just preventive; that is to say they do not just have the obligation to do their best to ensure that human life is protected. When life is lost, they are also required to find out why this happened, who was responsible and what lessons can be learned. This is sometimes referred to as the “procedural aspect” of Article 2 because it

18. *Öneryıldız v. Turkey*, para. 91.

19. *Öneryıldız v. Turkey*, para. 94.

20. *Öneryıldız v. Turkey*, para. 92.

21. *Öneryıldız v. Turkey*, para 93.

imposes on States the obligation to follow certain procedures to find out why life has been lost. The aim is to ensure that the legislative and administrative framework required to protect life does not exist on paper only. It also recognises that the victims' families have a right to know why their relatives have died and that society has an interest in punishing those responsible for the loss of human life.

7. The reason why public authorities are required to carry out an investigation is that they are usually the only bodies capable of identifying the causes of the incidents in question. The requirements that the investigation be prompt, independent and impartial seek to ensure its effectiveness. In *Öneryıldız v. Turkey*, where lives had been lost, the Court held that the authorities should of their own motion launch investigations into the accident which led to these deaths. It also found that in carrying out this investigation the competent authorities must first find out why the regulatory framework in place did not work, and secondly identify those officials or authorities involved in whatever capacity in the chain of events leading to the loss of life.

8. Furthermore, the Court emphasised in the *Öneryıldız* case that Article 2 does not automatically entail the right for an individual to have those responsible prosecuted or sentenced for a criminal offence. When it comes to cases where life has been lost, the need to deter future failure may in certain situations require criminal prosecution against those who are responsible in order to comply with Article 2, for instance where the taking of human life is intentional. However, in the specific field of environmental risks, loss of life is more likely to be unintentional. In such cases, States do not automatically have to prosecute those responsible. For example, where the loss of life was the result of human error or carelessness other less severe penalties may be imposed. However, in *Öneryıldız v. Turkey* the Court found that where the public authorities knew of certain risks, and knew that the consequences of not taking action to reduce those risks could lead to the loss of life, then the State may be under an obligation to prosecute those responsible for criminal offences. This may be the case even where there are other possibilities for taking action against those responsible (e.g. by initiating administrative or disciplinary proceedings).

Chapter II: Respect for private and family life as well as the home and the environment



ARTICLE 8

RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.



(a) The right to respect for private and family life and the home are protected under Article 8 of the Convention. This right implies respect for the quality of private life as well as the enjoyment of the amenities of one's home.²²

9. In a number of cases the Court has found that severe environmental pollution can affect people's well-being and prevent them from enjoying their homes to such an extent that their rights under Article 8 are violated. According to the Court the right to respect for the home does not only include the right to the actual physical area, but also to the quiet enjoyment of this area. Therefore, breaches of this right are not necessarily confined to such obvious interference as an unauthorised entry into a person's home, and may also result from intangible sources such as noise, emissions, smells or other similar forms of interference.²³ In the context of cases raising issues linked to environmental degradation or nuisance the Court has tended to interpret the notions of private and family life and home as being closely interconnected, and, for example, in one case it referred to the notion of "private sphere".²⁴

(b) Environmental degradation does not necessarily involve a violation of Article 8 as it does not include an express right to environmental protection or nature conservation.²⁵

(c) For an issue to arise under Article 8, the environmental factors must directly and seriously affect private and family life or the home.²⁶ In other words, the adverse effects must attain a certain minimum level. The assessment of that minimum depends on all the circumstances of the case, such as the intensity and duration of the nuisance and its physical or mental effects, as well as on the general environmental context.²⁷

22. *Powell & Rayner v. the United Kingdom*, judgment of 21 February 1990, para. 40.

23. *Moreno Gómez v. Spain*, judgment of 16 November 2004, para. 53.

24. *Fadeyeva v. Russia*, judgment of 9 June 2005, paras. 70, 82 and 86.

25. *Fadeyeva v. Russia*, para. 68; *Kyrtatos v. Greece*, judgment of 22 May 2003, para. 52.

26. *Hatton and Others v. the United Kingdom*, judgment of 8 July 2003 (Grand Chamber), para. 96.

27. *Fadeyeva v. Russia*, para. 69.

10. It should first be recalled that environmental factors may raise an issue under Article 8 and trigger its applicability without the Court necessarily finding a violation of the Convention afterwards. Indeed, the Court starts its examination of a case by determining whether or not Article 8 is applicable to the circumstances of the case (i.e. whether or not the problem raised comes within the scope of Article 8), and only if it finds it to be applicable does it examine whether or not there has been a violation of this provision.

11. In the *Kyrtatos v. Greece* case, the applicants brought a complaint under Article 8 alleging that urban development had led to the destruction of a swamp adjacent to their property, and that the area around their home had lost its scenic beauty. The Court emphasised that domestic legislation and certain other international instruments rather than the Convention are more appropriate to deal with the general protection of the environment. The purpose of the Convention is to protect individual human rights, such as the right to respect for the home, rather than the general aspirations or needs of the community taken as a whole. In this case, the Court found no violation of Article 8.

12. On the other hand, the Court has found that severe environmental pollution such as excessive noise levels generated by an airport²⁸, fumes, smells and contamination emanating from a waste treatment plant²⁹ and toxic emissions from a factory³⁰ can interfere with a person's peaceful enjoyment of his or her home in such a way as to raise an issue under Article 8.

13. By way of an example, in the *López Ostra v. Spain* case, the applicant complained that the fumes and noise from a waste treatment plant situated near her home made her family's living conditions unbearable. After having had to bear the nuisance caused by the plant for more than three years, the family moved when it became clear that the nuisance could go on indefinitely and when her daughter's paediatrician recommended them to do so. While recognising that the noise and smells had a negative effect on the applicant's quality of life, the national authorities argued that they did not constitute a grave health risk and that they did not reach a level of severity whereby the appli-

28. *Hatton and Others v. the United Kingdom*.

29. *López Ostra v. Spain*, judgment of 9 December 1994.

30. *Guerra and Others v. Italy*, judgment of 19 February 1998.

cant's fundamental rights were breached. However, the Court found that severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect adversely their private and family life, even though it does not seriously endanger their health. In this case, the Court found a violation of Article 8.

14. Another example is the *Fadeyeva v. Russia* case. In this case the applicant lived in the vicinity of a steel plant. The Court observed that in order to fall under Article 8, complaints relating to environmental nuisances have to show, firstly, that there has been an actual interference with the individual's "private sphere", and, secondly, that these nuisances have reached a certain level of severity. In the case in question, the Court found that over a significant period of time the concentration of various toxic elements in the air near the applicant's house seriously exceeded safe levels and that the applicant's health had deteriorated as a result of the prolonged exposure to the industrial emissions from the steel plant. Therefore, the Court accepted that the actual detriment to the applicant's health and well-being reached a level sufficient to bring it within the scope of Article 8 of the Convention. Here the Court concluded that there had been a violation of Article 8.

(d) While the object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, it may also imply in some cases an obligation on public authorities to adopt positive measures designed to secure the rights enshrined in this Article.³¹ This obligation does not only apply in cases where environmental harm is directly caused by State activities but also when it results from private sector activities.³² Public authorities must make sure that such measures are implemented so as to guarantee rights protected under Article 8.³³ The Court has furthermore explicitly recognised that public authorities may have a duty to inform the public about environmental risks.³⁴

31. *Guerra and Others v. Italy*, para. 58.

32. *Hatton and Others v. the United Kingdom*, para. 98.

33. *Moreno Gómez v. Spain*, para. 61.

34. *Guerra and Others v. Italy*, para. 60.

15. According to the Court's case-law³⁵, not only should public authorities refrain from interfering arbitrarily with individuals' rights, but they should also take active steps to safeguard these rights.³⁶ Such duties may arise also with regard to the relations between private parties.

16. In *Hatton and Others v. the United Kingdom*, which concerned aircraft noise generated by an international airport, the Court considered that whilst the activity was carried on by private parties Article 8 nonetheless applied on the ground that the State was responsible for properly regulating private industry in order to avoid or reduce noise pollution. In this case, the Court therefore concluded that the State had a responsibility to control air traffic and thus aircraft noise. However, the Court did not find a violation since, overall, the State could not be said to have failed to strike a fair balance between the interests of the complainants and the interests of others and of the community as a whole in the regulatory scheme it had put in place (see (e) below).

17. The *Moreno Gómez v. Spain* case concerned noise disturbance caused by discotheques and bars. The Spanish authorities were expected to take measures to keep noise disturbance at reasonable levels. Whilst they had made bylaws to set maximum noise levels and provided for the imposition of penalties and other measures on those who did not respect these levels, they failed to ensure that these measures were properly implemented. In this context, the Court stressed that the authorities should not only take measures aimed at preventing environmental disturbance, such as noise in the case at issue, but should also secure that these preventive measures are implemented in practice – thus ensuring their effectiveness in protecting the rights of individuals under Article 8. In this case the Court found a violation of Article 8.

18. Similarly, public authorities are expected to control emissions from industrial activities so that local residents do not suffer smells, noise or fumes emanating from nearby factories. An example illustrating this is the case of *Guerra and Others v. Italy*. In this case a chemical factory situated not far from where the applicants lived, was classified as high-risk. In the past, several accidents had occurred, resulting in the hospitalisation of many people living nearby. The

35. E.g. *Guerra and Others v. Italy*.

36. The so-called "doctrine of positive obligations".

applicants did not complain of the action of the public authorities, but on the contrary of their failure to act. The Court concluded that the public authorities had not fulfilled their obligation to secure the applicants' right to respect for their private and family life, on the ground that the applicants had not received essential information from the public authorities that would have enabled them to assess the risks which they and their families might run if they continued to live in the area. Here the Court ruled that there had been a violation of Article 8.

19. With regard to the authorities' obligation to inform the public on environmental matters, see chapter IV.

(e) Where decisions of public authorities affect the environment to the extent that there is an interference with the right to respect for private or family life or the home, they must accord with the conditions set out in Article 8 paragraph 2.³⁷ Such decisions must thus be provided for by law and follow a legitimate aim, such as the economic well-being of the country or the protection of the rights and freedoms of others. In addition, they must be proportionate to the legitimate aim pursued: for this purpose, a fair balance must be struck between the interest of the individual and the interest of the community as a whole.³⁸ Since the social and technical aspects of environmental issues are often difficult to assess, the relevant public authorities are best placed to determine what might be the best policy.³⁹ Therefore they enjoy in principle a wide margin of appreciation in determining how the balance should be struck.⁴⁰ The Court may nevertheless assess whether the public authorities have approached the problem with due diligence and have taken all the competing interests into consideration.⁴¹

20. The Convention recognises that the obligation of the State not to take measures which interfere with private and family life or the home is not absolute. Therefore, in certain situations, interference by public

37. *Hatton and Others v. the United Kingdom*, para. 98.

38. *López Ostra v. Spain*, para. 51.

39. *Powell & Rayner v. the United Kingdom*, para. 44.

40. *Hatton and Others v. the United Kingdom*, paras. 97, 98 and 100.

41. *Fadeyeva v. Russia*, para. 128.

authorities may be acceptable under the Convention. However, it has to be justified.

21. First, the interference must be in accordance with the law and the relevant law must be accessible and its effects foreseeable. In most of the relevant cases pertaining to the environment where the Court has found a violation of Article 8, the breach did not result from the absence of legislation protecting the environment, but rather the failure of the authorities to respect such legislation. For instance, in López Ostra v. Spain⁴² the waste-treatment plant was illegal because it was operated without the necessary licence, and in Guerra and Others v. Italy⁴³ the applicants were unable to obtain information that public authorities were under a statutory obligation to provide. In contrast, in Hatton and Others v. the United Kingdom,⁴⁴ there was no such element of irregularity under United Kingdom law and the applicants did not contest that the interference with their right accorded with relevant national law. In any event the Court has tended to look at the question of the lawfulness of the actions of public authorities as a factor to be weighed among others in assessing whether a fair balance has been struck in accordance with Article 8 paragraph 2 and not as a separate and conclusive test.⁴⁵

22. The interference must also follow a legitimate aim serving the interests of the community such as the economic well-being of the country.⁴⁶ Even then, there is an additional requirement that the measures taken by the authorities be proportionate to the aim pursued. In order to assess the proportionality of the measures taken, the Court will assess whether a fair balance has been struck between the competing interests of the community and the individuals concerned. In this context, the public authorities enjoy a certain flexibility – in the words of the Court, a “margin of appreciation” – in determining the steps to be taken to ensure compliance with the Convention. Since many aspects of the environment belong to a social and technical sphere difficult to assess, the Court acknowledges that national authorities are better placed than the Court itself to decide what the

42. For a short description of this case, see para. 13 of the manual.

43. For a short description of this case, see para. 18 of the manual.

44. For a short description of this case, see para. 16 of the manual.

45. *Fadeyeva v. Russia*, para. 98.

46. E.g. the running of an international airport: *Powell and Rayner v. the United Kingdom* and *Hatton and Others v. the United Kingdom*.

best policy to adopt in given circumstances should be. On the basis of this assumption, States therefore enjoy a certain leeway (“margin of appreciation”) as to the measures which they may adopt to tackle detrimental environmental factors. The Court will take account of this margin of appreciation when it reviews whether a fair balance has been struck between the competing interests. These principles are applicable in a similar way in cases where the question arises of whether the State has a positive obligation to take measures to secure the individual’s right under paragraph 1 of Article 8.⁴⁷ In such instances, the measures taken by the authorities must also be in accordance with the law, proportionate and reasonable.

23. For example, in *López Ostra v. Spain* concerning the operation of a waste-treatment plant and its impact on the nearby inhabitants, the Court concluded that the State had not struck a fair balance between the interest of the town’s economic well-being in having a waste-treatment plant and that of the applicant and her family’s living conditions and health, i.e. the effective enjoyment of her right to respect for her home and her private and family life, which were drastically affected by the waste treatment plant’s operation. In the case of *Fadeyeva v. Russia*,⁴⁸ the Court also concluded that despite the wide margin of appreciation left to the State, the Russian authorities had failed to strike a fair balance between the interests of the community and the applicant’s effective enjoyment of her rights under Article 8, leading to a violation of this provision. In this respect the Court noted that the public authorities had not offered the applicant any effective solution to help her move away from the dangerous area and there was no information that the public authorities had designed or applied effective measures to stop the polluting steel plant from operating in breach of domestic environmental standards.⁴⁹

(f) In addition, the Court has recognised the preservation of the environment, in particular in the framework of planning policies, as a legitimate aim justifying certain restrictions by public authorities on a person’s right to respect for private and family life and the home.⁵⁰

47. *López Ostra v. Spain*, para. 51

48. For a short description of this case, see para. 14 of the manual

49. *Fadeyeva v. Russia*, paras. 133 and 134.

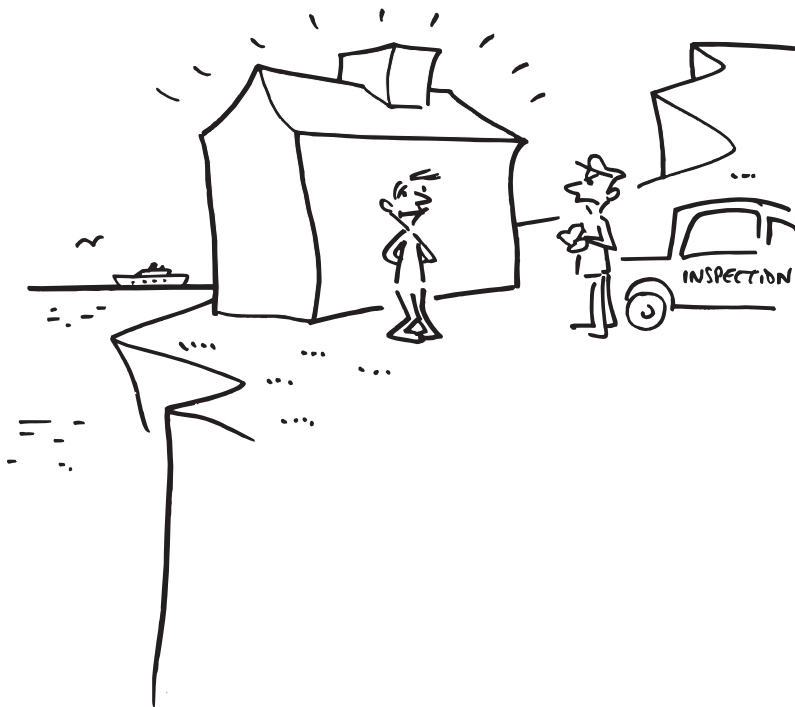
50. *Chapman v. the United Kingdom*, judgment of 18 January 2001 (Grand Chamber), para. 82.

24. As explained earlier, the Convention provides protection when the right to respect for private and family life and for the home are breached as a result of environmental degradation. However, in some cases the protection of the environment can also be a legitimate aim allowing the authorities to restrict this right. In *Chapman v. the United Kingdom* the authorities refused to allow the applicant, a gypsy, to remain in a caravan on land which she owned on the ground that this plot was situated in an area which, according to the planning policies in force, was to be preserved and where, for this purpose, dwellings were prohibited. The Court found that, whilst the authorities' refusal interfered with the applicant's right to respect for private and family life and home (notably because of her lifestyle as a gypsy), it nevertheless pursued the legitimate aim of protecting the rights of others through preservation of the environment, and was proportionate to that aim. The Court thus concluded that Article 8 of the Convention had not been violated.

25. Notwithstanding the fact that they pursue the legitimate aim of preserving the environment, any restrictions by the authorities should meet the same requirements as with other legitimate aims (see paragraphs 20 to 22).⁵¹

51. *Chapman v. the United Kingdom*, paras. 90-91.

Chapter III: Protection of property and the environment



ARTICLE 1 OF PROTOCOL NO. 1 PROTECTION OF PROPERTY

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

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

(a) Under Article 1 of Protocol No. 1 to the Convention, individuals are entitled to the peaceful enjoyment of their possessions, including protection from unlawful deprivation of property. This provision does not, in principle, guarantee the right to continue to enjoy those possessions in a pleasant environment.⁵² Article 1 of Protocol No. 1 also recognises that public authorities are entitled to control the use of property in accordance with the general interest.⁵³ In this context the Court has found that the environment is an increasingly important consideration.⁵⁴

26. Article 1 of Protocol No. 1 guarantees the right to the peaceful enjoyment of one's possessions. This right, however, is not absolute and certain restrictions are permissible. In certain circumstances, public authorities may order deprivation of property. However, any deprivation of one's property must be justified as being based on law and carried out in the public interest and a fair balance must be struck between the individual's interest and the public interest. In assessing whether a fair balance has been struck, the payment of compensation to the individual concerned is of relevance. In other cases, public authorities may also impose restrictions on the right to the peaceful

52. *Taşkın and others v. Turkey*, decision of 29 January 2004, "law" part (available in French only).

53. *Fredin v. Sweden*, judgment of 18 February 1991, para 41.

54. *Fredin v. Sweden*, para 48.

enjoyment of one's possessions which amount to a control of their use, provided that such control is lawful, in accordance with the public interest and proportionate.

27. The Court has found that the above-mentioned general features of Article 1 of Protocol No. 1 apply in cases raising environmental issues. The Court has held that Article 1 of Protocol No. 1 does not necessarily secure a right to continue to enjoy one's property in a pleasant environment. On the other hand, it has also noted that certain activities which could affect the environment adversely could seriously reduce the value of a property to the extent of even making it impossible to sell it, thus amounting to a partial expropriation.⁵⁵

(b) The general interest in the protection of the environment can justify certain restrictions by public authorities on the individual right to the peaceful enjoyment of one's possessions.⁵⁶ Such restrictions should be lawful and proportionate to the legitimate aim pursued. Public authorities enjoy a wide margin of appreciation in deciding what measures to implement in pursuance of the general interest.⁵⁷ However, the measures taken by public authorities must be proportionate and strike a fair balance between the interests involved.⁵⁸

28. Any restrictions by the public authorities on an individual's right to the peaceful enjoyment of his or her possessions must be in the general interest, i.e. in pursuit of a legitimate aim, which can be the protection of the environment. Measures taken in pursuit of such a legitimate aim must be in accordance with the law and the relevant law must be accessible and its effects foreseeable. Furthermore, the measures taken must be proportionate to the aim pursued, i.e. a fair balance must be struck between the individual and the general interests at stake. In assessing the fairness of this balance the Court recognises that the relevant national authorities are in a better position than the Court to judge how to weigh the various interests at stake. The Court therefore grants the State a "margin of appreciation", i.e. it will not seek to disturb the decision of the national authorities, unless the interference with the individual's rights is disproportionate.

55. *Taşkın and others v. Turkey*, decision of 29 January 2004, "law" part (available in French only).

56. *Pine Valley Developments Ltd and Others v. Ireland*, judgment of 29 November 1991, para. 57.

57. *Fredin v. Sweden*, para. 51.

58. *Chapman v. the United Kingdom*, para. 120.

29. In the case of *Fredin v. Sweden*, the Court considered a restriction on the use of property justified. 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. The Court found that the revocation of the licence interfered with the applicants' peaceful enjoyment of their property. However, it also held that it had a legal basis and served the general interest in protecting the environment. The Court underlined that the applicants were aware of the possibility which the authorities had of revoking their licence. While the authorities were under an obligation to take into account their interests when examining whether the licence should be renewed, which they were to do every ten years, this could not have founded any legitimate expectation on the applicants' part of being able to continue exploitation for a long period of time. In addition, the applicants were granted a three-year closing-down period, which was subsequently extended by eleven months at their request. The Court concluded that the revocation was not disproportionate to the legitimate aim pursued, i.e. the protection of the environment, and therefore that Article 1 of Protocol No. 1 was not violated.

30. The *Pine Valley Developments Ltd and Others v. Ireland* judgment and the *Kapsalis and Nima-Kapsali v. Greece*⁵⁹ decision both concerned the withdrawal of permissions to build on land purchased for development. In both cases, the Court found that these decisions amounted to a control of the use of property, but that it was lawful in domestic law and that the aim of environmental protection which had been pursued by the authorities when deciding on the withdrawal was both legitimate and in accordance with the general interest. In the *Pine Valley Developments Ltd and Others v. Ireland* case, the interference was aimed at securing the correct application of the planning/environmental legislation not only in the applicants' case but across the board. The prevention of building was a proper way of serving the aim of the legislation at issue which was to preserve the green-belt. Moreover, the applicants were engaged in 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 that the local authorities would oppose any departure from it. The Court concluded that the annulment of the building permission could not be considered disproportionate to the legitimate aim of preservation of the environment and thus that there was no violation of Article 1 of

59. *Kapsalis and Nima-Kapsali v. Greece*, decision of 23 September 2004.

Protocol No. 1.⁶⁰ In the *Kapsalis and Nima-Kapsali v. Greece* case, the Court held that in fields such as urban planning or the environment, the assessment of the national authorities should prevail unless it is manifestly unreasonable.⁶¹ In the case at hand, the withdrawal of the planning permission was validated by the Administrative High Court following a thorough examination of all aspects of the problem and there was no indication that its decision had been either arbitrary or unforeseeable. Indeed two other building permissions on land situated in the same area as the applicants' own plot had already been annulled by the courts prior to the annulment of the applicants' own permission. Moreover, the decision to allow building in the zone where the applicants' plot was situated had not been finalised when they had purchased it; the authorities could not be blamed for the applicants' negligence in verifying the status of the plot which they were buying. Therefore, the Court considered that the withdrawal of the planning permission was not disproportionate to the aim of protection of the environment and as a result concluded that the complaint should be dismissed as being manifestly ill-founded.

31. In another case, *Papastavrou and Others v. Greece*⁶², the applicants and the authorities were in dispute over the ownership of a plot of land. Following a decision of the prefect, it was decided that the area where the disputed plot was located should be reforested. The applicants unsuccessfully challenged this decision before domestic courts and therefore brought their case before the Court. They argued that the prefect's decision had not been taken in accordance with the public interest, alleging that the geological characteristics of that area made it unfit for reforestation. The Court had regard to the complexity of the issue and the fact that the prefect's decision was based solely on a decision of the Minister of Agriculture made some 60 years earlier, without any fresh reassessment of the situation. It also noted that there was no possibility of obtaining compensation under Greek law. The Court thus concluded that the public authorities had not struck a fair balance between the public interest and the applicants' rights. Accordingly, there had been a violation of Article 1 of Protocol No. 1.

(c) On the other hand, protection of the individual right to the peaceful enjoyment of one's possessions may require the public authorities

60. *Pine Valley Developments Ltd and Others v. Ireland*, paras. 57-59.

61. *Kapsalis and Nima-Kapsali v. Greece*, para. 3, "law" part.

62. *Papastavrou and Others v. Greece*, judgment of 10 April 2003, paras. 22-39.

to ensure certain environmental standards. The effective exercise of this right does not depend merely on the public authorities' duty not to interfere, but may require them to take positive measures to protect this right. The Court has found that such an obligation may arise in respect of dangerous activities.⁶³

32. Pursuant to the Court's interpretation of Article 1 of Protocol No. 1, in certain circumstances, public authorities must not only refrain from directly infringing the right to protection of property, but they may also be required to take active steps to ensure that this right is respected in practice. In the context of dangerous activities where the right of property is at risk, public authorities may therefore be expected to take measures to ensure that this right is not breached.

33. In *Öneryıldız v. Turkey*⁶⁴, the applicant's home was destroyed by an explosion which took place on the rubbish tip next to where his family's house had been illegally built. The Court noted that the authorities had tolerated its existence for a number of years. It considered therefore that the applicant could claim protection from Article 1 of Protocol No. 1 despite the fact that his dwelling had been illegally built. The Court also found that there was a causal link between the gross negligence attributable to the authorities and the destruction of the applicant's house. It held that there were certain suitable preventive measures that the national authorities could have taken to avert the environmental risk that had been brought to their attention, and that their failure to take the necessary measures amounted to a breach of their positive obligation under Article 1 of Protocol No. 1.

63. *Öneryıldız v. Turkey*, paras. 134 and 135.

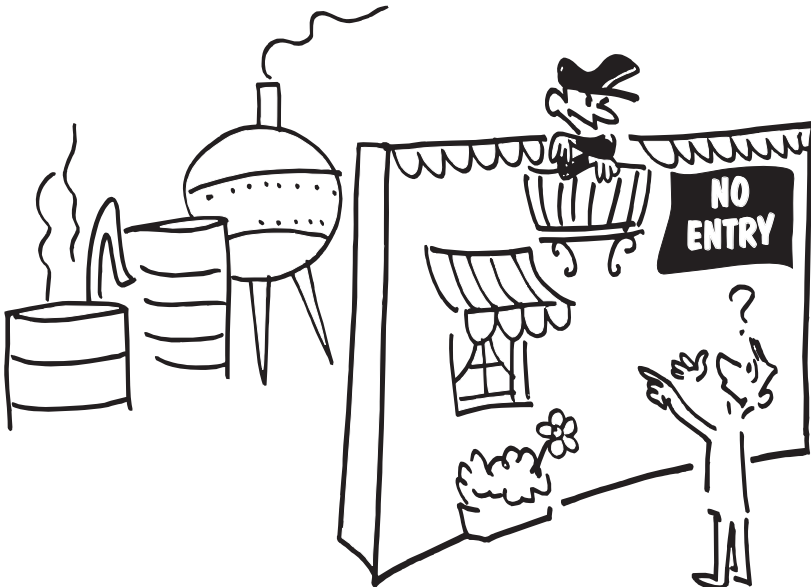
64. For a short description of the case, see para. 4 of the manual.

Chapter IV: Information and communication on environmental matters



ARTICLE 10 FREEDOM OF EXPRESSION

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. [...]
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.



***Right to receive and impart information
and ideas on environmental matters***

(a) The right to receive and impart information and ideas is guaranteed by Article 10 of the Convention. In the particular context of the environment, the Court has found that there exists a strong public interest in enabling individuals and groups to contribute to the public debate by disseminating information and ideas on matters of general public interest.⁶⁵

34. Freedom of expression is a cornerstone of democracy. It enables debate and the free exchange of ideas. The right to distribute information on environmental matters can be seen as just one example of the rights that Article 10 seeks to protect. Clearly, this right protects individuals from direct actions of the public authorities, such as censorship. However, this right may also be relevant when a private party takes legal action against another private party to stop the distribution of information.

35. The issue of the right of environmental activists to distribute material was raised in *Steel and Morris v. the United Kingdom*. This case involved two environmental activists who were associated with a campaign against McDonald's. As part of that campaign, a leaflet called 'What's wrong with McDonald's?' was produced and distributed. McDonald's sued the two applicants for libel. The trial lasted 313 days and the applicants did not receive any legal aid even though they were unemployed or earning low wages at the time. McDonald's won substantial damages against them. The European Court of Human Rights recognised that large multinational companies like McDonald's had the right to defend their reputation in court proceedings but stressed at the same time that small and informal campaign groups had to be able to carry on their activities effectively. The Court considered it essential, in the interests of open debate, that in court proceedings involving both big companies and small campaign groups there is fairness and equality of arms between them. Otherwise, there might be a possible "chilling effect" on the general interest in promoting the free circulation of information and ideas about the

65. *Steel and Morris v. the United Kingdom*, judgment of 15 February 2005, para. 89; *Vides Aizsardzības Klubs v. Latvia*, judgment of 27 May 2004, para. 40.

activities of powerful commercial entities. By not granting legal aid to the applicants, the United Kingdom had not guaranteed fairness in the court proceedings. This lack of fairness and the substantial damages awarded against them meant, according to the Court, that the applicants' freedom of expression had been violated.

(b) Restrictions by public authorities on the right to receive and impart information and ideas, including on environmental matters, must be prescribed by law and follow a legitimate aim. Measures interfering with this right must be proportionate to the legitimate aim pursued and a fair balance must therefore be struck between the interest of the individual and the interest of the community as a whole.⁶⁶

36. As is clear from the text of paragraph 2 of Article 10, freedom of expression is not an absolute right. However, when public authorities take steps which may interfere with freedom of expression, their actions must fulfil three requirements. These are cumulative, meaning all three must be present for the restriction to be permitted under Article 10. Firstly, there must be a legal basis for their action and the relevant domestic law must be accessible and its effects foreseeable. Secondly, their action must pursue one of the interests set out in Article 10 paragraph 2. Finally, their action must be necessary in a democratic society. This third requirement implies that the means used by the authorities must be proportionate to the interest pursued. The Court has frequently stated that the adjective "necessary" in paragraph 2 implies the existence of a "pressing social need".⁶⁷ The level of protection ultimately given to the expression in question will depend on the particular circumstances of the case including the nature of the restriction, the degree of interference and the type of information or opinions concerned.

37. Given that the information that environmental groups or activists will want to distribute is often of a sensitive nature, the level of protection will as a rule be high. By way of an example, in *Vides Aizsardzības Klubs v. Latvia*, the applicant was an environmental association which alleged that a local mayor had not halted building works which were

66. *Vides Aizsardzības Klubs v. Latvia*, para. 40.

67. E.g. *The Observer and Guardian v. the United Kingdom*, judgment of 26 November 1991, para. 59.

causing damage to the coastline. The mayor sued the association. The Latvian court found that the association had not proven its allegations and ordered it to publish an apology and pay damages to the mayor. The European Court of Human Rights noted that the association had been trying to draw attention to a sensitive issue. As a non-governmental organisation specialised in the relevant area, the applicant organisation had been exercising its role of a public “watchdog”. That kind of participation by an association was essential in a democratic society. In the Court’s view, the applicant organisation had expressed a personal view of the law amounting to a value judgement. It could not therefore be required to prove the accuracy of that assessment. The Court held that, in a democratic society, the public authorities were, as a rule, exposed to permanent scrutiny by citizens and, subject to acting in good faith, everyone should be able to draw the public’s attention to situations that they considered unlawful. As a result, despite the discretion afforded to the national authorities, the Court held that there had not been a reasonable relationship of proportionality between the restrictions imposed on the freedom of expression of the applicant organisation and the legitimate aim pursued. The Court therefore concluded that there had been a violation of Article 10.

(c) Freedom to receive information under Article 10 cannot be construed as imposing on public authorities a general obligation to collect and disseminate information relating to the environment of their own motion.⁶⁸

38. In *Guerra and Others v. Italy*,⁶⁹ the applicants complained – among other things – that the authorities’ failure to inform the public about the hazards of the factory and about the procedures to be followed in the event of a major accident, infringed their right to freedom of information as guaranteed by Article 10. However, the Court found that no obligation on States to collect, process and disseminate environmental information of their own motion could be derived from Article 10. Such an obligation would prove hard for public authorities to implement by reason of the difficulty for them to determine among other things how and when the information should be disclosed and

68. *Guerra and Others v. Italy*, para. 53.

69. For a short description of the case, see para. 18 of the manual

who should be receiving it. However, freedom to receive information under Article 10 as interpreted by the Court prohibits public authorities from restricting a person from receiving information that others wish or may be willing to impart to him or her.

Access to information on environmental matters

(d) Public authorities may be under a specific obligation to secure a right to access to information in relation to environmental issues in certain circumstances.⁷⁰ This obligation arises from the rights protected by Articles 2 and 8 of the Convention. The Court has found that in the particular context of dangerous activities falling within the responsibility of the State, special emphasis should be placed on the public's right to information.⁷¹

39. As mentioned under the previous principle, the Court stated in the *Guerra and Others v. Italy case*⁷² that Article 10 was not applicable because this Article basically prohibits public authorities from restricting a person from receiving information that others wish or may be willing to impart to him. The Court did find in this case, however, that Article 8 had been violated by the failure to make information available which would have enabled the applicants to assess the risks they and their families might run if they continued to live near the factory.

40. In *Öneryıldız v. Turkey*⁷³, the Court highlighted that the right to information which was recognised under Article 8 (see paragraph above) may also, in principle, be relied on for the protection of the right to life, notably with regard to dangerous activities.

(e) When public authorities engage in dangerous activities which they know involve adverse risks to health, they must establish an effective and accessible procedure to enable individuals to seek all relevant and appropriate information.⁷⁴

70. *Öneryıldız v. Turkey*, para. 90 and *Guerra and Others v. Italy*, para. 60.

71. *Öneryıldız v. Turkey*, para. 90.

72. For a short description of the case, see para. 18 of the manual.

73. For a short description of the case, see para. 4 of the manual.

74. *McGinley and Egan v. the United Kingdom*, judgment of 9 June 1998, para. 101.

(f) The Court has also recognised the importance to individuals of access to information that can allay their fears or enable them to assess the environmental danger to which they may be exposed. Public authorities must provide such information to persons when their rights to life under Article 2 and to respect for private and family life and the home under Article 8 are threatened.⁷⁵

41. In *McGinley and Egan v. the United Kingdom*, the applicants were soldiers in the Pacific when the British Government carried out nuclear tests there. They argued that non-disclosure of records relating to those tests violated their rights under Article 8 because the records would have enabled them to determine whether or not they had been exposed to dangerous levels of radiation, so that they could assess the possible consequences of the tests to their health. The Court found that Article 8 was applicable on the ground that the issue of access to information which could either have allayed the applicants' fears or enabled them to assess the danger to which they had been exposed was sufficiently closely linked to their private and family lives to raise an issue under Article 8. It further held that where a Government engages in hazardous activities which might have hidden adverse consequences on human health, respect for private and family life under Article 8 requires that an effective and accessible procedure be established which enables persons involved in such activities to seek all relevant and appropriate information. If there is an obligation of disclosure, individuals must not be required to obtain it through lengthy and complex litigation.⁷⁶ In the instant case, however, the Court found that the applicants had not taken the necessary steps to request certain documents which could have informed them about the radiation levels in the areas in which they were stationed during the tests, and which might have served to reassure them in this respect. The Court concluded that by providing a procedure for requesting documents the State had fulfilled its positive obligation under Article 8 and that therefore there had been no violation of this provision.

75. *Öneryıldız v. Turkey*, paras. 90 and 108; *McGinley and Egan v. the United Kingdom*, paras. 97 and 101; *Guerra and Others v. Italy*, para. 60; *Taşkın and Others v. Turkey*, judgment of 10 November 2004, para. 116.

76. *Roche v. the United Kingdom*, judgment 19 October 2005 (Grand Chamber), para. 165.

42. In the *Guerra and Others v. Italy* case, the Court explicitly noted that the applicants had not had access to essential information that would have enabled them to assess the risks that 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 a factory located nearby. The Court concluded that the Italian authorities had failed to guarantee the applicants' rights under Article 8 for not having communicated relevant information on the dangers of the factory. More generally, the Court has emphasised the importance of public access to the conclusions of studies and to information which would enable members of the public to assess the danger to which they are exposed.⁷⁷

43. As to the right to information in circumstances where life is at risk, the Court considered in *Öneryıldız v. Turkey*⁷⁸ that similar requirements arose under Article 2 as those it had found were applicable under Article 8 in the *Guerra and Others* case, and that in this context particular emphasis had to be placed on the public's right to information. However, the Court also found that even if public authorities respect the right of information this may not be sufficient to absolve the State of its responsibilities under Article 2, unless more practical measures are also taken to avoid the risks.

77. *Taşkın and Others v. Turkey*, para. 119.

78. For a short description of the case, see para. 4 of the manual.

Chapter V: Decision-making processes in environmental matters and public participation in them



(a) In the process of making decisions which relate to the environment, public authorities must take into account the interests of individuals who may be affected.⁷⁹ In this context, it is important that the public be able to make representations to the public authorities.⁸⁰

(b) Where public authorities have complex issues of environmental and economic policy to determine, the decision-making process must involve appropriate investigations and studies in order to predict and evaluate in advance the effects on the environment and to enable them to strike a fair balance between the various conflicting interests at stake.⁸¹ The Court has stressed the importance of public access to the conclusions of such studies and to information which would enable individuals to assess the danger to which they are exposed.⁸² However, this does not mean that decisions can be taken only if comprehensive and measurable data are available in relation to each and every aspect of the matter to be decided.⁸³

44. The Court has recognised the importance of ensuring that individuals are involved in the decision-making processes leading to decisions which could affect the environment and where their rights under the Convention are at stake.

45. In *Hatton and Others v. the United Kingdom*,⁸⁴ for instance, which related to the noise generated by aircraft taking off and landing at an international airport and the regulatory regime governing it, the Court examined the question of public participation in the decision making-process in the context of Article 8 considering that it had a bearing on the quiet enjoyment of the applicants' private and family life and home. It deemed that in cases involving decisions by public authorities which affect environmental issues, there are two aspects to the inquiry which may be carried out by the Court. First, the Court

79. *Hatton and Others v. the United Kingdom*, para. 99; *Chapman v. the United Kingdom*, para. 92.

80. *Hatton and Others v. the United Kingdom*, para. 128.

81. *Hatton and Others v. the United Kingdom*, para. 128; *Taşkın and Others v. Turkey*, para. 119.

82. *Taşkın and Others v. Turkey*, para. 119.

83. *Hatton and Others v. the United Kingdom*, para. 128; *G. and E. v. Norway*, admissibility decision of 3 October 1983.

84. For a short description of the case, see para. 16 of the manual.

may assess the substantive merits of the Government's decision, to ensure that it is compatible with Article 8. Secondly, it may scrutinise the decision-making process to ensure that due weight has been accorded to the interests of the individual. This means that in such cases the Court is required to consider all procedural aspects of the process leading to the decision in question, including the type of policy or decision involved, the extent to which the views of individuals were taken into account throughout the decision-making procedure and the procedural safeguards available, i.e. whether the individuals concerned could challenge the decision before the courts or some other independent body, if they believed that their interests and representations had not been properly taken into account.

46. The Court concluded in the *Hatton and Others v. the United Kingdom* case that there had not been fundamental procedural flaws in the preparation of the scheme on limitations for night flights and, therefore, no violation of Article 8 in this respect, in view of the following elements. The Court noted that the authorities had consistently monitored the situation and that night flights had been restricted as early as 1962. The applicants had access to relevant documentation and it would have been open to them to make representations. If their representations had not been taken into account, it would have been possible for them to challenge subsequent decisions or the scheme itself in court.

Chapter VI: Access to justice and other remedies in environmental matters



ARTICLE 6 PARAGRAPH 1

RIGHT TO A FAIR TRIAL

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

ARTICLE 13

RIGHT TO AN EFFECTIVE REMEDY

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

(a) Several provisions of the Convention guarantee that individuals should be able to commence judicial or administrative proceedings in order to protect their rights. Article 6 guarantees the right to a fair trial, which the Court has found includes the right of access to a court. Article 13 guarantees to persons, who have an arguable claim that their rights and freedoms as set forth in the Convention have been violated, an effective remedy before a national authority. Moreover, the Court has inferred procedural requirements from certain provisions of the Convention, such as Articles 2 and 8.⁸⁵ All these provisions may

apply in cases where human rights and environmental issues are involved.

(b) The right of access to a court under Article 6 will as a rule come into play when a “civil right or obligation”, within the meaning of the Convention, is the subject of a “dispute”.⁸⁶ This right includes the right to see final and enforceable court decisions executed and implies that all parties, including public authorities, must respect court decisions.⁸⁷

47. Article 6, guaranteeing the right to a fair trial, is one of the most litigated of all the rights of the Convention. There is, therefore, a great deal of case-law on the requirements of Article 6 paragraph 1 of “a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”. The case-law elaborates a number of other requirements relating to the issue of fairness, including equality of arms which entails that both parties should be given the opportunity to present their cases and adduce evidence under conditions that do not substantially disadvantage one or other, and that each party should have the opportunity to comment on the arguments and evidence submitted by the other. Other requirements also flow from the case-law on the issue of fair trial, for instance that the parties should normally be entitled to appear in person before the courts upon request and that courts should give reasoned decisions.

48. The Court has found that the right of access to a court is also one of the components of the right to a fair trial protected by Article 6. The text of the Convention alone does not contain an express reference to the right of access to a court. However, the case-law of the Court has established that the right of access to court – that is the right to institute proceedings before courts in civil and administrative matters – is an inherent part of the fair trial guarantees provided by Article 6. In one of its early judgments,⁸⁸ the Court held that Article 6

85. E.g. *Öneryıldız v. Turkey*, paras. 89-96; *Hatton and Others v. the United Kingdom*, para. 98.

86. *Balmer-Schafroth and Others v. Switzerland*, judgment of 26 August 1997 (Grand Chamber), para. 32; *Athanassoglou and Others v. Switzerland*, judgment of 6 April 2000 (Grand Chamber), para. 43.

87. *Kyrtatos v. Greece*, para. 32; *Taşkın v. Turkey*, para. 134.

88. *Golder v. the United Kingdom*, judgment of 21 February 1975, para. 36.

“secures to everyone the right to have any claim related to his civil rights and obligations brought before a court or tribunal.”

49. In order for Article 6 paragraph 1 to be applicable in civil cases, there must be a “dispute”⁸⁹ over a “civil right or obligation”. Such a dispute must be genuine and serious. It may be related not only to the actual existence of the right but also to its scope and the manner in which it is exercised. The outcome of the proceedings must be directly decisive for the rights in question. The Court has given the notion of “civil rights and obligations” an autonomous meaning for the purposes of the Convention: whilst it must be a right or an obligation recognised in the national legal system, the Court will not necessarily follow distinctions made in national legal systems between private and public law matters or limit the application of Article 6 to disputes between private parties. The Court has not sought to provide a comprehensive definition of what is meant by a “civil right or obligation” for these purposes.

50. In cases concerning environmental pollution, applicants may invoke their right to have their physical integrity and the enjoyment of their property adequately protected. These rights are recognised in the national law of most European countries and constitute therefore “civil rights” within the meaning of Article 6 paragraph 1.⁹⁰ The Court has recognised that an enforceable right to live in a healthy and balanced environment as enshrined in national law constituted a “civil right” within the meaning of Article 6 paragraph 1.⁹¹ In *Zander v. Sweden*, the Court recognised that the protection under Swedish law for landowners against the water in their wells being polluted constituted a “civil right” within the meaning of Article 6 paragraph 1. Since it was not possible for the applicants to have the Government’s decision reviewed by a court, the Court found a violation of this Article. In other cases the “rights” of individuals to build on or develop their land, or to protect the pecuniary value of their land by objecting to the development of neighbouring land, have been considered as “civil rights” for the purposes of Article 6.⁹²

89. “*contestation*” in the French text.

90. See *Balmer-Schafroth and Others v. Switzerland*, para. 33; *Athanassoglou and Others v. Switzerland*, para. 44; *Taşkın and Others v. Turkey*, para. 90.

91. *Okuy v. Turkey*, judgment of 12 July 2005 (judgment not final yet), paras. 67-69.

92. E.g. *Allan Jacobsson v. Sweden (no. 1)*, judgment of 19 February 1998, para. 42; *Fredin v. Sweden (no. 1)*, judgment of 18 February 1991, para. 63; *Ortenberg v. Austria*, judgment of 25 November 1994, para. 28.

51. In contrast, Article 6 is not applicable where the right invoked by the applicant is merely a procedural right under administrative law which is not related to the defence of any specific right which he or she may have under domestic law.⁹³

52. The right of access to a court which is derived from Article 6 paragraph 1 is not an absolute right. Restrictions on this right may be compatible with the Convention if they have a legitimate purpose and are proportionate to the goal they aim to achieve. On the other hand, legal or factual restrictions on this right may be in violation of the Convention if they impede the applicant's effective right of access to a court.

53. In addition, the Court has established that the right to the enforcement of a court decision forms an integral part of the right to a fair trial and of access to a court under Article 6 paragraph 1. The right to institute proceedings before courts would be illusory and deprived of any useful effect if a national legal system allowed a final court decision to remain inoperative.⁹⁴ This holds true in cases related to the environment where issues under Article 6 arise. In the *Taskın and Others v. Turkey* judgment, the Court found a violation under Article 6 paragraph 1 on the ground that the authorities had failed to comply within a reasonable time with an administrative court judgment, later confirmed by the Turkish Supreme Administrative Court, annulling a mining permit by reason of its adverse effects on the environment and human health. In *Kyrtatos v. Greece*,⁹⁵ the Court found that by failing for more than seven years to take the necessary measures to comply with two final court decisions quashing building permits on the ground of their detrimental consequences on the environment, the Greek authorities had deprived the provisions of Article 6 paragraph 1 of any useful effect.

(c) The right of access to a court guaranteed by Article 6 applies if there is a sufficiently direct link between the environmental problem at issue and the civil right invoked; mere tenuous connections or remote consequences are not sufficient.⁹⁶ In case of a serious, specific

93. *Ünver v. Turkey*, decision of 26 September 2000, para. 2 (in "the law").

94. *E.g. Hornsby v. Greece*, judgment of 19 March 1997, para. 40.

95. For a short description of the case, see para. 11 of the manual.

96. *Balmer-Schafroth and Others v. Switzerland*, para. 40.

and imminent environmental risk, Article 6 may be invoked if the danger reaches a degree of probability which makes the outcome of the proceedings directly decisive for the rights of those individuals concerned.⁹⁷

54. Not all national legal systems recognise a specific right to live in a healthy and balanced environment that is directly enforceable by individuals in the courts. In many disputes relating to environmental matters, applicants invoke their more general rights to life, physical integrity or property. In such cases, they have a right of access to a court with all the guarantees under Article 6 of the Convention if the outcome of the dispute is directly decisive for their individual rights. It may be difficult to establish a sufficient link with a “civil right” in cases where the applicants only complain of an environmental risk but have not suffered any damage to their health or property.

55. In the cases of *Balmer-Schafroth and Others v. Switzerland* and *Athanassoglou and Others v. Switzerland*, the Court examined in detail whether the applicants could successfully invoke the right of access to a court in proceedings concerning the granting of operating licences for nuclear power plants. The applicants lived in villages situated in the vicinity of nuclear power stations. In both cases, they objected to the extension of operating licences. They invoked risks to their rights to life, physical integrity and protection of property which they claimed would result from such an extension. According to them, the nuclear power plants did not meet current safety standards and the risk of an accident occurring was greater than usual. In both cases, the Federal Council dismissed all the objections as being unfounded and granted the operating licences. Before the Court, the applicants complained in both cases of a lack of access to a court to challenge the granting of operating licences by the Swiss Federal Council as under Swiss law, they had no possibility of appealing against such decisions. The Court recognised in both cases that there had been a genuine and serious dispute between the applicants and the decision-making authorities about the extension of operating licences for the nuclear power plants. The applicants had a “right” recognised under Swiss law to have their life, physical integrity and property adequately protected from the risks entailed by the use of nuclear energy. The Court found that the decisions at issue were of a judicial character. It had therefore

97. *Balmer-Schafroth and Others v. Switzerland*, para. 40.

to determine whether the outcome of the proceedings in question had been directly decisive for the rights asserted by the applicants, i.e. whether the link between the public authorities' decisions and the applicants' rights to life, physical integrity and protection of property was sufficiently close to bring Article 6 into play.

56. In the *Balmer-Schafroth and Others v. Switzerland* case the Court found that the applicants had not established a direct link between the operating conditions of the power station and the right to protection of their physical integrity as they had failed to show that the operation of the power station had exposed them personally to a danger that was not only serious but also specific and, above all, imminent. In the absence of such a finding, the effects on the population of the measures which could have been taken regarding security had therefore remained hypothetical. Consequently, neither the dangers nor the remedies had been established with the degree of probability that made the outcome of the proceedings directly decisive within the meaning of the Court's case-law for the right relied on by the applicants. The connection between the Federal Council's decision and the right invoked by the applicants had been too tenuous and remote. The Court ruled therefore that Article 6 was not applicable.

57. The Court reached the same conclusion in the *Athanassoglou and Others v. Switzerland* case.⁹⁸ The Court emphasised that the applicants 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. The Court considered that the outcome of the procedure before the Federal Council was decisive for the general question as to whether the operating licence of the power plant should be extended, but not for the "determination" of any "civil right", such as the rights to life, physical integrity and protection of property, which Swiss law conferred on the applicants in their individual capacity. The Court thus found Article 6 not to be applicable.

(d) Environmental associations which are entitled to bring proceedings in the national legal system to defend the interests of their members may invoke the right of access to a court when they seek to defend the economic interests of their members (e.g. their personal assets and

98. *Athanassoglou and Others v. Greece*, para. 54.

lifestyle). However, they will not necessarily enjoy a right of access to a court when they are only defending a broad public interest.⁹⁹

58. According to the case-law of the Court, environmental associations may invoke the right of access to a court provided that the proceedings which they bring concern “civil rights” falling within the scope of Article 6 paragraph 1 of the Convention and thus go beyond the general public interest to protect the environment.

59. The Court addressed this issue in the case of *Gorraiz Lizarraga and Others v. Spain*. One of the applicants in this case was an association which had brought proceedings against plans to build a dam in Itoiz, a village of the province of Navarre, which would result in three nature reserves and a number of small villages being flooded. The *Audiencia Nacional* partly allowed their application and ordered the suspension of the work. The parliament of the Autonomous Community of Navarre later passed Law no. 9/1996 on natural sites in Navarre, which amended the rules applicable to conservation areas in nature reserves and effectively allowed work on the dam to continue. Following an appeal on points of law, the Supreme Court reduced the scale of the dam. The State and the Autonomous Government argued that they were unable to execute that judgment in the light of the Autonomous Community’s Law no. 9/1996. The *Audiencia Nacional* asked the Constitutional Court to rule on a preliminary question by the applicant association as to the constitutionality of certain provisions of this law. The Constitutional Court found the law in question to be constitutional.

60. Relying on Article 6 paragraph 1, the applicants submitted that they had not had a fair hearing in that they had been prevented from taking part in the proceedings concerning the referral to the Constitutional Court of the preliminary question, whereas the State and State Counsel’s Office had been able to submit observations to the Constitutional Court. The Government contested the applicability of Article 6 arguing that the dispute did not concern pecuniary or subjective rights of the association, but only the general question of legality and collective rights. The Court rejected this view. Although the dispute was partly about the defence of the general interest, the association also complained about a concrete and direct threat to the per-

99. *Gorraiz Lizarraga and Others v. Spain*, judgment of 27 April 2004, paras. 46 and 47.

sonal possessions and the way of life of its members. Since the action was, at least partly, “pecuniary” and “civil” in nature, the association was entitled to rely on Article 6 paragraph 1 which was therefore applicable. The Court stressed that the judicial review by the Constitutional Court had been the only means for the applicants to challenge, albeit indirectly, the interference with their property and way of life. However, the Court found that there had been no violation of Article 6 paragraph 1.

(e) Where public authorities have to determine complex questions of environmental and economic policy, they must ensure that the decision-making process takes account of the rights and interests of the individuals whose rights under Article 8 may be affected. Where such individuals consider that their interests have not been given sufficient weight in the decision-making process, they should be able to appeal to a court.¹⁰⁰

61. The Court has emphasised the importance of the right of access to a court also in the context of Article 8 of the Convention. When complex issues of environmental and economic policy are at stake, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests of the individuals concerned. In *Hatton and Others v. the United Kingdom*¹⁰¹ and in *Taşkın and Others v. Turkey*¹⁰², the Court recognised that the right of access to a court is part of a fair decision-making process in environmental matters required under Article 8.

(f) In addition to the right of access to a court as described above, Article 13 guarantees that persons, who have an arguable claim that their rights and freedoms as set forth in the Convention have been violated, must have an effective remedy before a national authority.¹⁰³

(g) The protection afforded by Article 13 does not go so far as to require any particular form of remedy. The State has a margin of appreciation in determining how it gives effect to its obligations under

100. *Taşkın and Others v. Turkey*, para. 116.

101. For a short description of the case, see para. 16 of the manual.

102. For a short description of the case, see para. 53 of the manual.

103. *Leander v. Sweden*, judgment of 26 March 1987, para. 77.

this provision. The nature of the right at stake has implications for the type of remedy which the State is required to provide. Where for instance violations of the rights enshrined in Article 2 are alleged, compensation for economic and non-economic loss should in principle be possible as part of the range of redress available. However, neither Article 13 nor any other provision of the Convention guarantees an individual a right to secure the prosecution and conviction of those responsible.¹⁰⁴

62. The object of Article 13 of the Convention is to provide a means whereby individuals can obtain appropriate relief at the national level for violations of their Convention rights so as to avoid having to bring their case before the European Court of Human Rights. States enjoy a certain margin of appreciation as to how they provide remedies within their own legal systems. However, whatever form is chosen, the remedy must be effective.

63. The Court has held that the protection afforded by Article 13 must extend to anyone with an “arguable claim” that his or her rights or freedoms under the Convention have been infringed.¹⁰⁵ It is not necessary for a violation of a right to have been established. The individuals concerned must, however, be able to demonstrate that they have grievances which fall within the scope of one of the Convention rights and which can be regarded as “arguable” in terms of the Convention. The Court has not defined the concept of arguability which is to be interpreted on a case-by-case basis.

64. The Court has developed the following general principles for the application and interpretation of Article 13:¹⁰⁶

- where an individual has an arguable claim to be the victim of a violation of the rights set forth in the Convention, he or she should have a remedy before a national authority in order both to have the claim decided and, if appropriate, to obtain redress;

104. *Öneryıldız v. Turkey*, para. 147.

105. *Klass and Others v. Germany*, judgment of 6 September 1978, para. 64; *Silver and Others v. the United Kingdom*, judgment of 25 March 1983, para. 113.

106. E.g. *Leander v. Sweden*, para. 77.

- the authority referred to in Article 13 does not have to be a judicial authority. However, if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective; this means that it should be composed of members who are impartial and who enjoy safeguards of independence and it should be competent to decide on the merits of the claim and, if appropriate, provide redress;
- although no single remedy may itself entirely satisfy the requirements of Article 13, a combination of remedies provided for under domestic law may do so;
- Article 13 does not require that remedies should include the possibility of challenging a State's laws before a national authority on the ground that they are contrary to the Convention or equivalent domestic norms.

65. The nature of the right in respect of which a remedy is sought might have implications for the type of remedy which the State is required to provide under Article 13. In the case of alleged violations of the right to life (Article 2), the Court has established high standards for evaluating the effectiveness of domestic remedies. These include the duty to carry out a thorough and effective investigation, a duty that also follows, as a procedural requirement, from Article 2 (see above chapter I under principle (d)). Failure to act by government officials whose duty it is to investigate will undermine the effectiveness of any other remedy that may have existed at the material time. There must be a mechanism for establishing the liability of State officials or bodies for acts or omissions. The families of victims must, in principle, receive compensation that reflects the pain, stress, anxiety and frustration suffered in circumstances giving rise to claims under this Article.¹⁰⁷

66. In cases concerning environmental matters, applicants may typically seek remedies under Article 13 for alleged breaches of the right to life (Article 2 of the Convention), the right to respect for private and family life (Article 8 of the Convention) or the right to the protection of property (Article 1 of Protocol No. 1 to the Convention) (see chapters I, II and III of the manual).

107. *Keenan v. the United Kingdom*, judgment of 3 April 2001, paras. 123-130.

67. In *Hatton and Others v. the United Kingdom*,¹⁰⁸ the Court considered whether the applicants had had a remedy at national level to enforce their Convention rights under Article 8. As stated before, the applicants complained of excessive night-time noise from airplanes landing and taking off from Heathrow Airport. They argued that the scope of judicial review provided by English courts had been too limited. At the time, the courts were only competent to examine whether the authorities had acted irrationally, unlawfully or manifestly unreasonably (classic English public-law concepts). The English courts had not been able to consider whether the claimed increase in night flights represented a justifiable limitation on the right to respect for private and family lives or for the homes of those who lived near Heathrow Airport. The Court accordingly held that there had been a violation of Article 13.

68. In *Öneryıldız v. Turkey*¹⁰⁹ the Court examined the adequacy of criminal and administrative investigations that had been carried out following a methane-gas explosion on a waste-collection site. The national authorities carried out criminal and administrative investigations, following which the mayors of Ümraniye and Istanbul were brought before the courts, the former for failing to comply with his duty to have the illegal dwellings surrounding the said tip destroyed and the latter for failing to make the rubbish tip safe or order its closure. They were both convicted of “negligence in the exercise of their duties” and sentenced to very low fines and the minimum three-month prison sentence, which was later commuted to a fine. The applicant complained of important shortcomings in the criminal and administrative investigations. After finding a violation of Article 2, the Court examined the complaints also under Article 13. It noted that remedies for alleged violations of the right to life should allow for compensation of any pecuniary and non-pecuniary damages suffered by the individuals concerned. However, neither Article 13 nor any other provision of the Convention guarantees an applicant the right to secure the prosecution and conviction of a third party or the right to “private revenge”. The Court found violations of Article 13 both with regard to the right to life (Article 2) and the protection of property (Article 1 of Protocol No. 1).

108. For a short description of the case, see para. 16 of the manual.

109. For a short description of the case, see para. 4 of the manual.

69. As regards the complaint under Article 2, the Court considered that the administrative law remedy available appeared sufficient to enforce the substance of the applicant's complaints regarding the death of his relatives and was capable of affording him adequate redress. However, the Court underlined that the timely payment of a final award should be considered an essential element of a remedy under Article 13. It noted that the Administrative Court had taken four years, eleven months and ten days to reach its decision and even then the damages awarded (which were only for non-pecuniary loss) were never actually paid to the applicant. The Court concluded that the administrative proceedings had not provided the applicant with an effective remedy in respect of the State's failure to protect the lives of his relatives.

70. As regards the complaint under Article 1 of Protocol No. 1, the decision on compensation had been unduly delayed and the amount awarded in respect of the destruction of household goods never paid. The Court therefore ruled that the applicant had been denied an effective remedy also in respect of the alleged breach of Article 1 of Protocol No. 1.

Appendices to the manual

APPENDIX I: GLOSSARY

- Applicant** Any person, non-governmental organisation or group of persons that brings a case before the European Court of Human Rights. The right to do so is guaranteed by Article 34 of the European Convention on Human Rights. It is subject to the conditions set out in Article 35 of the Convention.
- Aarhus Convention** The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (commonly referred to as the Aarhus Convention, from the name of the Danish city where it was signed on 25 June 1998) was elaborated within the United Nations Economic Commission for Europe (UN/ECE), a regional body of the United Nations.
- Dangerous activities** The Court uses this concept in the context of Articles 2 and 8 of the Convention, as well as Article 1 of Protocol No. 1 to the Convention, in particular in order to define what positive steps the national authorities should take in the event of dangerous activities threatening the rights flowing from the aforementioned Articles. So far, the Court has not given a general definition of the concept. In the *Öneryıldız v. Turkey* judgment of 30 November 2004, it referred to “the relevant European standards” resulting from various texts of the Parliamentary Assembly¹¹⁰ and the Committee of Ministers of the Council of Europe,¹¹¹ the Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment of 21 June 1993 (ETS No. 150), the Convention on the Protection of the Environment through Criminal Law of 4 November 1998 (ETS No. 172) as well as from European Union instruments (the Council of the European Union’s Framework Decision No. 2003/80 of 27 January 2003 and the European
-
110. Resolution 587 (1975) on problems connected with the disposal of urban and industrial waste; Resolution 1087 (1996) on the consequences of the Chernobyl disaster, and Recommendation 1225 (1993) on the management, treatment, recycling and marketing of waste.
111. Recommendation R (96) 12 on the distribution of powers and responsibilities between central authorities and local and regional authorities with regard to the environment.

Commission's proposal of 13 March 2001, amended on 30 September 2002, for a directive on the protection of the environment through criminal law). In the context of Article 2 of the ECHR, the Court has qualified toxic emissions from a fertiliser factory, waste collection sites or nuclear tests as "dangerous activities", whether carried out by public authorities or private companies, but the concept could encompass a wider range of industrial activities.

At the international and European level, several instruments refer to the related concept of "hazardous activities". However, although aiming at the protection of human health and the environment, these instruments primarily focus on the technical and procedural aspects of the control of "dangerous" or "hazardous activities" and do not address the question of adverse effects on the effective enjoyment of human rights. Consequently "hazardous" or "dangerous activities" are generally described in relation to the handling of dangerous substances as such.¹¹² The substances deemed "hazardous" or "dangerous" are usually listed in appendices to those instruments. These substance-related criteria may be coupled with a quantity criteria.¹¹³ If not appearing in the lists, a substance may also be qualified "hazardous" on the basis of indicative criteria, namely the nature of its characteristics.¹¹⁴ Another way of identifying hazardous substances is to cumulatively apply the substance and the characteristics criteria.¹¹⁵

112. Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment of 21 June 1993 (ETS No. 150); Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa of 30 January 1994; Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 22 March 1989.

113. Convention on the Transboundary effects of industrial accidents, Helsinki 1992; Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances – Seveso II.

114. Ibid. annex I, notes

- Effective remedy** Article 13 of the Convention states that “everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity”. Article 13 seeks to ensure that States fulfil their obligations under the Convention without the need for citizens to take their case to the European Court of Human Rights. It essentially means that anyone who believes that his or her human rights as guaranteed by the Convention have been violated must be able to bring the matter to the attention of the authorities and, if a violation has occurred, to have the situation corrected.
- Environment** There is no standard definition of the environment in the Convention or the case law of the Court. The Court’s purpose is the protection of human rights enshrined in the Convention and to examine individual cases in order to assess whether there has been a violation of one of these rights in specific circumstances. Because of the nature of this task, the Court has not had to give a general definition of the environment. However, it is commonly accepted that the environment includes a wide range of elements including the air, water, land flora and fauna as well as human health and safety and that it is to be protected as part of the more global goal of ensuring sustainable development.
- European Convention on Human Rights** The full title is the “Convention for the Protection of Human Rights and Fundamental Freedoms”, usually referred to as the “the ECHR” or “the Convention”. It was adopted in 1950 and entered into force in 1953. The full text of the Convention and its additional Protocols is available in 29 languages at <http://www.echr.coe.int/>. The chart of signatures and ratifications as well as the text of declarations and reservations made by State parties can be consulted at <http://conventions.coe.int>.

115. Basel Convention art. 1 a) and annex III referring to a list of hazardous characteristics corresponding to the hazard classification system included in the United Nations Recommendations on the Transport of Dangerous Goods (ST/SG/AC.10/1Rev.5, United Nations, New York, 1988).

European Court of Human Rights

The European Court of Human Rights was set up in Strasbourg by the Council of Europe member states in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments.

Fair balance

The ECHR provides for the limitation of certain rights for the sake of the greater public interest. The European Court of Human Rights has said that when rights are restricted there must be a fair balance between the public interest at stake and the human right in question. The Court is the final arbiter on when this balance has been found. It does however give States a "margin of appreciation" in assessing when the public interest is strong enough to justify restrictions on certain human rights. See also *margin of appreciation*; *public interest*.

Interference

Any instance where the enjoyment of a right set out the Convention is limited. Not every interference will mean that there has been violation of the right in question. Many interferences may be justified by the restrictions provided for in the Convention itself. Generally for an interference to be justified it must be in accordance with the law, pursue a legitimate aim and be proportionate to that aim. See also *legitimate aim*; *prescribed by law*; *proportionality*.

Prescribed by law (in accordance with the law)

The term used in Article 8 paragraph 2 of the Convention is *in accordance with the law* but this is taken to mean the same as the term *prescribed by law* which is found in paragraphs 2 of Articles 9, 10 and 11. The purpose of the term is to ensure that when rights are restricted by public authorities, this restriction is not arbitrary and has some basis in domestic law. The Court has stated for a restriction to meet the requirement it should be adequately accessible and its effects should be foreseeable.

Legitimate aim

This expression is used by the Court in connection with a number of Articles of the Convention: Article 8 (right to respect for private and family life and for home), Article 9 (freedom of thought, conscience and religion), Article 10 (freedom of expression), Article 11 (freedom of assembly and association). The Court's case-law has established that the right to respect for private and family life and for the home can be adversely affected by environmental factors. While the Convention seeks to safeguard this right, it does recognise that, in certain specific circumstances, restrictions may be acceptable. However, the measures imposing such restrictions should meet a number of requirements for the court not to find a violation of the right in question. One of them is that they should be necessary in a democratic society, which means that they should answer a pressing social need and pursue a legitimate aim. Article 8 lists the broad categories of aims which can be considered as legitimate to justify an interference with the right to private and family life and home, including national security, territorial integrity or public safety, the prevention of disorder or crime, the protection of health or morals, the protection of the reputation or rights of others. On the other hand, the protection of the environment can sometimes indirectly be considered as a legitimate aim to restrict the right to private and family life and to home. Indeed, while this list appearing in Article 8 is in principle exhaustive and does not include the protection of the environment, the Court has found it could come under the protection of the rights of others – their right to see their environment preserved – and therefore that it can be considered a legitimate aim justifying some restrictions on the right to private and family life and home.

Margin of appreciation

The protection offered by the Convention with regard to certain rights is not absolute and provides for the possibility for States to restrict to a certain extent these rights. This is true in the case of the rights covered by Article 8 of the Convention or Article 1 of Protocol No. 1 which have already been at stake in cases concerning the environment. However, the measures which are taken by the authorities to restrict these rights should meet certain requirements: they should be prescribed

by law, necessary in a democratic society and thus pursue a legitimate aim (such as the protection of health or the economic well-being of the country), they should also be proportionate to the aim pursued. Once it established that these measures are prescribed by law and are necessary in a democratic society in pursuing a legitimate aim, it has to be examined whether the measures in question are proportionate to this legitimate aim. For this purpose, the Court weighs the individual interests and the community's interests to decide which prevail in particular circumstances and to what extent the rights encompassed in the Convention could be curtailed in the interests of the community. It is in the context of this examination that the idea that the authorities enjoy a certain "margin of appreciation" has been developed. Indeed, the Court has established that the authorities are given a certain scope for discretion, i.e. the "margin of appreciation", in determining the most appropriate measures to take in order to reach the legitimate aim sought. The reason why the Court decided that such leeway should be left to the authorities is that national authorities are often better placed to assess matters falling under the Articles concerned, all the more so in technical and social spheres such as the environment. The scope of this margin of appreciation varies depending on the issue at stake, but, in environmental cases, the Court has found it to be wide, which means that authorities have a certain scope for discretion in their action. However, in no way this margin of appreciation should be seen as absolute and preventing the Court from any critical assessment of the proportionality of the measures concerned. Indeed, it has found a number of violations for instance under Article 8 in cases which concerned pollution.

Positive obligations

The Court's case-law in respect of a number of provisions of the Convention States that public authorities should not only refrain from interfering arbitrarily with individuals' rights as protected expressly by the Articles of the Convention, they should also take active steps to safeguard them. These additional obligations are usually referred to positive obligations as the authorities are required to act so as to prevent violations of the rights encompassed in the Convention or punish those

responsible. For instance, under Article 2, the authorities are required not only to avoid taking lives but also to launch proper investigations into killings should they occur.

**Possessions
(Peaceful
enjoyment of)**

The notion of *possessions* within the meaning of Article 1 of Protocol No. 1 to the Convention is not limited to ownership of physical goods and is independent from the formal classification in domestic law. Others rights and interests constituting assets can also be regarded as “possessions” for the purpose of this provision. For instance, social security benefits, clientele or economic interests connected with the running of a shop were treated as “possessions” by the Court. The Court has also stated that Article 1 of Protocol No. 1 applies to present and existing possessions but also to claims in respect of which the applicant can argue that he or she has at least a reasonable and “legitimate expectation” of obtaining effective enjoyment of a property right.

**Proportionate
measures**

By *proportionate measures* the Court means measures taken by the authorities that strike a fair balance between the interests of the community and the interests of an individual. The Court applies this test in the context of its examination of the respect for the right to private and family life and home (Article 8 of the Convention) as well as the right to property (Article 1 of Protocol No. 1).

Public authorities

Public authorities should be understood broadly as including both national and local authorities carrying out activities of a public nature. They will therefore include municipalities as well as prefects or ministries.

**Subsidiarity
(principle of)**

The principle of subsidiarity is one the founding principles of the human rights protection mechanism of the Convention. According to this principle it should first and foremost be for national authorities to ensure that the rights enshrined in the Convention are not violated and to offer redress if ever they are. The Convention mechanism and the European Court of Human Rights should only be a last resort in case the national level has not offered the protection or redress needed.

APPENDIX II: JUDGMENTS AND DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS RELEVANT TO THE ENVIRONMENT

| | Decision on admissi- bility or Judgment | Date | Articles of the Convention | | | | | | | |
|--|--|------------|----------------------------|---|-------|----|---|----|----|------|
| | | | 2 | 3 | 6 (1) | 13 | 8 | 10 | 11 | 1-P1 |
| <i>Arrondelle v. the United Kingdom*</i> | Admissible (friendly set- tlement) | 15/7/1980 | | | | ☐ | ☐ | | | ☐ |
| <i>Zimmerman and Steiner v. Switzerland</i> | Judgment | 13/7/1983 | | | ■ | | | | | |
| <i>G. and E. v. Norway*</i> | Inadmissible | 3/10/1983 | | | | ☐ | ☐ | ☐ | | ☐ |
| <i>Baggs v. the United Kingdom*</i> | Partially admissible | 16/10/1985 | | | ☐ | ☐ | ☐ | | | ☐ |
| <i>Rayner v. the United Kingdom*</i> | Partially admissible | 16/7/1986 | | | ☐ | | ☐ | | | ☐ |
| <i>Vearnacombe and others v. Germany*</i> | Admissible | 18/1/1989 | | | ☐ | ☐ | ☐ | | | ☐ |
| <i>Powell and Rayner v. the United Kingdom</i> | Judgment | 21/2/1990 | | | ☐ | ☐ | ☐ | | | |
| <i>S. v. France*</i> | Inadmissible | 17/5/1990 | | | | | ☐ | | | ☐ |
| <i>Fredin v. Sweden</i> | Judgment | 18/2/1991 | | | ■ | | | | | ☐ |
| <i>Pine Valley Development Ltd v. Ireland</i> | Judgment | 29/11/1991 | | | ☐ | | | | | ☐ |
| <i>Zander v. Sweden</i> | Judgment | 25/11/1993 | | | ■ | | | | | |
| * = Commission Decision GC = Grand Chamber P1 = Protocol No. 1 ☐ = Articles invoked ■ = Violation | | | | | | | | | | |

Appendices to the manual

| | Decision on admissi- bility or Judgment | Date | Articles of the Convention | | | | | | | |
|--|--|-----------|----------------------------|---|-------|----|---|----|----|------|
| | | | 2 | 3 | 6 (1) | 13 | 8 | 10 | 11 | 1-P1 |
| <i>López Ostra v. Spain</i> | Judgment | 9/12/1994 | | ☐ | | | ■ | | | |
| <i>Piermont v. France</i> | Judgment | 27/4/1995 | | | | | | ■ | | |
| <i>Matos e Silva Lda. and others v. Portugal</i> | Judgment | 19/6/1996 | | | ■ | ☐ | | | | ■ |
| <i>Buckley v. the United Kingdom</i> | Judgment | 25/9/1996 | | | | | ☐ | | | |
| <i>Balmer-Schafroth and others v. Switzerland</i> | Judgment (GC) | 26/8/1997 | | | ☐ | ☐ | | | | |
| <i>Guerra and others v. Italy</i> | Judgment (GC) | 19/2/1998 | ☐ | | | | ■ | ☐ | | |
| <i>Chassagnou and others v. France</i> | Judgment (GC) | 29/4/1999 | | | | | | | ■ | ■ |
| <i>McGinley & Egan v. Ireland</i> | Judgment | 9/6/1998 | | | ☐ | ☐ | ☐ | | | |
| <i>L.C.B. v. the United Kingdom</i> | Judgment | 9/6/1998 | ☐ | ☐ | | ☐ | ☐ | | | |
| <i>Hertel v. Switzerland</i> | Judgment | 25/8/1998 | | | ☐ | | ☐ | ■ | | |
| <i>Steel and others v. the United Kingdom</i> | Judgment | 23/9/1998 | | | | | | ☐ | | |
| <i>L'Association des Amis de St-Raphaël et Fréjus and others v. France</i> | Inadmissible | 29/2/2000 | | | ☐ | ☐ | ☐ | | | ☐ |
| <i>Athanassoglou and others v. Switzerland</i> | Judgment (GC) | 6/4/2000 | | | ☐ | ☐ | | | | |
| * = Commission Decision GC = Grand Chamber P1 = Protocol No. 1 ☐ = Articles invoked ■ = Violation | | | | | | | | | | |

Human rights and the environment

| | Decision on admissi- bility or Judgment | Date | Articles of the Convention | | | | | | | |
|--|--|------------|----------------------------|---|-------|----|---|----|----|------|
| | | | 2 | 3 | 6 (1) | 13 | 8 | 10 | 11 | 1-P1 |
| <i>Pagliccia and others v. the United Kingdom</i> | Inadmissible | 7/9/2000 | | | | | ☐ | | | |
| <i>Ünver v. Turkey</i> | Inadmissible | 26/9/2000 | | | ☐ | | | | | ☐ |
| <i>Sciavilla v. the United Kingdom</i> | Inadmissible | 14/11/2000 | | | | | ☐ | | | ☐ |
| <i>Chapman v. the United Kingdom</i> (GC) | Judgment (GC) | 18/1/2001 | | | ☐ | | ☐ | | | ☐ |
| <i>Jane Smith v. the United Kingdom</i> (GC) | Judgment (GC) | 18/1/2001 | | | ☐ | | ☐ | | | ☐ |
| <i>Coster v. the United Kingdom</i> (GC) | Judgment (GC) | 18/1/2001 | | | | | ☐ | | | ☐ |
| <i>Thoma v. Swit- zerland</i> | Judgment | 29/3/2001 | | | | | | ■ | | |
| <i>Dati v. Italy</i> | Inadmissible | 22/1/2002 | | | | | ☐ | | | |
| <i>Burdov v. Russia</i> | Judgment | 7/5/2002 | | | ■ | | | | | ■ |
| <i>Demuth v. Swit- zerland</i> | Judgment | 15/11/2002 | | | | | | ☐ | | |
| <i>Dactylidi v. Greece</i> | Judgment | 27/3/2003 | | | ■ | ■ | | | | |
| <i>Papastavrou and others v. Greece</i> | Judgment | 10/4/2003 | | | | | | | | ☐ |
| <i>Kyrtatos v. Greece</i> | Judgment | 22/5/2003 | | | ■ | | ☐ | | | |
| <i>Hatton and others v. the United Kingdom</i> | Judgment (GC) | 8/7/2003 | | | | ■ | ☐ | | | |
| <i>Lam and others v. the United Kingdom</i> | Inadmissible | 8/7/2003 | ☐ | | ☐ | ☐ | ☐ | | | ☐ |
| <i>Fadeyeva v. Russia</i> | Partially admissible | 16/10/2003 | ☐ | ☐ | ☐ | | ☐ | | | |
| * = Commission Decision GC = Grand Chamber P1 = Protocol No. 1 ☐ = Articles invoked ■ = Violation | | | | | | | | | | |

Appendices to the manual

| | Decision on admissibility or Judgment | Date | Articles of the Convention | | | | | | | |
|--|---------------------------------------|------------|----------------------------|---|-------|----|---|----|----|------|
| | | | 2 | 3 | 6 (1) | 13 | 8 | 10 | 11 | 1-P1 |
| <i>Ashworth and others v. the United Kingdom</i> | Inadmissible | 20/1/2004 | | | | ☐ | ☐ | | | ☐ |
| <i>Taşkın and others v. Turkey</i> | Partially admissible | 29/1/2004 | ☐ | | ☐ | ☐ | ☐ | | | ☐ |
| <i>Gorraiz Lizarraga v. Spain</i> | Judgment | 27/4/2004 | | | ☐ | | ☐ | | | ☐ |
| <i>Aparicio Benito v. Spain</i> | Partly inadmissible and adjourned | 4/5/2004 | ☐ | | | ☐ | ☐ | | | |
| <i>Vides Aizsardzības Klubs v. Lithuania</i> | Judgment | 27/5/2004 | | | | | | ■ | | |
| <i>Ledyayeva v. Russia</i> | Partially admissible | 16/9/2004 | ☐ | ☐ | ☐ | | ☐ | ☐ | | |
| <i>Kapsalis et Nima-Kapsali v. Greece</i> | Inadmissible | 23/9/2004 | | | ☐ | ☐ | | | | ☐ |
| <i>Giani v. Italy</i> | Inadmissible | 28/10/2004 | | ☐ | | ☐ | ☐ | | | |
| <i>Balzarini and others v. Italy</i> | Inadmissible | 28/10/2004 | | | | ☐ | ☐ | | | |
| <i>Ward v. the United Kingdom</i> | Inadmissible | 9/11/2004 | | ☐ | | | ☐ | | | |
| <i>Taşkın and others v. Turkey</i> | Judgment | 10/11/2004 | ☐ | | ■ | | ■ | | | |
| <i>Moreno Gómez v. Spain</i> | Judgment | 16/11/2004 | | | | | ■ | | | |
| <i>Öneryıldız v. Turkey</i> | Judgment (GC) | 30/11/2004 | ■ | | | ■ | ☐ | | | ■ |
| <i>Botti v. Italy</i> | Inadmissible | 2/12/2004 | ☐ | | | | ☐ | | | |
| * = Commission Decision GC = Grand Chamber P1 = Protocol No. 1 ☐ = Articles invoked ■ = Violation | | | | | | | | | | |

Human rights and the environment

| | Decision on admissi- bility or Judgment | Date | Articles of the Convention | | | | | | | |
|--|--|------------|----------------------------|---|-------|----|---|----|----|------|
| | | | 2 | 3 | 6 (1) | 13 | 8 | 10 | 11 | 1-P1 |
| <i>Steel and Morris v. the United Kingdom</i> | Judgment | 15/2/2005 | | | ■ | | | ■ | | |
| <i>Fadeyeva v. Russia</i> | Judgment | 9/6/2005 | | | | | ■ | | | |
| <i>Okyay v. Turkey</i> | Judgment | 12/7/2005 | | | ■ | | | | | |
| <i>Roche v. the United Kingdom</i> (GC) | Judgment (GC) | 19/10/2005 | | | □ | □ | ■ | □ | | □ |
| * = Commission Decision GC = Grand Chamber P1 = Protocol No. 1 □ = Articles invoked ■ = Violation | | | | | | | | | | |

APPENDIX III: USEFUL WEB SITES

Council of Europe

| | |
|--|---|
| European Court of Human Rights | http://www.echr.coe.int/ |
| Hudoc – the online database of the Court’s case-law | http://hudoc.echr.coe.int/ |
| European Social Charter | http://www.coe.int/T/E/Human_Rights/Esc/ |
| Activities related to the environment and sustainable development | http://www.coe.int/T/E/Cultural_Co-operation/Environment |

United Nations Economic Commission for Europe

| | |
|---|---|
| United Nations Economic Commission for Europe: their activities related to the environment | http://www.unece.org/env/welcome.html |
| Aarhus Convention’s official Web site | http://www.unece.org/env/pp/welcome.html |

This Web site provides the text of the Convention, status of ratification and publications, with a number of documents available on-line, such as:

- the Handbook on access to justice;
- the Aarhus Convention implementation guide;
- the Handbook of good practices in public participation at local level;
- the Layperson’s guide to the Convention.

European Union

European Union's portal to EU law

<http://europa.eu.int/eur-lex/>

This is the official database of the EU, including EU legislation, case-law of the European Court of Justice as well as other documents. These documents are available in all official languages of the EU.

European Commission environment portal

http://europa.eu.int/comm/environment/index_en.htm

Other informative Web sites

European Environmental Law (EEL)

<http://www.eel.nl/>

This site contains the text of relevant case-law, national legislation and other documents related to European environmental law. It also gathers complete dossiers on specific issues.

ECOLEX

<http://www.ecolex.org/ecolex/index.php>

ECOLEX is a comprehensive database, operated jointly by the IUCN (the World Conservation Union), UNEP (the UN Environment Programme) and FAO (the Food and Agriculture Organization of the UN). It gives basic information about relevant treaties, national legislation or court decisions and provides technical as well as literature references.

REC (the Regional Environmental Center for central and eastern Europe)

<http://www.rec.org/>

Established in 1990, the REC provides assistance to resolve environmental problems in Central and Eastern Europe. To this end, it promotes co-operation among all actors involved in environmental protection, and by supporting the free exchange of information and public participation in environmental decision-making. The REC's head office is

in Szentendre, Hungary, and it has offices in 16 countries: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Former Yugoslav Republic of Macedonia, Poland, Romania, Serbia and Montenegro, Slovakia, Slovenia and Turkey.

The REC's Web site contains valuable information on the developments which are taking place in central and eastern Europe. It also provides an extended bibliography and study cases on public access to information, public participation and access to justice. It has been closely involved in the process leading to the adoption, entry into force and implementation of the Aarhus Convention.

See for example their pages:

<http://www.rec.org/REC/Programs/PublicParticipation/PublicAwareness/>;

http://www.rec.org/REC/Publications/Publications_PublicParticipation.html (publications relative to the Aarhus Convention, most of them available on-line).

**IEEP (Institute for
European Environmental
Policy)**

<http://www.ieep.org.uk/>

The IEEP Web site is a comprehensive list of links connected to environmental law and policy regarding the European Union. The IEEP is an independent, non-profit organisation based in London and Brussels.

Human rights and the environment have become increasingly interconnected. This manual seeks to contribute to a better understanding of this relationship in the light of the relevant case-law of the European Court of Human Rights.

Whilst the European Convention on Human Rights does not guarantee a specific right to a healthy environment, the general standards deriving from it may also apply to environmental matters. The European Court of Human Rights regularly examines complaints in which individuals argue that a breach of their Convention rights is the result of adverse environmental factors. The aim of this manual is to present the principles flowing from this case-law in a systematic and accessible way. It has been prepared by government experts from all forty-six member states of the Council of Europe.

The manual is intended to be of practical use not only for public authorities, but also decision-makers, legal professionals and the general public.

The Council of Europe has forty-six member states, covering virtually the entire continent of Europe. It seeks to develop common democratic and legal principles based on the European Convention on Human Rights and other reference texts on the protection of individuals. Ever since it was founded in 1949, in the aftermath of the second world war, the Council of Europe has symbolised reconciliation.

ISBN 10 – 92-871-5980-7
ISBN 13 – 978-92-871-5980-9



€12/US\$18

<http://book.coe.int/>
Council of Europe Publishing