



# MANUAL ON HUMAN RIGHTS AND THE ENVIRONMENT (3rd edition)

► Principles emerging from the case law of the European Court on Human Rights and the conclusions and decisions of the European Committee of Social Rights

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CONSEIL DE L'EUROPE



**Manual  
on Human Rights  
and the Environment**  
*(3rd edition)*

**containing principles emerging  
from the case law  
of the European Court  
on Human Rights  
and the conclusions  
and decisions of the  
European Committee  
of Social Rights**

**French edition:**

***Manuel sur les droits de l'homme et  
l'environnement  
(3<sup>e</sup> édition)***

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## LIST OF ABBREVIATIONS

|        |  |
|--------|--|
| CDDH   | Steering Committee for Human Rights  |
| CIS    | Commonwealth of Independent States   |
| CITIES | Convention on International Trade in Endangered Species of Wild Fauna and Flora    |
| CoE    | Council of Europe  |
| EC     | European Community   |
| ECJ    | European Court of Justice  |
| ECS    | Environmental Cross-cutting Strategy   |
| ECSR   | European Committee for Social Rights   |
| EEA    | European Environment Agency  |
| EEL    | European Environmental Law   |
| EIA    | Environmental Impact Assessment  |
| ETS    | European Treaty Series   |
| EU     | European Union   |
| FAO    | Food and Agricultural Organization   |
| GAOR   | General Assembly Official Records  |
| GC     | Grand Chamber  |
| HUDOC  | Human Rights Documentation (Online Database)                                       |
| ICJ    | International Court of Justice   |
| IEEP   | Institute for European Environmental Policy  |
| ILC    | International Law Commission   |
| IMPEL  | European Union Network for the Implementation and Enforcement of Environmental Law |
| IPPC   | International Plant Protection Convention  |
| ITLOS  | International Tribunal for the Law of the Sea                                      |
| IUCN   | International Union for Conservation of Nature                                     |
| NGO    | Non-Governmental Organisation  |
| PACE   | Parliamentary Assembly of the Council of Europe                                    |
| REC    | Regional Environmental Center for central and eastern Europe                       |
| SEA    | Strategic Environmental Assessment   |
| UN     | United Nations   |
| UNCED  | United Nations Conference on Environment and Development                           |
| UNECE  | United Nations Economic Commission for Europe                                      |
| UNEP   | United Nations Environment Programme   |
| UNESCO | United Nations Educational, Scientific and Cultural Organization                   |
| UNFCCC | United Nations Framework Convention on Climate Change                              |
| WTO    | World Trade Organization   |



# PRELIMINARY REMARKS

## WHAT IS THE AIM OF THIS MANUAL?

1. The main aim of this manual is to increase the understanding of the relationship between the environment and the protection of human rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and the European Social Charter (“the Charter”) as a relevant part of international law on the matter and thereby to contribute to strengthening environmental protection at the national level.

2. Human rights are universal, indivisible, interdependent and interrelated, thus including both civil and political rights on the one hand and social and economic rights on the other hand. To illustrate this, the manual seeks to provide information about both the case law of the European Court of Human Rights (“the Court”) as well as the conclusions and decisions of the European Committee of Social Rights (“the Committee”) in this field.

## WHO IS THE TARGET AUDIENCE OF THIS MANUAL?

3. 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 INTERNATIONAL LAW?

4. The environment is protected under international law, and multi-farious international treaties govern specific environmental issues, e.g., climate change, loss of biodiversity and pollution. Thus, various legal obligations to protect the environment are placed upon States, e.g., duties to inform, co-operate, or limit emissions. Additionally, International Humanitarian Law protects the natural environment against widespread, long-term and severe damage in armed conflict.

## IS THE ENVIRONMENT PROTECTED UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND THE EUROPEAN SOCIAL CHARTER?

5. Neither the Convention nor the Charter are designed to provide a general protection of the environment as such and do not expressly guarantee a right to a safe, clean, healthy and sustainable environment. However, the Convention and the Charter indirectly offer a certain degree of protection with regard to environmental matters, as demonstrated by the evolving interpretation in the case law of the Court and in the conclusions and decisions of the Committee on Social Rights in this area.

6. 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:

- First, the human rights protected by the Convention may be directly affected by adverse environmental factors. For instance, toxic smells from a factory or rubbish tip might have a negative impact on the health of individuals. Public authorities may be obliged to take

measures to ensure that human rights are not seriously affected by adverse environmental factors;

- Second, 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;
- Third, 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.

7. Also, the Committee has found that neglect by States of environmental issues may amount to non-compliance with their obligations to fulfil particular Charter rights. Not taking measures to avoid or reduce deterioration of the environment can thus, in itself, amount to infringing specific Charter rights in the following manner:

- First, the right to protection of health has been interpreted by the Committee as including the right to a healthy environment. Therefore, States are required, when submitting their periodic reports, to identify measures taken with a view to ensuring such an environment for individuals;
- Second, the Committee has stated that the protection and creation of a healthy environment is at the heart of the Charter's system of guarantees and may be relevant to the application of a variety of Charter provisions more specifically.

### **WHICH RIGHTS OF THE CONVENTION AND THE SOCIAL CHARTER CAN BE AFFECTED BY ENVIRONMENTAL FACTORS?**

8. 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 not to be subjected to inhuman or degrading treatment (Article 3), 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 respect of freedom of peaceful assembly and freedom of association (Article 11), 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).

9. Likewise, the Committee has considered issues related to the environment which could affect the right to just conditions of work (Article 2), the right to safe and healthy working conditions (Article 3), the right to protection of health (Article 11), and the right to housing (Article 31).

## INTRODUCTION

10. The environment and environmental protection have increasingly become a concern of the international community. After World War II, the reconstruction of the economy and lasting peace were the first priorities; this included the guarantee of civil and political as well as social and economic human rights. However, in the subsequent half century the environment became a prominent concern, which has also had an impact on international law. Although the main human rights instruments (the Universal Declaration of Human Rights<sup>1</sup>, the International Covenant on Civil and Political Rights<sup>2</sup> and the International Covenant on Economic, Social and Cultural Rights<sup>3</sup>) and those at the European level (the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>4</sup> and the European Social Charter)<sup>5</sup>, all drafted well before full awareness of environmental issues arose,<sup>6</sup> do not refer to the environment, today it is commonly accepted that human rights and the environment are interdependent<sup>7</sup> even to the point that it is suggested that environmental rights belong to a “third generation of human rights”.<sup>8</sup> Moreover, rights relating to the environment have an inter-generational character.<sup>9</sup>

11. In 1972, the first UN Conference on the Human Environment took place in Stockholm, which marked the beginning of legal recognition of the interdependence between respect for human rights and the protection of the environment. Indeed, the preamble to the Stockholm Declaration proclaims that “both aspects of man’s environment, the natural and manmade, are essential to his well-being and to the enjoyment of basic human rights – even the right to life itself”. The first principle of the Stockholm Declaration stressed that “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations”. Today it is clearly

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<sup>1</sup> Universal Declaration of Human Rights (UDHR) proclaimed by the United Nations General Assembly in Paris on 10 December 1948.

<sup>2</sup> International Covenant on Civil and Political Rights (ICCPR) (16 December 1966).

<sup>3</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR) (16 December 1966).

<sup>4</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (4 November 1950) ETS No. 5.

<sup>5</sup> European Social Charter (ETS No. 35) (18 October 1961) and European Social Charter (Revised) (3 May 1996) ETS No. 163.

<sup>6</sup> European Court of Human Rights, ‘Dialogue between Judges 2020, The European Convention on Human Rights: living instrument at 70’ (2020), Laurence Boisson de Chazournes, Professor at the University of Geneva, ‘Environment – human rights and the environment: an evolving relationship’, p. 17: “Environmental issues were not yet a priority at that point in history”.

<sup>7</sup> Knox J. H. and Pajan R. (2018), Introduction, *The Human Right to a Healthy Environment*, Cambridge University Press, Cambridge, p. 1. See also UN General Assembly, ‘Right to a healthy environment: good practices. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment’ (30 December 2019), UN Doc. A/HRC/43/53, p. 4, paras. 11-13.

<sup>8</sup> See Karel Vasak, “Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give Force of law to the Universal Declaration of Human Rights”, *UNESCO Courier* 30:11, Paris: United Nations Educational, Scientific, and Cultural Organization, November 1977. Jacobs, White & Ovey (2014), *The European Convention on Human Rights*, Oxford University Press, Oxford, Sixth Edition, p. 7: “The third generation of human rights consists of those rights that concern people collectively and include the right to development, to peace, and to a clean environment”.

<sup>9</sup> Jacobs, White & Ovey (2014), *The European Convention on Human Rights*, Oxford University Press, Oxford, Sixth Edition, p. 7: “Such rights transcend the present generation; what is done now may have a significant impact on future generations”.

acknowledged that there is a link between human dignity, human rights and the protection of the environment.<sup>10</sup>

12. In the 1980s the UN realised that there was a need to reconcile economic development with environmental protection.<sup>11</sup> The 1992 Rio de Janeiro Conference on Environment and Development (UNCED) – also known as the Earth Summit – developed and adopted the first agenda for Environment and Development, namely Agenda 21. The Declaration adopted during the Rio Conference also focused on the link that exists between human rights and the environment in terms of procedural rights (Principle 10):

*“Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”*

13. Additionally, adopted in 1992 and opened for signature at the Rio Earth Conference is the Convention on Biological Diversity which recognises that the world’s ecosystems are fundamental to current and future generations of humanity, as their economic as well as social development depends on it. This convention strives for “the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources”.<sup>12</sup>

14. Another important achievement of the Rio Conference was an agreement on the UN Framework Convention on Climate Change (UNFCCC) with the aim to achieve, “in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system” (Article 2). A protocol to the convention was subsequently concluded in 1997 in Kyoto which contained legally binding obligations for developed countries to reduce their greenhouse gas emissions in the period 2008 – 2012. In 2012, it was agreed in Doha to prolong the

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<sup>10</sup> UN General Assembly, ‘Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment’ (24 January 2018) UN Doc. A/HRC/37/59, § 16; UN Economic and Social Council, ‘Human Rights and the Environment’ Final report prepared by Mrs Fatma Zohra Ksentini, Special Rapporteur’ (6 July 1994), UN Doc. E/CN.4/Sub.2/1994/9, §§ 31, 54, 124, 178. Daly E. and May J. R. (2019), “Exploring environmental justice through the lens of human dignity”, *Widener Law Review* Vol. 25, p. 177; Introductory Report to the High-Level Conference “*Environmental Protection and Human Rights*” (Strasbourg, 27 February 2020), prepared at the request of the Steering Committee for Human Rights (CDDH) by Elisabeth LAMBERT, CNRS Research Director, SAGE Research Unit, University of Strasbourg.

<sup>11</sup> The 1980 World Conservation Strategy of the International Union for the Conservation of Nature was the first report to include a very brief chapter on the new concept “sustainable development”. The UN then initiated the creation of an independent commission, the World Commission on Environment and Development (WCED) whose main report “Our Common Future” strongly influenced the Earth Summit, in Rio de Janeiro, in 1992 and the third UN Conference on Environment and Development, in Johannesburg, in 2002. Also, it is credited with crafting the most prevalent definition of “sustainability” which builds on the three pillars: economic development, environmental protection and social development.

<sup>12</sup> *Convention on Biological Diversity* (5 June 1992), Art. 1.

Kyoto Protocol until 2020. The Doha amendment entered into force on 31 December 2020. In 2015, at COP 21 in Paris, a legally binding international treaty on climate change was adopted. The Paris Agreement sets out a global framework to hold the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursue efforts to limit the temperature increase to 1,5 °C above pre-industrial levels recognizing that this would significantly reduce the risks and impacts of climate change. The Paris Agreement is the first international environmental treaty to explicitly underline the link between climate change and human rights (Preamble of the Paris Agreement):

*Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.*

15. Twenty years after the first Conference in Rio de Janeiro, a follow-up Conference on Sustainable Development (UNCSD) was organised in 2012 in the same city, also known as Rio 2012, Rio+20 or Earth Summit 2012. At the conference, commitment to sustainable development was renewed combining economic growth with ecological responsibility. It was indeed decided to launch a process to develop a set of Sustainable Development Goals (SDGs), which in 2015 were adopted by the UN General Assembly as part of the 2030 Agenda for Sustainable Development and among which several are environment-related targets.<sup>13</sup> In the preamble to the 2030 Agenda, the governments affirmed that they are: *“Determined to protect the planet from degradation, including through sustainable consumption and production, sustainably managing its natural resources and taking urgent action on climate change, so that it can support the needs of the present and future generations”*.<sup>14</sup>

16. Work on the issue of human rights and the environment has continued in the UN framework. The UN Special Rapporteur on human rights and the environment is mandated to examine the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, to promote best practices of the use of human rights in environmental policymaking, to identify challenges and obstacles and to conduct country visits and respond to human rights violations. Together with the UN Secretary General, the UN High Commissioner for Human Rights and the Directors of several UN agencies, the UN Special Rapporteur on human rights and the environment calls for the recognition of a human right to a safe, clean, healthy and sustainable environment by the UN Human Rights Council and the UN General Assembly.

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<sup>13</sup> The following goals of the United Nations 2030 Agenda for Sustainable Development are environmental-related: Goal 3 (“Good health and well-being”), Goal 6 (“Clean water and sanitation”), Goal 7 (“Affordable and clean energy”), Goal 11 (“Sustainable cities and communities”), Goal 12 (“Responsible consumption and production”), Goal 13 (“Climate action”), Goal 14 (“Life below water”), Goal 15 (“Life on land”).

<sup>14</sup> UN General Assembly, resolution A/70/L.1 of 25 September 2015 “Transforming our world: the 2030 Agenda for Sustainable Development”.

17. As for human rights treaties, whereas the older ones, such as the Universal Declaration of Human Rights, the European Convention on Human Rights, the European Social Charter, the International Covenants, do not contain a *specific* human right to a healthy environment, the more recent regional (both civil and political as well as socio-economic) treaties do. Those treaties include the African Charter on Human and Peoples' Rights<sup>15</sup> and its Additional Protocol on the Rights of Women in Africa,<sup>16</sup> the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights,<sup>17</sup> the Arab Charter on Human Rights<sup>18</sup> and the Association of Southeast Asian Nations (ASEAN) Human Rights Declaration.<sup>19</sup>

18. In an Advisory Opinion in 2017, the Inter-American Court of Human Rights reiterated "the existence of an undeniable relationship between the protection of the environment and the realization of other human rights, in that environmental degradation and the adverse effects of climate change affect the real enjoyment of human rights."<sup>20</sup> It clarified that "the human right to a healthy environment has been understood as a right that has both individual and also collective connotations. In its collective dimension, the right to a healthy environment constitutes a universal value that is owed to both present and future generations. That said, the right to a healthy environment also has an individual dimension insofar as its violation may have a direct and an indirect impact on the individual owing to its connectivity to other rights, such as the rights to health, personal integrity, and life. Environmental degradation may cause irreparable harm to human beings; thus, a healthy environment is a fundamental right for the existence of humankind."<sup>21</sup>

19. However, at present no comprehensive legally binding instrument for the protection of the environment exists globally. Meanwhile, various specific legally binding instruments and political documents have been adopted at the international and European levels to ensure environmental protection. For example, at the European level the right to a healthy environment has been recognised for the first time in the operative provisions of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention).<sup>22</sup> However, the scope of the Aarhus Convention is the

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<sup>15</sup> Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights* (Banjul Charter) (27 June 1981), Art. 24.

<sup>16</sup> Additional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (11 July 2003), Art. 18.

<sup>17</sup> Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol) (1988), OAS TS No. 69, Art. 11(1).

<sup>18</sup> Arab Charter on Human Rights (22 May 2004), Art. 38.

<sup>19</sup> ASEAN Human Rights Declaration (AHRD) (18 November 2012), Art. 28(f).

<sup>20</sup> Inter-American Court of Human Rights, Advisory Opinion OC-23/17 (15 November 2017), Requested by the Republic of Colombia, Environment and Human Rights (State Obligations in Relation to the Environment in the Framework of the Protection and Guarantee of the Rights to Life and Personal Integrity – Interpretation and Scope of Articles 4.1 and 5.1, in Relation to Articles 1.1 and 2 of the American Convention on Human Rights), para. 47.

<sup>21</sup> Inter-American Court of Human Rights, Advisory Opinion OC-23/17 (15 November 2017), Requested by the Republic of Colombia, Environment and Human Rights (State Obligations in Relation to the Environment in the Framework of the Protection and Guarantee of the Rights to Life and Personal Integrity – Interpretation and Scope of Articles 4.1 and 5.1, in Relation to Articles 1.1 and 2 of the American Convention on Human Rights), para. 59.

<sup>22</sup> Article 1 of the Aarhus Convention recognises "the right of every person of present and future generations to live in an environment adequate to his or her health and well-being". Similar, in Article 1 of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) which entered into force on 22 April 2021 recognises "the right of every person of present and future generations to live in a healthy environment and to sustainable development."

guarantee of procedural rights, but not the right to a healthy environment as such. The Almaty Guidelines and the Protocol on Pollutant Release and Transfer Registers have enhanced protection of this convention.<sup>23</sup>

20. Although at the time of the elaboration of the Convention and the Charter the environment was not a major concern, and therefore they do not contain a definition of the environment, the human rights laid down within those treaties have been interpreted as including obligations pertaining to the protection of the environment. Thus, while neither the Convention nor the Charter protects the environment as such, various individual rights provided for in these treaties may be affected by the anthropogenic impact on the environment. Therefore, the question of the precise definition of the environment is not of vital importance to understand the case law of the European Court of Human Rights (“the Court”) and the conclusions and decisions of the European Committee of Social Rights (“the Committee”). In the light of the common acceptance that has emerged of the interconnection between the protection of the environment and human rights, the Court recognised that in today’s society the protection of the environment is an increasingly important consideration.<sup>24</sup> It referred to rights included in the Convention on which issues such as noise disturbance, industrial pollution, town planning and construction, waste management, water contamination, and human-caused and natural disasters, undeniably had an impact. At the same time, the Committee considers that a healthy environment is at the heart of the Charter’s system of guarantees and may be relevant to the application of a variety of Charter provisions more specifically.<sup>25</sup> After

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<sup>23</sup> 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 (25 February 2021) by 42 of the Council of Europe member States as well as Belarus. The European Union has also ratified it. The Aarhus Convention entered into force in 2001. For more information: [www.unece.org/env](http://www.unece.org/env). Almaty Guidelines on promoting the application of the principles of the Aarhus Convention in International Forums, Annexed to Report of the Second Meeting of Parties, UN Doc. ECE/MP.PP/2005/2/Add.5 of 20 June 2005, available at: [www.unece.org/env/documents/2005/pp/ece/ece.mp.pp.2005.2.add.5.e.pdf](http://www.unece.org/env/documents/2005/pp/ece/ece.mp.pp.2005.2.add.5.e.pdf). Protocol on Pollutant Release and Transfer Registers to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, signed in Kyiv on 21 May 2003, entry into force 8 October 2009, available at: [www.unece.org/environment-policy/public-participation/prtrs-protocol-text](http://www.unece.org/environment-policy/public-participation/prtrs-protocol-text). Currently, 36 Council of Europe member States have become parties to it. Guidance on Implementation of the Protocol on Pollutant Release and Transfer Registers, final text published in November 2008 available at [www.unece.org/environment-policy/publications/guidance-protocol-pollutant-release-and-transfer-registers](http://www.unece.org/environment-policy/publications/guidance-protocol-pollutant-release-and-transfer-registers). Amendment on public participation in decisions on deliberate release into the environment and placing on the market of genetically modified organisms (GMO amendment), adopted at the second meeting of the Parties held in Almaty, Kazakhstan, on 25-27 May 2005, available at <https://unece.org/DAM/env/pp/gmoamend.htm>. 36 Council of Europe member States have adopted Decision II/1 on genetically modified organisms.

<sup>24</sup> *Fredin v. Sweden (No. 1)* (Judgment) (18 February 1991), ECHR Application NNo. 12033/86, para. 48: Greater consideration of environmental concerns was the basis for including ‘the environment’ as one of three examples dealt with during the seminar on ‘*The Convention as a Living Instrument at 70*’ organised by the Court in connection with its ‘Opening of the Judicial Year 2020’, see: European Court of Human Rights, ‘The Convention as a Living Instrument at 70’ (Background Document, Judicial Seminar 2020), Chapter B, p. 13: “B. The Environment  
Even though the European Convention on Human Rights does not as such enshrine a right to a healthy environment, the Court has developed a significant body of case-law in environmental matters. This is because the exercise of certain Convention rights may be undermined by pollution and exposure to environmental hazards.”

<sup>25</sup> *ATTAC ry, Globaali sosiaalityö ry and Maan ystävät ry v. Finland* (Decision on Admissibility and on Immediate Measures) (22 January 2019), ECSR Complaint No. 163/2018, para. 12.

all, both the Convention<sup>26</sup> and the Charter<sup>27</sup> are living instruments which must be interpreted in the light of present-day conditions and in a way that ensures that all of the rights they guarantee are not theoretical or illusory but practical and effective, both in terms of the substance of those rights and the remedies available in case of their violation.

21. Conscious of the developments at the international and the regional levels, the Committee of Ministers of the Council of Europe decided in 2004, following a recommendation of the Parliamentary Assembly,<sup>28</sup> that it was an appropriate time to raise awareness of the Court's case law, which led to the drafting of the first version of this manual.<sup>29</sup> Subsequently in 2009, the Committee of Ministers decided,<sup>30</sup> upon the recommendation of the Parliamentary Assembly,<sup>31</sup> to update the manual in the light of the relevant new case law. Moreover, when approving the first version of the manual, the Steering Committee for Human Rights (CDDH) had already decided that subsequent versions should also reflect the relevant standards set out by other international organisations and the Council of Europe bodies, notably the European Committee of Social Rights (the 'Committee').<sup>32</sup> Thus the second version of the manual was extended to include references to other environmental protection instruments, a collection of examples of national good practices and an environmental law bibliography, in addition to the updated sections on the case law of the Court.

22. In the light of the intention of the Georgian Presidency of the Committee of Ministers to hold a High-Level Conference on "Environmental Protection and Human Rights" in February 2020, the Committee of Ministers decided in November 2019 to ask the CDDH to update the Manual on Human Rights and the Environment and, if appropriate, develop a draft non-binding instrument of the Committee of Ministers (for example a recommendation, or guidelines) recalling the existing standards in this field. Thus, the present version of the manual has been updated in a manner that could assist the elaboration of a new non-binding instrument on the interconnection between human rights and the protection of the environment, as such a new instrument will take into account the principles emerging from the case law of the Court and from the conclusions and decisions of the Committee.

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<sup>26</sup> *Tyler v. The United Kingdom* (Judgment) (25 April 1978), ECHR Application NNo. 5856/72, para. 31.

<sup>27</sup> *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits), ECSR Complaint No. 30/2005, para. 194.

<sup>28</sup> Recommendation (2003) 1614 of the Parliamentary Assembly, adopted on 27 June 2003.

<sup>29</sup> Terms of reference to draft this manual were received by the Steering Committee for Human Rights (CDDH) – a body composed of governmental representatives from the 47 member States – from the Committee of Ministers in a decision of 21 January 2004 (869<sup>th</sup> meeting). The CDDH entrusted this task to a subordinate intergovernmental body of experts: the Committee of Experts for the Development of Human Rights (DH-DEV). Website: [www.coe.int/en/web/human-rights-intergovernmental-cooperation/](http://www.coe.int/en/web/human-rights-intergovernmental-cooperation/).

<sup>30</sup> Document CDDH(2009)019, para. 19.

<sup>31</sup> Recommendation 1885 (2009) of the Parliamentary Assembly, adopted on 30 September 2009.

<sup>32</sup> Document CDDH(2005)016, para. 4.

23. The Final Declaration presented by the Georgian Presidency of the Committee of Ministers at the end of the High-level Conference on Environmental Protection and Human Rights on 27 February 2020 acknowledged that “climate change, extinction of species, loss of biodiversity, pollution and the overall degradation of the earth’s ecosystems have a profound global impact on the enjoyment of human rights and require the widest possible cooperation by all Council of Europe Member States,”<sup>33</sup> that “the protection of the environment and the protection of human rights are interconnected: one cannot be achieved without the other, nor at the expense of the other. Life and well-being on our planet is contingent on humanity’s collective capacity to guarantee both human rights and a healthy environment to future generations,”<sup>34</sup> and that “the Council of Europe has a key role to play in mainstreaming the environmental dimension into human rights and pursue a rights-based approach to environmental protection.”<sup>35</sup>

24. The same year, the Court hosted an international conference on human rights and environmental protection “Human Rights for the Planet” (Strasbourg, 5 October 2020) which underlined that a clean environment is a precondition to the enjoyment of human rights: the full enjoyment of everyone’s rights to life, health, quality private and family life or home, depends on healthy ecosystems and their benefits to people.<sup>36</sup>

25. 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, thereby contributing to strengthening environmental protection at the national level. It strives primarily to describe the extent to which environmental protection is embedded in the Convention and the Charter. It will also refer to other international instruments with direct relevance for the interpretation of the Convention and the Charter.

26. The manual sets out the principles which govern environmental protection based on human rights. Most of the principles are derived from the relevant case law of the Court and several others from the relevant decisions and conclusions of the Committee. These principles are explained by references to concrete case law, 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. The manual is divided into two sections. Whereas section A will solely focus on the Court’s case law, section B will shed light on the Charter and the decisions and conclusions of the Committee. The principles explained in section A

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<sup>33</sup> Final Declaration by the Georgian Presidency of the Committee of Ministers, Environmental Protection and Human Rights, High-Level Conference organised under the aegis of the Georgian Presidency of the Committee of Ministers (Strasbourg, 27 February 2020), <<https://www.coe.int/en/web/human-rights-rule-of-law/final-declaration-by-the-presidency-of-the-committee-of-ministers>> accessed at 13 January 2021.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> High-Level International Conference on Human Rights and Environmental Protection “Human Rights for the Planet” (5 October 2020, Strasbourg) <<https://www.coe.int/en/web/portal/human-rights-for-the-planet>> accessed at 25 February 2021:

“A clean environment is a precondition to the enjoyment of human rights: the full enjoyment of everyone’s rights to life, health, quality private and family life or home, depends on healthy ecosystems and their benefits to people. Climate change, loss of biodiversity, depletion of natural resources and chemical pollution bring new challenges for society, Governments and the European Court of Human Rights. How will the Court take account of these issues when interpreting the ECHR in future cases relating to the environment?”.

are divided into seven thematic chapters. For the purpose of clarity, the first chapters deal with substantive rights (chapters I to III), while the following chapters cover procedural rights (chapters IV to VI). The last chapter of this section deals with the territorial scope of the Convention's application. The principles explained in section B have since the previous publication of the manual been broadened to contain three thematic chapters.

27. Efforts have been made to keep the language as simple and clear as possible, while at the same time remaining legally accurate and faithful to the reasoning of the Court and the Committee. 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). Appendix III contains a list of the most relevant conclusions and decisions of the Committee pertaining to environmental questions. In addition, a list containing the judgments of the Court and the decisions of the Committee that refer explicitly to other international environmental protection instruments has been included (Appendix IV). Furthermore, the Council of Europe has elaborated a number of conventions on environmental protection, some of which acknowledge the interdependence of human beings and their natural environment. Four of these are briefly described in Appendix V. Moreover, some examples of good practices at the national level complement the substantial chapters of this manual. This list of national good practices provides some useful advice to policymakers at national and local levels who wish to contribute to environmental protection. The examples often follow the principles derived from the Court's case law as well as other standards at the European and international level (Appendix VI). Furthermore, as the manual cannot provide an in-depth analysis of each specific aspect of the Court's case law and the Committee's decisions, especially, with regard to all international environmental instruments, whose proper understanding is indispensable for the interpretation of the Convention and the Charter, an updated web bibliography and a list of relevant readings has been included (Appendix VII and VIII).

28. Importantly, nothing in this manual seeks to add or subtract to rights under the Convention and Charter as interpreted by the Court and the Committee. It is simply a guide to the existing case law and decisions at the time of publication.<sup>37</sup>

29. Before considering the main part of the manual, some comments are necessary on the definition of "environment". In the absence of a universal framework convention, no generally accepted legal definition exists at present. It appears, however, that most proposed definitions are rather anthropocentric. The International Court of Justice (ICJ), in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons<sup>38</sup>, and later in its *Gabčíkovo-Nagymaros* judgment from 1997<sup>39</sup>, held that "the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn".<sup>40</sup>

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<sup>37</sup> The principles contained in this revised manual are based on case law and decisions until July 2020.

<sup>38</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory opinion of 8 July 1996, ICJ. Reports (1996) 226, para. 29.

<sup>39</sup> ICJ, *Gabčíkovo-Nagymaros Project*, judgment of 25 September 1997, Reports 1997, para. 53.

<sup>40</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory opinion of 8 July 1996, ICJ. Reports (1996) 226, para. 29.

30. Among the environment-related conventions elaborated within the framework of the Council of Europe,<sup>41</sup> only one endeavours to define the scope of the concept “environment”. The following broad definition can be found in the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (Lugano, 21 June 1993) which provides in its Article 2 (10):

*“Environment” includes:*

- *natural resources both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors;*
- *property which forms part of the cultural heritage; and*
- *the characteristic aspects of the landscape.”*

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<sup>41</sup> Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment (ETS No 150); Convention on the Protection of Environment through Criminal Law (ETS No. 172); European Landscape Convention (ETS No. 176).



## Section A – Introduction – Principles derived from the European Convention on Human Rights

31. 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 47 member states.<sup>42</sup> All member states have ratified the Convention and therefore accept the jurisdiction of the Court which ensures compliance with the Convention.

32. 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.<sup>43</sup> The Court can find that states have violated the Convention and, where it does, can award compensation to the victims and obliges the states in question to take certain measures of either an individual or general character.

33. 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 an explicit right to the environment.

34. Nevertheless, 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 disturbance, industrial pollution, waste mismanagement, water contamination, human-caused and natural disasters and issues arising from town planning and construction. As environmental concerns have become more important nationally and internationally since 1950, the case law of the Court has increasingly reflected the idea that human rights law and environmental law are mutually reinforcing. Notably, the Court is not bound by its previous decisions, and in carrying out its task of interpreting the Convention, the Court adopts an evolutive approach. Therefore, the interpretation of the rights and freedoms is not fixed but can take account of the social context and changes in society.<sup>44</sup> As a consequence, even though no explicit right to a clean and quiet environment is included in the Convention or its protocols,<sup>45</sup> 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. The Court has also made reference, in

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<sup>42</sup> 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, Republic of Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, North Macedonia, Turkey, Ukraine, United Kingdom.

<sup>43</sup> Admissibility criteria are listed in Article 35 of the Convention.

<sup>44</sup> The Court often refers to the Convention as a "living instrument".

<sup>45</sup> *Hatton and Others v. the United Kingdom* [GC], judgment of 8 July 2003, § 96; *Dubetska and Others v. Ukraine*, judgment of 10 February 2011, also *Ioan Marchiș and Others v. Romania*, decision of 28 June 2011, § 28.

its case law, to other international environmental law standards and principles (see Appendix III).

35. However, it is not primarily upon the Court to determine which measures are necessary to protect the environment, but upon national authorities. 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. This is the practical implementation of the principle of subsidiarity, which has been stressed in the Interlaken Declaration of the High-Level Conference on the Future of the European Court of Human Rights.<sup>46</sup> 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 resort after the domestic remedies have been exhausted. The principle is particularly important in the context of environmental matters due to their very nature.

36. The following section is solely dedicated to the Court’s case law.<sup>47</sup> It will describe the scope of environmental protection based on Articles 2, 3, 6(1), 8, 10, 11, 13 and Article 1 of Protocol 1 of the Convention. At first it will discuss which substantial rights based on the right to life (Chapter I), the right to respect for private and family life, and the home (Chapter II) and the right to protection of property (Chapter III). Thereafter, procedural rights relating to information and communication (Chapter IV), decision-making procedure (Chapter V) and the access to justice and other remedies (Chapter VI). Finally, some general remarks on the territorial scope of the application of the Convention are made (Chapter VII).

37. 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: [www.echr.coe.int/](http://www.echr.coe.int/). 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/>.

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<sup>46</sup> Preamble part PP6 and § 2 of the Interlaken Declaration of 19 February 2010, available at: [www.echr.coe.int/Documents/2010\\_Interlaken\\_FinalDeclaration\\_ENG.pdf](http://www.echr.coe.int/Documents/2010_Interlaken_FinalDeclaration_ENG.pdf).

<sup>47</sup> The section only considers case-law of the Court up to July 2011. However, Appendix II includes also more recent jurisprudence.

## Chapter I

# The environment and the right to life, and the right not to be subjected to inhuman and degrading treatment



## 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.

## Article 3

### Prohibition of inhuman or degrading treatment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

**(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 a State, but also lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction.<sup>48</sup> This means that public authorities have a duty to take steps to guarantee the rights of the Convention even when they are threatened by other (private) persons or activities that are not directly connected with the State.**

38. 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, 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 a criminal offence of any action of individuals deliberately leading to the loss of life. 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.

39. 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. So far, the Court has considered environmental issues in six cases brought under Article 2, three of which relate to dangerous activities and three which relate to natural disasters. 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.<sup>49</sup>

**(b) The Court has found that the positive obligation on States may apply in the context of dangerous activities, such as nuclear tests, the operation of chemical factories with toxic emissions, waste-collection sites or man-made water reservoirs, whether carried out by public authorities themselves or by private companies.<sup>50</sup> 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.<sup>51</sup>**

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<sup>48</sup> *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, § 36; *Paul and Audrey Edwards v. the United Kingdom*, judgment of 14 March 2002, § 54; *Öneryıldız v. Turkey* [GC], judgment of 30 November 2004, § 71; *Budayeva and Others v. Russia*, § 128.

<sup>49</sup> E.g. *Makaratzis v. Greece* [GC], judgment of 20 December 2004, § 49.

<sup>50</sup> *Öneryıldız v. Turkey* [GC], § 71.

<sup>51</sup> *Öneryıldız v. Turkey* [GC], § 73; *L.C.B. v. the United Kingdom*, §§ 37-41.

40. 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.<sup>52</sup> 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.

41. 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 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.

42. The Kolyadenko and Others v. Russia case concerned a number of applicants who lived in the Primorskiy Region, close to the Pionerskoye reservoir and Pionerskaya river. On 7 August 2001, an urgent release of a large quantity of water from the reservoir caused a large area around the reservoir to instantly flood, including the area where the applicants resided.<sup>53</sup> Before the Court, the applicants complained that the authorities had put their lives at risk by releasing this water, without any prior warning, into a river which for years the authorities had failed to maintain in a proper state of repair, causing the flash flood.<sup>54</sup> In this case, the Court noted that the reservoir was a man-made industrial facility containing millions of cubic meters of water and situated in an area prone to heavy rains. Therefore, the operation of such reservoir undoubtedly fell into the category of dangerous industrial activities.<sup>55</sup> The Court noted that the authorities could reasonably have been expected to acknowledge the increased risk of grave consequences in the event of flooding following the urgent evacuation of water from the reservoir, and to show all possible diligence in alerting the residents of the area downstream of the reservoir. Although especially informing the public of the inherent risks was one of the essential

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<sup>52</sup> L.C.B. v. the United Kingdom, §§ 36 and 38.

<sup>53</sup> Kolyadenko and Others v. Russia (Judgment) (28 February 2012), ECHR Application No. 17423/05, § 32.

<sup>54</sup> *Ibid.*, § 130.

<sup>55</sup> *Ibid.*, § 164.

practical measures needed to ensure effective protection of the citizens concerned,<sup>56</sup> the Court noted the authorities' continued failure to restore and maintain an operational emergency warning system to raise the alarm in the event of the massive release of water from the reservoir, in spite of various requests to that effect. Additionally, even after the flood of 7 August 2001, the authorities remained passive and failed to take any practical measures to clear the river channel. Their manifest inactivity, putting the lives of people living along the river in danger, was also acknowledged by prosecutors and other State agencies.<sup>57</sup> Therefore the Court found a violation of Article 2 of the Convention, as the Government failed in its positive obligation to protect the relevant applicants' lives.<sup>58</sup>

**(c) In addition, the Court requires States to discharge their positive obligation to prevent the loss of life also in cases of natural disasters, even though they are as such, beyond human control, in contrast to the case of dangerous activities where States are required to hold ready appropriate warning and defence mechanisms.<sup>59</sup>**

43. In *Budayeva and Others v. Russia*, the Court was asked to consider whether Russia had failed its positive obligation to warn the local population, to implement evacuation and emergency relief policies or, after the disaster, to carry out a judicial enquiry, despite the foreseeable threat to the lives of its inhabitants in this hazardous area. The application resulted from a severe mudslide after heavy rain falls, which had cost numerous lives. The Court also found that there had been a causal link between the serious administrative flaws in this case and the applicants' death.

44. The earlier case of *Murillo Saldias v. Spain*<sup>60</sup> additionally supports the existence of such positive obligation in the event of natural disasters. In this case the applicants complained that the State had failed to comply with its positive obligation to take necessary preventive measures to forestall the numerous deaths that occurred during a flooding of a campsite following strong rain. The Court did not explicitly affirm a positive obligation, however it found that the applications were inadmissible not because the article did not apply *ratione materiae* to natural disasters, but because one of the applicants had already obtained satisfaction at the national level and that the remaining applicants had failed to exhaust the available domestic remedies.

**(d) 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 or natural disasters. This entails, above all, the primary duty of a State to put in place a legislative and administrative framework which includes:<sup>61</sup>**

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<sup>56</sup> *Ibid.*, § 181.

<sup>57</sup> *Ibid.*, § 182.

<sup>58</sup> *Ibid.*, § 186.

<sup>59</sup> *Budazeva and Others v. Russia*, judgment of 22 March 2008, § 135.

<sup>60</sup> *Murillo Saldias v. Spain*, decision of 28 November 2006.

<sup>61</sup> *Öneryıldız v. Turkey* [GC], § 89; *Budayeva and Others v. Russia*, § 129.

- making regulations which take into account the special features of a situation or an activity and the level of potential risk to life. In the case of dangerous activities this entails regulations that govern the licensing, setting-up, operation, security and supervision of such activities;<sup>62</sup>
- placing particular emphasis on the public's right to information concerning such activities. In cases of natural disasters this includes the maintenance of an adequate defence and warning infrastructure;<sup>63</sup>
- providing for appropriate procedures for identifying shortcomings in the technical processes concerned and errors committed by those responsible.<sup>64</sup>

45. In the *Öneryıldız v. Turkey* and *Budayeva and Others v. Russia* judgments 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 is that in both these cases, the Court transposes this principle to environmental hazards. In *Öneryıldız v. Turkey* the Court applies it in the context of dangerous activities and in *Budayeva and Others v. Russia* the Court applies it to natural disasters. Moreover, in the case of dangerous activities the significance of the necessary legislative and administrative framework will usually require that the responsible public authorities make regulations concerning dangerous activities. In 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.

46. The most significant difference between cases of natural disasters and dangerous activities is that the Court tends to provide States with a broader margin of appreciation for the former due to their unforeseeable nature, which is beyond human control.<sup>65</sup> Moreover, the Court stated that the scope of the positive obligations imputable to the State in the particular circumstances would depend on the origin of the threat and the extent to which one or the other risk is susceptible to mitigation.<sup>66</sup> Accordingly, it held that in the sphere of emergency relief, where the State is directly involved in the protection of human lives through the mitigation of natural hazards, these considerations should apply in so far as the circumstances of a particular case point to the imminence of a natural hazard that had been clearly identifiable, and especially where it concerned a recurring calamity affecting a distinct area developed for human habitation or use.<sup>67</sup>

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<sup>62</sup> *Öneryıldız v. Turkey* [GC], § 90; *Budayeva and Others v. Russia*, §§ 129 and 132.

<sup>63</sup> *Öneryıldız v. Turkey* [GC], § 90; *Budayeva and Others v. Russia*, §§ 129 and 132.

<sup>64</sup> *Öneryıldız v. Turkey* [GC], § 90; *Budayeva and Others v. Russia*, §§ 129 and 132.

<sup>65</sup> *Budayeva and Others v. Russia*, §§ 134-135.

<sup>66</sup> *Ibid.*, § 137

<sup>67</sup> *Ibid.*

**(e) 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.<sup>68</sup>**

47. The obligations which public authorities have in relation to the right to life are not just preventive; 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 it was lost, who was responsible and what lessons can be learned. As mentioned above, this is often referred to as the “procedural aspect,” “procedural head” or “procedural limb” of Article 2, as it imposes on States investigative obligations after the loss of life occurred. The aim of such obligation is to ensure that the legislative and administrative framework that is required to protect life does not exist on paper only. The Court 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.

**(f) This response by the State includes the duty to promptly initiate an independent and impartial investigation. The investigation must, firstly, be capable of ascertaining the circumstances in which the incident took place and identifying shortcomings in the operation of the regulatory system, and secondly, it must be capable of identifying the public officials or authorities involved in the chain of events in issue.<sup>69</sup>**

48. 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 Öneriyıldız 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.

49. The Özel and Others v. Turkey case concerned the death of 195 persons due to an earthquake which collapsed 17 buildings in the municipality of Çınarcık.<sup>70</sup> In 1994 the Çınarcık Municipal Council had approved property developers to build six storeys buildings in the area.<sup>71</sup> After the earthquake however, experts established that the Municipal Council authorised the multi-storey buildings without commissioning the requisite prior geological studies and failed to, *inter alia*, provide

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<sup>68</sup> Öneriyıldız v. Turkey [GC], § 91; Budayeva and Others v. Russia, § 138.

<sup>69</sup> Öneriyıldız v. Turkey [GC], § 94; Budayeva and Others v. Russia, § 142; Özel and Others v. Turkey, § 189

<sup>70</sup> Özel and Others v. Turkey (Judgment) (17 November 2015), ECHR Application No. 14350/05, § 17

<sup>71</sup> *Ibid.*, § 7

supervision of the projects.<sup>72</sup> According to this post-assessment, the Municipal Council had therefore no valid reason for issuing permits for six story buildings.<sup>73</sup> Moreover, the applicants stated that many years previously, the area had been declared a disaster zone, which meant that any buildings constructed there were subject to special regulations.<sup>74</sup> In this case, the Court emphasised that States have to ensure prompt official investigations in the context of dangerous activities where lives have been lost in events that occurred under the responsibility of their public authorities.<sup>75</sup> Those investigations are essential to the effective implementation of the domestic laws protecting the right to life.<sup>76</sup>

**(g) If the infringement of the right to life is unintentional, civil, administrative or even disciplinary remedies may be a sufficient response.<sup>77</sup> However, the Court has found that, in particular in the case of dangerous activities, where the public authorities were fully aware of the likely consequences and disregarded the powers vested in them, hence failing to take measures that are necessary and sufficient to avert certain risks which might involve loss of life, Article 2 may require that those responsible for endangering life be charged with a criminal offence or prosecuted.<sup>78</sup>**

50. In the *Öneryıldız v. Turkey* case the Court emphasised that Article 2 does not automatically entail the right for an individual to have those responsible prosecuted or sentenced for a criminal offence. In cases where life has been lost, the need to deter future failure may in certain situations require criminal prosecution of 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).

51. The above principles developed with respect to dangerous activities have also been transposed by the Court in *Budayeva and Others v. Russia* and *Murillo Saldias and Others v. Spain* to situations of disaster relief.

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<sup>72</sup> *Ibid.*, § 45

<sup>73</sup> *Ibid.*, § 45

<sup>74</sup> *Ibid.*, § 139

<sup>75</sup> *Ibid.*, § 188

<sup>76</sup> *Ibid.*

<sup>77</sup> *Öneryıldız v. Turkey* [GC], § 92; *Budayeva and Others v. Russia*, § 139.

<sup>78</sup> *Öneryıldız v. Turkey* [GC], § 93; *Budayeva and Others v. Russia*, § 140.

52. In the *Kolyadenko and Others v. Russia* case, the Court found it essential to ascertain whether the competent authorities were determined to establish the circumstances surrounding the flood of 7 August 2001 and to identify and bring to justice those responsible.<sup>79</sup> The Court found however, that although an investigation proved that the poor maintenance of the river channel had as its consequence the flood, the prosecutor's office brought criminal proceedings against officials of the municipal and regional authorities on suspicion of them having abused their power when allocating plots of land for individual housing construction within a water protection zone in the river basin.<sup>80</sup> As this seems to have been the main purpose of the proceedings, instead of identifying those responsible for the poor maintenance of the river channel, which was established as the main reason for the flood, the Court doubted this investigation was an adequate judicial response.<sup>81</sup> The Court further noted that although there were clearly listed failures by both the municipal and regional authorities, the investigating authorities decided to close the investigation, referring to the absence of evidence of a crime.<sup>82</sup> As such, the Court found that the competent Russian authorities did not secure accountability of the involved State officials or authorities, and therefore did not effectively guarantee the respect for the right to life through domestic criminal law.<sup>83</sup>

**(h) The requirements of Article 2 of the Convention go beyond the stage of the official investigation, where this has led to the institution of proceedings in the national courts: the proceedings as a whole, including the trial stage, must satisfy the requirements of the positive obligation to protect lives through the law.<sup>84</sup>**

53. In the *Öneryıldız v. Turkey* case the Court stated that the national courts should not under any circumstances be prepared to allow life-endangering offences to go unpunished.<sup>85</sup> The Court's task therefore consists in reviewing whether and to what extent the courts, in reaching their conclusion, may be deemed to have submitted the case to the careful scrutiny required by Article 2 of the Convention, so that the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the right to life are not undermined.<sup>86</sup>

54. In *Özel and Others v. Turkey*, the applicants, amongst other things, raised issues of major negligence both on the part of the property developer and his partners as well as the authorities, who had, despite all their efforts, not been prosecuted.<sup>87</sup> The criminal proceedings against the property developers took over 12 years and led to only two convictions, one of which was granted the benefit of a partial stay of the proceedings on ground of statutory limitation.<sup>88</sup> Additionally, the Court noted the overall failure of the authorities to indict and prosecute persons holding public office owing to a refusal by the administrative authorities to authorise such action.<sup>89</sup>

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<sup>79</sup> *Kolyadenko and Others v. Russia* (Judgment) (28 February 2012), ECHR Application No. 17423/05, § 196.

<sup>80</sup> *Ibid.*, § 198.

<sup>81</sup> *Ibid.*, §§ 199, 200.

<sup>82</sup> *Ibid.*, § 201.

<sup>83</sup> *Ibid.*, §§ 202, 203.

<sup>84</sup> *Öneryıldız v. Turkey* [GC], § 95; *Budayeva and Others v. Russia*, § 143; *Özel and Others v. Turkey*, § 190.

<sup>85</sup> *Öneryıldız v. Turkey* (Judgment) (30 November 2004), ECHR Application No. 48939/99, § 96.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Özel and Others v. Turkey* (Judgment) (17 November 2015), ECHR Application No. 14350/05, § 139.

<sup>88</sup> *Ibid.*, § 193.

<sup>89</sup> *Ibid.*, § 198.

Considering the circumstances under which the buildings had been built and the reason for their collapse, the Court stated that the domestic authorities should have prompted to address the matter rapidly in order to prevent any appearance of collusion and tolerance of unlawful acts.<sup>90</sup> The length of the proceedings had therefore breached the requirement for a prompt examination of the case without unnecessary delays under Article 2 of the Convention,<sup>91</sup> and so did the lack of criminal investigation of the involved public officials.<sup>92</sup>

**(i) The Convention does not explicitly include a right to a clean and healthy environment. Yet environment-related issues may be addressed, as seen above, in the context of Article 2, as well as under other provisions of the Convention. However, only few cases with environmental issues have been brought under Article 3 prohibiting torture and other inhuman and degrading treatment. Not all types of ill-treatment fall within the scope of Article 3, as a minimum level of severity is required. Thus, the Court must consider whether a causal link exists between the treatment and the negative impact on the individual<sup>93</sup> and whether it has attained the severity threshold<sup>94</sup>. An assessment of whether the threshold has been reached will depend on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim.<sup>95</sup>**

55. The Grand Chamber restated in the *Jalloh v. Germany* case the Court's longstanding view that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim.<sup>96</sup> In the context of the environment, Article 3 has been applied in situations where the conditions of detainment endanger the prisoner's' the health and well-being to such a degree of attaining the required threshold of severity.<sup>97</sup>

**(j) Article 3 does not solely concern an obligation to refrain from infliction of ill-treatment by agents of the State, but also imposes a positive obligation on States to take specific action to protect individuals from the prohibited treatment, or to provide them with adequate standards of care.<sup>98</sup>**

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<sup>90</sup> *Ibid.*, § 196.

<sup>91</sup> *Ibid.*, § 197.

<sup>92</sup> *Ibid.*, § 198.

<sup>93</sup> *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, § 39.

<sup>94</sup> *Florea v. Romania*, judgment of 14 September 2010, § 93.

<sup>95</sup> *Jalloh v Germany* [GC], judgment of 11 July 2006, § 67.

<sup>96</sup> *Ibid.* See also *Kafkaris v. Cyprus* [GC], judgment of 12 February 2008, § 95.

<sup>97</sup> *Florea v. Romania*, § 63;

<sup>98</sup> *Kudła v. Poland* [GC], judgment of 26 October 2000 (No. 30210/96), § 94; *Mouisel v. France*, judgment of 14 November 2002 (No. 67263/01), § 40.

56. The context in which most violations of Article 3 occur is with respect to the conditions of detention and the treatment of detainees as they are vulnerable to poor treatment by the authorities.<sup>99</sup> Moreover, some prisoners will have special needs and the failure to attend to them may amount to inhuman treatment. A State must ensure that a person is detained in conditions which are compatible with the respect of human dignity.<sup>100</sup> The Court has found that States failing to protect prisoners' health and well-being adequately breach Article 3 of the Convention.<sup>101</sup>

**(k) Article 3 has been applied in the context of exposure to excessive smoke in prisons. Although there does not exist a general obligation at European level to protect inmates against passive smoking<sup>102</sup>, the Court has nevertheless found that States have a positive obligation to take measures to protect a prisoner from the harmful effects of passive smoking where medical examinations and the advice of doctors indicate that this is necessary for health reasons.<sup>103</sup>**

57. The Court has considered health-environmental issues particularly in two cases concerning passive smoking in detention brought under Article 3. In *Florea v. Romania*, the applicant, who suffered from chronic hepatitis and arterial hypertension, complained in particular of overcrowding and poor hygiene conditions, including having been detained together with smokers in his prison cell and in the prison hospital. According to the applicant, 90% of his cellmates were smokers. The Court observed in particular that the applicant had spent in detention approximately three years living in very cramped conditions, with an area of personal space falling below the European standard. As to the fact that he had to share a cell and a hospital ward with prisoners who smoked, the Court noted that the applicant had never had an individual cell and had had to tolerate his fellow prisoners' smoking even in the prison infirmary and the prison hospital, against his doctor's advice. However, a law in force since June 2002 prohibited smoking in hospitals and the domestic courts had frequently ruled that smokers and non-smokers should be detained separately. It followed that the conditions of detention to which the applicant had been subjected had exceeded the threshold of severity required by Article 3 of the Convention, in violation of this provision.<sup>104</sup>

58. Similarly, the Court found a violation of Article 3 in the case of *Elefteriadis v. Romania*. The applicant, who suffered from chronic pulmonary disease, was serving a sentence of life imprisonment. Between February and November 2005, he was placed in a cell with two prisoners who smoked. In the waiting rooms of the courts where he had been summoned to appear on several occasions between 2005 and 2007, he was also held together with prisoners who smoked. The Court observed in

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<sup>99</sup> Aisling Reidy, *The prohibition of torture: A guide to the implementation of Article 3 of the European Convention on Human Rights*, Human rights handbooks, No. 6, Council of Europe (2003), p. 22.

<sup>100</sup> *Florea v. Romania*, § 50; *Kudła v. Poland* [GC], judgment of 26 October 2000 (No. 30210/96), § 94.

<sup>101</sup> *Ibid.*

<sup>102</sup> *Aparicio Benito v. Spain*, inadmissible decision of 3 November 2006 (No 36150/03) as the prisoner non-smoker was placed in an individual cell and where smoking was allowed only in a common TV area.

<sup>103</sup> *Elefteriadis v. Romania* (French only), judgment of 25 January 2011, §§ 49-55.

<sup>104</sup> *Florea v. Romania* (French only), judgment of 14 September 2010, §§ 60-62. By contrast see *Stoine Hristov v. Bulgaria* (No. 2) (No. 36244/02), judgment of 16 October 2008, §§ 43-46, where the domestic authorities took the necessary measures to address a prisoner's complaints by transferring him to a cell with non-smokers.

particular that a State is required to take measures to protect a prisoner from the harmful effects of passive smoking where, as in the applicant's case, medical examinations and the advice of doctors indicated that this was necessary for health reasons.<sup>105</sup>

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<sup>105</sup> *Elefteriadis v. Romania* (French only), judgment of 25 January 2011, §§ 49-55.



## Chapter II

### The environment and the right to respect for private and family life, and the home



## 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 (“living space”).<sup>106</sup>**

59. 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 within reasonable limits. Therefore, breaches of this right are not necessarily confined to obvious interferences such as an unauthorised entry into a person’s home but may also result from intangible sources such as noise, emissions, smells or other similar forms of interference.<sup>107</sup> If such interferences prevent a person from enjoying the amenities of this home, that person’s right to respect for his or her home could be breached. 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”<sup>108</sup> or in another case “living space”.<sup>109</sup> A “home”, according to the Court’s rather broad notion, is the place, i.e. physically defined area, where private and family life develops.

**(b) Environmental degradation does not necessarily involve a violation of Article 8 as it does not include an express right to general environmental protection or nature conservation.<sup>110</sup>**

60. In the *Kyrtatos v. Greece*<sup>111</sup> 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. The Court highlighted in this case that neither Article 8 nor any of the other articles of the Convention are specifically designed to provide general protection of the environment as such.<sup>112</sup> In this case, the Court found no violation of Article 8.

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<sup>106</sup> *Powell and Rayner v. the United Kingdom*, judgment of 21 February 1990, § 40; *Brândușe v. Romania*, judgment of 7 April 2009 (in French only), § 67.

<sup>107</sup> *Moreno Gómez v. Spain*, judgment of 16 November 2004, § 53; *Borysiewicz v. Poland*, judgment of 1 July 2008, § 48; *Giacomelli v. Italy*, judgment of 2 November 2006, § 76; *Hatton and Others v. the United Kingdom* [GC], judgment of 8 July 2003, § 96; *Deés v. Hungary*, judgment of 9 November 2010, § 21.

<sup>108</sup> *Fadeyeva v. Russia*, judgment of 9 June 2005, §§ 70, 82 and 86.

<sup>109</sup> *Brândușe v. Romania*, § 64 “l’espace de vie”.

<sup>110</sup> *Fadeyeva v. Russia*, § 68; *Kyrtatos v. Greece*, judgment of 22 May 2003, § 52; *Dubetska and Others v. Ukraine*, § 105; *Kyrtatos v. Greece*, § 52.

<sup>111</sup> *Kyrtatos v. Greece*, judgment of 22 May 2003.

<sup>112</sup> *Kyrtatos v. Greece*, § 52.

61. On the other hand, the Court has found that, *inter alia*, “severe environmental pollution” such as excessive noise levels generated by an airport,<sup>113</sup> fumes, smells and contamination emanating from a waste treatment plant<sup>114</sup> and toxic emissions from a factory<sup>115</sup> can interfere with a person’s peaceful enjoyment of home in such a way as to raise an issue under Article 8, even when the pollution is not seriously health threatening.<sup>116</sup>

**(c) For an issue to arise under Article 8, the environmental factors must have a directly harmful effect on or seriously risk the enjoyment of private and family life or home and correspondence of individuals.<sup>117</sup> Thus, there are two issues which the Court must consider – whether a causal link exists between the activity and the negative impact on the individual and whether the adverse effects have attained a certain threshold of harm. The assessment of that minimum threshold 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.<sup>118</sup>**

62. 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.

63. In *Leon and Agnieszka Kania v. Poland*<sup>119</sup> the Court had to consider whether the long proceedings to close a private company which emitted high levels of noise violated Article 8. The Court first reiterated that there is no explicit right in the Convention to a clean and quiet environment, but that where an individual is directly and seriously affected by noise or other pollution, an issue may arise under Article 8. Nevertheless, the Court concluded that it had not been established that the noise levels considered in the present case were so serious as to reach the high threshold established in cases dealing with environmental issues. Therefore, the Court held that Article 8 of the Convention had not been violated.

64. In contrast, 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 elsewhere when it became clear that the nuisance could go on indefinitely and when her daughter’s paediatrician

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<sup>113</sup> *Hatton and Others v. the United Kingdom* [GC].

<sup>114</sup> *López Ostra v. Spain*, judgment of 9 December 1994; *Giacomelli v. Italy*.

<sup>115</sup> *Guerra and Others v. Italy* [GC], judgment of 19 February 1998; *Tătar v. Romania*, judgment of 27 January 2009 (in French only); *Ledyayeva and Others v. Russia*, judgment of 26 October 2006, *Fadeyeva v. Russia*.

<sup>116</sup> *Taşkın and Others v. Turkey*, judgment of 10 November 2004, § 113; *Ioan Marchiș and Others v. Romania*, § 28.

<sup>117</sup> *Hatton and Others v. the United Kingdom* [GC], § 96; *Cordella et al. v. Italy* (Judgment) (24 January 2019), ECHR Application No. 54414/13 and 54264/15, §§ 157, 172

<sup>118</sup> *Fadeyeva v. Russia*, § 69; *Borysiewicz v. Poland*, § 51; *Leon and Agnieszka Kania v. Poland*, judgment of 21 July 2009, § 100 *Ioan Marchiș and Others v. Romania*, § 33; *Grimkovskaya v. Ukraine*, judgment of 21 July 2011.

<sup>119</sup> *Leon and Agnieszka Kania v. Poland*, judgment of 21 July 2009, §§ 98-104.

recommended them to relocate. The national authorities, while recognising that the noise and smells had a negative effect on the applicant's quality of life, argued that they did not constitute a grave health risk and that they did not reach a level of severity breaching the applicant's fundamental rights. 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.

65. Likewise, in *Brândușe v. Romania* the Court did not require an actual impact on the health of the applicant to find Article 8 applicable.<sup>120</sup> In the case the Court was required to determine firstly whether Article 8 of the Convention applied in the case of an applicant who considered the cell in which he was serving a prison sentence to be his "living space", and secondly whether the bad odours from a nearby rubbish tip breached the gravity threshold to fall within the scope of Article 8. The Court agreed with the applicant that Article 8 applied to his cell as the cell represented the only "living space" available to the prisoner for several years. Moreover, the Court clearly held that the quality of life and well-being of the applicant had been affected in a manner that had impaired his private life and was not just the consequence of the deprivation of his liberty. Thereby it found that the pure absence of any health impact is not sufficient alone to dismiss the applicability of Article 8. In the end the Court found a violation of this article.

66. 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.

67. In *Dubetska and Others v. Ukraine*, like in *Fadeyeva v. Russia*, the Court stressed with regard to the minimum threshold necessary to invoke Article 8 that no issue will arise if the detriment complained of is negligible in comparison to the environmental hazards inherent in life in every modern city.<sup>121</sup> In *Dubetska and Others v. Ukraine* the applicants', living in a rural area, complained that they suffered chronic health problems and damage to their homes and the living environment as a result of a coal mine and a factory which were operated nearby. The Court recognised that while there is no doubt that industrial pollution may negatively affect public health in general and worsen the quality of an individual's life, it is often impossible to quantify its effect in each individual case. It is generally hard to distinguish the effect of environmental hazards from the influence of other relevant factors. The Court further held that living in an area marked by pollution in clear excess of applicable safety standards exposed the applicants to an elevated risk to health. In the present case, the Court found that the specific area in which the applicants lived was both according to the legislative framework (provision of minimum distances from industrial plants) and empirically unsafe for residual use.

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<sup>120</sup> *Brândușe v. Romania*, § 67.

<sup>121</sup> *Dubetska and Others v. Ukraine*, § 105; also *Ioan Marchiș and Others v. Romania*, § 33.

Consequently, the Court found a violation of Article 8 as the authorities had not found an effective solution to the applicant's situation for 12 years either by curbing the pollution or resettling them as envisaged by national court judgments.<sup>122</sup>

68. In *Grimkovskaya v. Ukraine*, the Court reaffirmed that the hazard at issue necessary to raise a claim under Article 8 must attain a level of severity resulting in a "significant impairment if the applicant's ability to enjoy her home, private or family life" and that the assessment of all circumstances of the case is needed to decide on the threat level.<sup>123</sup> In this case, the Ukrainian authorities routed in 1998 a motorway through a street which had been constructed as a residential street. It had no drainage system, pavement or proper surfacing able to withstand high volumes of heavy goods traffic. In addition, potholes which appeared were occasionally filled up by the road authorities with cheap materials including waste from coal-mines which were high in heavy metal content. The applicant claimed that her house had become unusable and the people living in it suffered from constant vibrations provoked by the traffic and from noise and pollution. While the Court found that there was insufficient evidence to prove all the applicant's allegations (e.g. the detailed impact on the health of the inhabitants), it relied on evidence showing that in general the level of emissions was above the statutory limits and that some of the applicant's son's health issues could not be plausibly explained (e.g. lead and copper salts poisoning) to conclude that the cumulative effect of noise, vibrations and air and soil pollution generated by the motorway significantly deterred the applicant from enjoying her rights guaranteed by Article 8.<sup>124</sup> However, the Court found a violation only with regard to procedural aspects of the decision-making and complaints procedure.

69. Yet, the case of *Tătar v. Romania* is also remarkable. In this case the applicants, who lived near a gold ore extraction plant, had lodged several complaints with the authorities about the risks to which they were being exposed because of the use by the company of a technical procedure involving sodium cyanide. In 2000, despite the fact that the authorities had reassured the applicant that sufficient safety mechanisms existed, a large quantity of polluted water spilled into various rivers, crossing several borders and affecting the environment of several countries. In this particular case the Court was confronted with the problem that there was no internal decision or other official document stating explicitly how much of a threat the company's activities posed to human health and the environment.<sup>125</sup> The Court noticed that the applicant failed to obtain any official document from the authorities confirming that the company's activities were dangerous. Moreover, the Court found that the applicants had failed to prove that there was a sufficient causal link between the pollution caused and the worsening of their symptoms. Nevertheless, on the basis of environmental impact studies of the spilling submitted by the respondent State, the Court concluded that a serious and substantial threat to the applicants' well-being existed. Consequently, the State was under a positive obligation to adopt reasonable and sufficient measures to protect the rights of the interested parties to respect for their private lives and their home and, more generally, a healthy, protected environment.<sup>126</sup> This applied to the authorities just as much before the plant had begun operating as after the accident.

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<sup>122</sup> *Dubetska and Others v. Ukraine*, §§ 105-106, 111, 118.

<sup>123</sup> *Grimkovskaya v. Ukraine*, § 58.

<sup>124</sup> *Grimkovskaya v. Ukraine*, § 62.

<sup>125</sup> *Tătar v. Romania*, § 93.

<sup>126</sup> *Tătar v. Romania*, § 107.

70. In this respect it is notable that the Court emphasised the importance of the precautionary principle (which had been established for the first time by the Rio Declaration, whose purpose was to secure a high level of protection for the health and safety of consumers and the environment in all the activities of the Community).<sup>127</sup> It held that the national authorities' positive obligations to ensure respect for private and family life applied with even more force to the period after the accident of 2000.<sup>128</sup> The applicants must have lived in a state of anxiety and uncertainty, accentuated by the passive approach of the national authorities and compounded by the fear stemming from the continuation of the activity and the possibility that the accident might occur again. Consequently, the Court found that there had been a violation of Article 8 of the Convention.

71. However, the precautionary principle does not protect against every potential harm that is conceivable. In the case of *Luginbühl v. Switzerland*,<sup>129</sup> the applicant claimed that emissions caused by a mobile phone antenna could impact her health and so lead to a violation of Article 8 of the Convention. The Court noted that the Swiss authorities had published a scientific study on the effects of mobile phones on the environment and the health of individuals, and that the issue of the noxiousness had not been proven scientifically for the time being. The Court concluded that the complaint under Article 8 should be rejected, as well as the complaint under Article 2 of the Convention. Hence, the Court requires at least some scientific validity of the claim that a certain activity is dangerous to the environment and/or health.

72. In addition, considering the *Taşkın and Others v. Turkey*<sup>130</sup> case, it appears that the Court has a two-track approach to Article 8. In this case the Court was called to decide on whether national authorities had incorrectly prolonged the operation permit of a gold mine which was employing a particular technique that could have a negative impact on the environment and the applicant's health. On the one hand, if the possible environmental damage is severe enough that it seems likely that individuals' well-beings and the enjoyment of their homes are adversely affected, the Court refrains from a more in-depth analysis of the link between the pollution and the negative impact and the gravity of the impact on the individual. However, in case of "dangerous activities" the Court requires a "sufficiently close link" to be established with the private and family life of an applicant to accept the invocation of Article 8.

73. In the *Di Sarno and Others v. Italy* case, the Court was flexible with the interpretation of the individual harm criteria. This case concerned thirteen applicants who lived, and five applicants who worked in the municipality of Somma Vesuviana (in Campania), which was affected by a "waste crisis". From 11 February 1994 to 31 December 2009, a state of emergency was in place in the Campania region, by decision of the then Prime Minister, because of serious problems of solid urban waste disposal.<sup>131</sup> Particularly from the end of 2007 until May 2008, the applicants were forced to live in a polluted environment due to tons of waste which were left to pile up for weeks in the streets of Naples and other towns in the province.<sup>132</sup> *Inter alia* relying on Article 8 of the Convention, the applicants submitted that the State failed to take the requisite measures to guarantee the proper functioning of the public waste disposal service and inadequately applied legislative and administrative policies, causing serious damage to the environment in their region and endangered their

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<sup>127</sup> *Tătar v. Romania*, § 120.

<sup>128</sup> *Tătar v. Romania*, § 121.

<sup>129</sup> *Luginbühl v. Switzerland*, decision of 17 January 2006.

<sup>130</sup> *Taşkın and Others v. Turkey*, § 113.

<sup>131</sup> *Di Sarno and others v. Italy* (Judgment) (10 January 2012), ECHR Application No. 30765/08, § 7

<sup>132</sup> *Ibid.*, §§ 36, 108

lives, health and that of the local population in general.<sup>133</sup> Remarkably, the Court did not specifically require the five applicants who did not live in the region (but only worked there), to prove how the environmental situation affected their rights under Article 8 of the Convention. Moreover, the applicants did not allege that they were affected by any pathologies linked to the exposure of waste,<sup>134</sup> nor did the Court identify a lack of compliance by Italy with respect to national measures to overcome the waste issues in Campina.<sup>135</sup> Yet, the Court decided that the situation in the case at hand *may have led* to a deterioration of the applicants' quality of life and, in particular, adversely affected their right to respect for their homes and their family life under Article 8.<sup>136</sup> The Court noted in particular that this case did not concern direct interference with Article 8 of the Convention, but rather the alleged failure of the authorities to take adequate steps to ensure the proper functioning of the waste collection, treatment and disposal service in the municipality of Somma Vesuviana.<sup>137</sup> The Court ruled that the collection, treatment and disposal of waste are without a doubt dangerous activities,<sup>138</sup> and accordingly, the State was under a positive obligation to take reasonable and adequate steps to protect the right of the people concerned to respect for their homes and their private life and, more generally, to live in a safe and healthy environment.<sup>139</sup> In light of the facts of the case, the Court found that there was no denying that the protracted inability of the Italian authorities to ensure the proper functioning of the waste collection, treatment and disposal service adversely affected the applicants' right to respect for their homes and their private life, in violation of Article 8 of the Convention in its substantive aspect.<sup>140</sup>

74. The *Dzemyuk v. Ukraine* case, the applicant lived in a village where water supply was not centralized but came from wells fed by groundwater.<sup>141</sup> In 2000, the local authorities decided to construct a cemetery on a plot of land which was approximately 38 meters from the applicant's house and the water well,<sup>142</sup> regardless of the fact that a multitude of environmental-health authorities had communicated the incompatibility of the location of the cemetery with environmental health laws and regulations, and expressed concern with respect to the contamination of the drinking water.<sup>143</sup> The applicant started proceedings before a national court, which declared that the decision of the local authorities to place the cemetery on this plot of land was unlawful.<sup>144</sup> Nonetheless, burials continued, and in 2003 the court again ordered the closure of the cemetery<sup>145</sup> which was accompanied by writs of execution in 2004.<sup>146</sup> The local authorities however refused to comply with the order.<sup>147</sup> Before the Strasbourg Court, the applicant submitted that the construction of a cemetery near his house had led to the contamination of his supply of drinking water, negatively affecting his own and his family's physical and mental health.<sup>148</sup> In the absence of direct evidence of actual damage to the applicant's health however, the Court had to

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<sup>133</sup> *Ibid.*, § 94

<sup>134</sup> *Ibid.*, § 108

<sup>135</sup> *Ibid.*, § 111

<sup>136</sup> *Ibid.*, § 108

<sup>137</sup> *Ibid.*, § 109

<sup>138</sup> *Ibid.*, § 110

<sup>139</sup> *Ibid.*

<sup>140</sup> *Ibid.*, § 112

<sup>141</sup> *Dzemyuk v. Ukraine* (Judgment) (4 September 2014), ECHR Application No. 42488/02, § 9

<sup>142</sup> *Ibid.*, § 33

<sup>143</sup> *Ibid.*, §§ 10 – 14

<sup>144</sup> *Ibid.*, § 35

<sup>145</sup> *Ibid.*, § 49

<sup>146</sup> *Ibid.*, § 52

<sup>147</sup> *Ibid.*, §§ 54, 55, 60

<sup>148</sup> *Ibid.*, § 73

determine whether the potential risks to the environment caused by the location of the cemetery established a close link sufficient to affect his “quality of life”.<sup>149</sup> The Court noted, *inter alia*, that the domestic environmental health and sanitary regulations clearly prohibited placing the cemetery in close proximity to residential buildings and water sources, as this would pose environmental risks; that the environmental dangers of the location of this cemetery had been acknowledged by the authorities on numerous occasions, and; that there was no centralized water supply in the village.<sup>150</sup> Considering that environmental regulations were breached; the conclusions of the environmental authorities were disregarded; final and binding judicial decisions were never enforced and the health and environment dangers inherent in water pollution were not acted upon, the Court ruled that the interference with the applicant’s right to respect for his home and private and family life was not “in accordance with the law” within the meaning of Article 8 of the Convention.<sup>151</sup>

75. Another noteworthy case is *Cordella and Others v. Italy* which concerned 180 applicants who lived in the city of Taranto or in neighbouring municipalities. The applicants complained about the impact of toxic emissions produced by the local steel plant on the environment and on the health of the local population.<sup>152</sup> Besides the fact that the Italian Council of Ministers itself classified the area surrounding the plant as a high environmental risk area in 1990,<sup>153</sup> nine scientific reports between 1997 and 2017 affirmed this and additionally established a link between the exposure to environmental pollution in those areas and the increase of health issues such as the development of certain tumors and other diseases.<sup>154</sup> On this basis, the applicants argued that the Government had failed to protect their health and the environment *inter alia* under Article 8 of the Convention.<sup>155</sup> Of the 180 applications, the Court accepted 161 claims.<sup>156</sup> Although repeating that neither Article 8 nor any other provision of the Convention specifically guarantees the general protection of the environment,<sup>157</sup> the Court recognised the 161 applicants were located in the previously classified high environmental risk areas.<sup>158</sup> By analogy, all applicants within those areas were considered to have an admissible claim, as the scientific evidence showed that the pollution made those residing in high risk regions more vulnerable to various diseases,<sup>159</sup> which, in itself, established a causal link between the polluting activity and each affected individual.<sup>160</sup> The Court additionally noted the prolongation of a situation of environmental pollution endangering the health of the applicants and, more generally, that of the entire population residing in the areas at risk;<sup>161</sup> thereby not merely addressing the issue of environmental pollution within the context of the individual claims only, but also recognising its effect on non-applicants residing within those same high-risk areas. The Court concluded that there has been

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<sup>149</sup> *Ibid.*, § 82

<sup>150</sup> *Ibid.*, § 83

<sup>151</sup> *Ibid.*, § 92

<sup>152</sup> *Cordella and Others v. Italy* (Judgment) (24 January 2019), ECHR Application No. 54414/13 and 54264/15, §§ 13, 14

<sup>153</sup> *Ibid.*, § 32

<sup>154</sup> *Ibid.*, §§ 15 – 31

<sup>155</sup> *Ibid.*, § 93

<sup>156</sup> *Ibid.*, § 103

<sup>157</sup> *Ibid.*, § 100

<sup>158</sup> *Ibid.*, §§ 102, 103

<sup>159</sup> *Ibid.*, § 105

<sup>160</sup> *Ibid.*, §§ 106, 107

<sup>161</sup> *Ibid.*, § 172

a violation of Article 8 of the Convention due to lack of reaction to air pollution by a steelworks, to the detriment of the surrounding population's health.

**(d) While the objective 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.<sup>162</sup> 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.<sup>163</sup> Public authorities must make sure that such measures are implemented so as to guarantee rights protected under Article 8.<sup>164</sup> The Court has furthermore explicitly recognised that public authorities may have a duty to inform the public about environmental risks.<sup>165</sup> Moreover, the Court has stated with regard to the scope of the positive obligation that it is generally irrelevant of whether a situation is assessed from the perspective of paragraph 1 of Article 8 which, *inter alia*, relates to the positive obligations of State authorities, or paragraph 2, asking whether a State interference was justified, as the principles applied are almost identical.<sup>166</sup>**

76. According to the Court's case law,<sup>167</sup> not only should public authorities refrain from interfering arbitrarily with individuals' rights, but they should also take active steps to safeguard these rights.<sup>168</sup> Such duties may arise also with regard to the relations between private parties.

77. 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 out by private parties, Article 8 nonetheless applied because 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 principle (e) below).

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<sup>162</sup> *Guerra and Others v. Italy* [GC], § 58.

<sup>163</sup> *Hatton and Others v. the United Kingdom* [GC], § 98; *Tătar v. Romania*, § 87; *Deés v. Hungary*, § 21.

<sup>164</sup> *Moreno Gómez v. Spain*, § 61.

<sup>165</sup> *Guerra and Others v. Italy* [GC], § 60; *Tătar v. Romania*, § 88; *Lemke v. Turkey*, judgment of 5 June 2007 (in French only), § 41.

<sup>166</sup> *Tătar v. Romania*, § 87. *Giacomelli v. Italy*, § 78; *Leon and Agnieszka Kania v. Poland*, § 99.

<sup>167</sup> For example *Guerra and Others v. Italy* [GC].

<sup>168</sup> The so-called "doctrine of positive obligations". *Hatton and Others v. the United Kingdom* [GC], §§ 100, 119, 123; *Dubetska and Others v. Ukraine*, § 143

78. 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.

79. 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 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.

80. The case of *Ledyayeva and Others v. Russia*,<sup>169</sup> dealt with situation similar to the case of *Fadeyeva v. Russia*, in which the Court had found that the operation of a polluting steel plant in the middle of a densely populated town placed the State under an obligation to offer the applicant an effective solution to help her move away from the dangerous area or to reduce the toxic emissions. In the more recent *Ledyayeva and Others v. Russia* case the Court noted that the Government had not put forward any new fact or argument that would persuade it to reach a conclusion different from that of the *Fadeyeva and Others v. Russia* case. Accordingly, the Court found that the Russian authorities had failed to take appropriate measures to protect the applicants' right to respect for their homes and their private lives against severe environmental nuisances. In particular, the authorities had not resettled the applicants outside the dangerous area or provided compensation for people seeking new accommodation. Nor had they devised and implemented an efficient policy to induce the owners of the steel plant to reduce its emissions to safe levels within a reasonable time. The Court found that there had been a violation of Article 8 of the Convention. With this judgment the Court underlined again its position from *Fadeyeva v. Russia* that a State's responsibility in cases relating to the environment "may arise from a failure to regulate [the] private industry."<sup>170</sup>

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<sup>169</sup> *Ledyayeva and Others v. Russia*, judgment of 26 October 2006.

<sup>170</sup> *Fadeyeva v. Russia*, § 89.

81. Moreover, in *Dubetska and Others v. Ukraine*<sup>171</sup> the Court applied the same principles regardless of the fact that the polluting state-owned factory was privatised in 2007. To determine whether or not the State could be held responsible under Article 8 of the Convention, the Court examined whether the situation was a result of a sudden and unexpected turn of events or, on the contrary, was long-standing and well known to the State authorities; whether the State was or should have been aware that the hazard or the nuisance was affecting the applicant's private life and to what extent the applicant contributed to creating this situation for himself and was in a position to remedy it without a prohibitive outlay.<sup>172</sup>

82. The case of *Deés v. Hungary* underlines the extent of the obligation to remedy violation resulting from a private third party. In this case, the volume of traffic routed through the applicant's town increased substantially in 1997 because of the attempt of many trucks to avoid rather high toll charges which had recently been introduced on a neighbouring, privately owned motorway. The Government was aware of the increased burden on the citizens and tried to remedy it as early as 1998 through several measures including the construction of three bypass roads, 40 km/h speed limit at night, the erection of several traffic lights and, in 2001, a ban of vehicles of over 6tons on the town's road. Those measures were enforced through the increased presence of the police. Nevertheless, the Court found that the authorities failed in their duty to stop the third-party breaches of the right relied on by the applicant, since the measures taken consistently proved to be insufficient and, consequently, the applicant was consistently exposed to excessive noise disturbance over a substantial period of time. The Court held that this created a disproportionate individual burden for the applicant. Hence, it found a breach of Article 8.

83. However, in *Grimkovskaya v. Ukraine* the Court did not find a violation of Article 8 because the nuisances caused by the noise and pollution emitted from a nearby motorway were not effectively remedied by the authorities. It recognised the complexity of States' task in handling infrastructural issues holding that Article 8 cannot be constructed as requiring States to ensure that every individual enjoys housing that meets particular environmental standards. Consequently, it would be going too far to render the Government responsible for the very fact of allowing cross-town traffic to pass through a populated street or establish the applicants right to free, new housing at the State's expense, especially since the applicant had not proven that she could not relocate without the State's help. Nevertheless, the Court found a violation of the procedural obligations of Article 8 because minimal safeguards had not been respected by the authorities. The Court considered that, *inter alia*, the efficient and meaningful management of the street through a reasonable policy aimed at mitigating the motorway's harmful effects on the Article 8 right of the street's residents belonged to those minimal safeguards (see also chapter V).<sup>173</sup>

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

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<sup>171</sup> For a short description of this case, see § [...] of the manual.

<sup>172</sup> *Dubetska and Others v. Ukraine*, § 108.

<sup>173</sup> *Grimkovskaya v. Ukraine*, §§ 65-66, 68, 73.

85. In *Bor v. Hungary*, the applicant complained that the extreme noise disturbance caused by the railway station had started in 1988, while the first measures aiming at reducing the noise levels had only been implemented in 2010. As the noise had exceeded the statutory levels for more than twenty years, he claimed there was an interference with his rights under Article 8 of the Convention.<sup>174</sup> The Government on the other hand, argued that the Nature Protection Act provided for a clear sanction system, installing soundproof doors and windows. It stated that the remaining noise stemmed from an activity serving both public and private interest and was therefore lawful.<sup>175</sup> The Court noted that applicant only benefitted from the sanctioning system (replacement of the doors and windows) in 2008. As the complaint about the noise disturbance was brought in the domestic courts in 1991, it had taken about sixteen years to carry out a proper balancing exercise and to reach an enforceable decision by the domestic courts. Therefore, the applicant remained unprotected against the excessive noise disturbance, which caused serious nuisance preventing him from enjoying his home, for an unacceptably long period.<sup>176</sup> The Court emphasized that the existence of a sanction system is not enough if it is not applied in a timely and effective manner. As such, there had been a violation of Article 8 of the Convention as the domestic courts failed to determine any enforceable measures in order to assure that the applicant would not suffer any disproportionate individual burden for some sixteen years.<sup>177</sup>

86. In the *Brincat and Others v. Malta* case, five applicants complained that they had been constantly and intensively exposed to asbestos during their employment at a Maltese ship repair yard from the 1950/60s to 2000. Repairs included breaking apart the asbestos casing that was used for insulation purposes, thereby releasing the particles into the surrounding air.<sup>178</sup> The applicants contended that asbestos particles would settle on the workers' clothing and be carried around in this way, with the result that it could also affect the lives of their family members, creating further anguish and affecting their private and family life.<sup>179</sup> In response, the Government argued that, as soon as they were aware of the health risks of asbestos in 1987, they adopted work place regulations to protect the employees.<sup>180</sup> The Court however, stated that Malta had been or should have been aware of the risks of asbestos starting from the 1970s.<sup>181</sup> Moreover, the Court noted that the regulations adopted by the Government in 1987 did not adequately regulate the operation of the asbestos-related activities nor provided any practical measures to ensure the effective protection of the employees. Even the limited protection afforded by that legislation had no impact on the applicants since it remained unenforced.<sup>182</sup> Consequently, the Court concluded that in view of the seriousness of the threat at issue the Government had failed to satisfy all their positive obligations to legislate or take other practical measures, *inter alia*, under Article 8 of the Convention.<sup>183</sup>

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<sup>174</sup> *Bor v. Hungary* (Judgment) (18 June 2013), ECHR Application No. 50474/08, § 22

<sup>175</sup> *Ibid.*, § 23

<sup>176</sup> *Ibid.*, § 26

<sup>177</sup> *Ibid.*, § 27

<sup>178</sup> *Brincat and Others v. Malta* (Judgment) (24 July 2014), ECHR Application No. 60908/11, § 7

<sup>179</sup> *Ibid.*, § 8

<sup>180</sup> *Ibid.*, § 107

<sup>181</sup> *Ibid.*, § 106

<sup>182</sup> *Ibid.*, § 111

<sup>183</sup> *Ibid.*, § 116

87. In *Cordella and Others v. Italy*, the Court noted that since the 1970s scientific studies had proved the polluting effect from the steel plant on the environment and human health. Those reports and their results, proving the causal link between environmental exposure and the increase of certain health issues,<sup>184</sup> were largely put forward by the State and regional organizations itself.<sup>185</sup> Nonetheless, the consequent depollution plans made by the national authorities lacked implementation.<sup>186</sup> The Court specifically noted the frequent intervention by the Government through urgent measures ensuring continued production activity of the plant, despite the findings of competent judicial authorities regarding the existence of serious risks to health and the environment.<sup>187</sup> Moreover, the Court noted that the Government had granted administrative and criminal immunity to those responsible for ensuring compliance with environmental requirements.<sup>188</sup> In light of this, the Court recognized the prolongation of the situation of environmental pollution and the lack of information provided to the applicants with respect to the deadlines of the actual implementation of the sanitation of the area concerned.<sup>189</sup> As such, the Court established that the national authorities had failed to take all the necessary measures to ensure the effective protection of the right of persons concerned to respect for their private life under Article 8 of the Convention.<sup>190</sup>

88. In *Di Sarno and Others v. Italy*, the Court found that the State was under a positive obligation to take reasonable and adequate steps to protect the rights under Article 8 of the Convention,<sup>191</sup> with respect to the collection, treatment and disposal of waste. Here, the Court noted that although some of the waste treatment and disposal service was entrusted with private companies, the fact that the Italian authorities handed over the management of a public service to third parties did not relieve them of the duty of care incumbent on them under Article 8 of the Convention.<sup>192</sup> Contrary to, for example *Bor*, *Brincat* and *Cordella* cases, the Court did not find a lack of compliance by Italy with respect to national measures to overcome environmental issues in the *Di Sarno* case.<sup>193</sup> It even noted that the Italian State took various measures and initiatives to overcome the difficulties in Campania.<sup>194</sup> However, the Court found that there was no denying that the protracted inability of the Italian authorities to ensure the proper functioning of the waste collection, treatment and disposal service adversely affected the applicants' right to respect for their homes and their private life, in violation of Article 8 of the Convention in its substantive aspect.<sup>195</sup>

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<sup>184</sup> *Cordella and Others v. Italy* (Judgment) (24 January 2019), ECHR Application No. 54414/13 and 54264/15, §§ 164 – 166

<sup>185</sup> *Ibid.*, § 163

<sup>186</sup> *Ibid.*, §§ 167, 168

<sup>187</sup> *Ibid.*, § 169

<sup>188</sup> *Ibid.*

<sup>189</sup> *Ibid.*, § 172

<sup>190</sup> *Ibid.*, § 173

<sup>191</sup> *Di Sarno and others v. Italy* (Judgment) (10 January 2012), ECHR Application No. 30765/08, § 109

<sup>192</sup> *Ibid.*, § 110

<sup>193</sup> *Ibid.*, § 111

<sup>194</sup> *Ibid.*

<sup>195</sup> *Ibid.*, § 112

(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.<sup>196</sup> 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.<sup>197</sup> 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.<sup>198</sup> Therefore they enjoy in principle a wide margin of appreciation in determining how the balance should be struck.<sup>199</sup> 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.<sup>200</sup>

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

90. 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 in which 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. Spain*<sup>201</sup> the operation of the waste-treatment plant was illegal because it was run without the necessary licence. In *Guerra and Others v. Italy*<sup>202</sup> the applicants were unable to obtain information from the public authorities despite the existence of a national statutory obligation.

91. Likewise, in *Taskin and Others v. Turkey*<sup>203</sup> and *Fadeyeva and Others v. Russia*<sup>204</sup> the Court found violations because industrial activities were conducted illegally or in violation of existing national environmental standards. In *Fadeyeva v. Russia* the Court explicitly expounded that “in accordance with the law” means that “[a] breach of domestic law [...] would necessarily lead to a finding of a violation of the Convention.”<sup>205</sup> In contrast, in *Hatton and Others v. the United Kingdom*<sup>206</sup> there was no such element of irregularity under United Kingdom law and the applicants did

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<sup>196</sup> *Hatton and Others v. the United Kingdom* [GC], § 98.

<sup>197</sup> *López Ostra v. Spain*, § 51; *Öçkan and Others v. Turkey*, § 43.

<sup>198</sup> *Powell and Rayner v. the United Kingdom*, § 44; *Giacomelli v. Italy*, § 80

<sup>199</sup> *Hatton and Others v. the United Kingdom* [GC], §§ 97, 98 and 100.

<sup>200</sup> *Fadeyeva v. Russia*, § 128.

<sup>201</sup> For a short description of this case, see § 64 of the manual.

<sup>202</sup> For a short description of this case, see § 79 of the manual.

<sup>203</sup> For a short description of this case, see § 72 of the manual.

<sup>204</sup> For a short description of this case, see § 66 of the manual.

<sup>205</sup> *Fadeyeva v. Russia*, § 95. Moreover, in *López Ostra v. Spain* and *Taşkın and Others v. Turkey* national courts had already ordered the facilities to be closed, which was not implemented.

<sup>206</sup> For a short description of this case, see § 77 of the manual.

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.<sup>207</sup>

92. The interference must also follow a legitimate aim serving the interests of the community such as the economic well-being of the country.<sup>208</sup> 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 that is difficult to assess, the Court acknowledges that national authorities are better placed than the Court itself to decide on the best policy to adopt in given circumstances. 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.<sup>209</sup> In such instances, the measures taken by the authorities must also be in accordance with the law, proportionate and reasonable.

93. 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*,<sup>210</sup> 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.<sup>211</sup>

94. In contrast, the wide margin of appreciation allowed the United Kingdom to sufficiently balance the environmental impact of the extension of Heathrow Airport against its economic gains. The Court found in *Hatton and Others v. the United Kingdom* that the additional night flight would not violate Article 8 because their

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<sup>207</sup> *Fadeyeva v. Russia*, § 98.

<sup>208</sup> For example, the running of an international airport: *Powell and Rayner v. the United Kingdom* and *Hatton and Others v. the United Kingdom* [GC].

<sup>209</sup> *López Ostra v. Spain*, § 51; *Borysiewicz v. Poland*, judgment of 1 July 2008, § 50.

<sup>210</sup> For a short description of this case, see § 66 of the manual.

<sup>211</sup> *Fadeyeva v. Russia*, §§ 133 and 134.

frequency had been regulated, the environmental impact had been assessed in advance and measures such as sound-proofing houses had been taken.

95. In *Giacomelli v. Italy* the Court clearly set out in which respect it assesses whether States have acted within their margin of appreciation.<sup>212</sup> In this case the applicant complained of the noise and harmful emissions from a waste storage and treatment plant. The Court considered, recalling the cases of *Hatton and Others v. the United Kingdom* and *Taskin and Others v. Turkey*<sup>213</sup> that there were two aspects to the examination which it could carry out. Firstly, it could assess the substantive merits of the Government's decision to authorise the plant to operate to ensure that it was compatible with Article 8. Secondly, it could assess the decision-making process to check that due regard had been given to the individual's interests. With regard to the substantive aspect, the Court stressed that the State had to be granted a wide margin of appreciation and that it was primarily for the national authorities to assess the necessity of interference, although the decision-making process leading to the interference had to be fair and show due regard for the interests of the individual protected by Article 8.<sup>214</sup> Consequently, the Court considered the type of policy or decision involved, the extent to which the views of individuals were taken into account throughout the decision-making process, and the procedural safeguards available.<sup>215</sup> Nevertheless, the Court further stated that this does not prevent authorities from making decisions, e.g. providing operating licences, if they do not possess measurable data for each and every aspect of a project.<sup>216</sup>

96. Accordingly, in *Giacomelli v. Italy* the Court criticised the whole decision-making process whereby the waste treatment plant had been set up and operated. It noted that it had been impossible for citizens concerned to take part in the licensing procedure and make their own submissions to the judicial authorities and, where appropriate, obtain an order for the suspension of the dangerous activity. Even supposing that, much later, the measures required to protect the applicant's rights had been taken, the fact remained that for several years her right to respect for her home had been seriously impaired by the dangerous activities of the plant built thirty metres from her house.<sup>217</sup>

97. In the *Flamenbaum and Others v. France* case, the applicants were the owners of residences located in and around the forest of Saint Gantien, which is located between 500 and 2,500 meters from the main runway from the Deauville-Saint Gantien airport, which the State decided to lengthen.<sup>218</sup> The applicants complained, *inter alia*, that there was a violation of Article 8 of the Convention due to the noise pollution generated by the lengthening of the runway and the shortcomings in the decision-making process related to this lengthening.<sup>219</sup> As the State owned the airport and was responsible for the decisions relating to the lengthening of the runway, the Court analysed the case from the perspective of State interference (and not from the perspective of positive obligations).<sup>220</sup> The Court recalled that an interference with Article 8 is allowed when prescribed by law, pursuing a legitimate

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<sup>212</sup> *Giacomelli v. Italy*, § 79.

<sup>213</sup> *Taşkın and Others v. Turkey*, § 15.

<sup>214</sup> See, *mutatis mutandis*, *McMichael v. the United Kingdom*, judgment of 24 February 1995, § 87.

<sup>215</sup> See also *Hatton and Others v. the United Kingdom* [GC], § 104.

<sup>216</sup> *Giacomelli v. Italy*, § 82.

<sup>217</sup> *Giacomelli v. Italy*, § 96.

<sup>218</sup> *Flamenbaum and Others v. France* (Judgment) (13 December 2012), ECHR Application nos. 3675/04 and 23264/04, § 9

<sup>219</sup> *Ibid.*, § 80

<sup>220</sup> *Ibid.*, § 141

aim and be necessary in a democratic society.<sup>221</sup> As part of the substantive limb of the complaint, the Court concluded that the airport project was adopted in compliance with prescribed procedure and applicable law,<sup>222</sup> that there was a legitimate aim for the lengthening of the runway, as studies pointed towards the increased economic well-being of the region with its lengthening, and that the interference was proportionate towards the legitimate aim as data showed that the lengthening of the runway did not result in a considerable increase in air traffic<sup>223</sup> and the State had put measures and procedures in place to limit the impact of noise pollution.<sup>224</sup> As part of the procedural limb regarding the decision-making process, the Court noted the environmental impact studies carried out by the State and the involvement of the public in the adoption of the clearance plan.<sup>225</sup> Moreover, the Court noted that the applicants had sufficient access to remedies.<sup>226</sup> Consequently, the Court found that there was no violation of Article 8, as the State had struck a fair balance between all competing interests.

98. The Court's position on States' margin of appreciation has been reaffirmed also in the cases of *Öçkan and Others v. Turkey*<sup>227</sup> and *Lemke v. Turkey*,<sup>228</sup> in which the Court found that there had been a violation of Article 8 because of the threat posed to the applicants' health by the operations of a gold mine using cyanidation.<sup>229</sup> Here again the Court emphasised the importance of proper decision-making processes, including appropriate surveys and studies, which had to be accessible to the public (on this point, see chapters IV and V below).

99. Likewise, the Court found a violation of Article 8 in *Băcilă v. Romania* where an applicant complained about the emissions of a lead and zinc plant in the town of Copșa Mică. Analyses carried out by public and private bodies established that heavy metals could be found in the town's waterways, in the air, in the soil and in vegetation, at levels of up to twenty times the maximum permitted. The rate of illness, particularly respiratory conditions, was seven times higher in Copșa Mică than in the rest of the country. The Court found that the authorities had failed to strike a fair balance between the public interest in maintaining the economic activity of the biggest employer in a town (the lead and zinc plant) and the applicant's effective enjoyment of the right to respect for her home and for her private and family life.<sup>230</sup>

100. The *Dubetska and Others v. Ukraine* case highlights the relationship between the margin of appreciation awarded to States and the requirement to strike a fair balance when weighing different interests. On the one hand, the Court reaffirmed the State's margin of appreciation. For instance, the Court stated that it would be going too far to establish an applicant's general right to free new housing at the State's expense as the complaint under Article 8 could also be remedied by duly addressing the environmental hazards. On the other hand, it reiterated that the Convention is thought to protect effective rights and not illusory ones; therefore, the striking of a fair balance between the various interests at stake may be upset, not only where the regulations to protect guaranteed rights are lacking, but also where

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<sup>221</sup> *Ibid.*, § 142

<sup>222</sup> *Ibid.*, § 144

<sup>223</sup> *Ibid.*, § 152

<sup>224</sup> *Ibid.*, § 153

<sup>225</sup> *Ibid.*, § 156

<sup>226</sup> *Ibid.*, § 158

<sup>227</sup> *Öçkan and Others v. Turkey*, judgment of 28 March 2006.

<sup>228</sup> *Lemke v. Turkey*, judgment of 5 June 2007 (in French only).

<sup>229</sup> Identical circumstances to those of the case *Taşkın and Others v. Turkey*, judgment of 10 November 2004, already mentioned in the manual.

<sup>230</sup> *Băcilă v. Romania*, judgment of 30 March 2010

they are not duly complied with. In the present case the Court found a violation of Article 8 because the Government's approach to tackling pollution has been marked by numerous delays and inconsistent enforcement as well as the fact that the applicants were not resettled despite being only a few in number. In summary, the Court did not require a specific state action, but it required that the measures taken were effective in ceasing an interference in an individual's rights.<sup>231</sup>

101. Another interesting statement in *Dubetska and Others v. Ukraine*, alike to *Fadeyeva v. Russia*, relates to the burden of proof of the State when justifying an interference with an individual's right for the benefit of the general public. The Court held that "the onus is on the State to justify, using detailed and rigorous data, a situation in which certain individuals bear a heavy burden on behalf of the rest of the community".<sup>232</sup>

**(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.**<sup>233</sup>

102. 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.

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 36 to 38).<sup>234</sup>

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<sup>231</sup> *Dubetska and Others v. Ukraine*, §§ 143-145, 150-152, 155.

<sup>232</sup> *Dubetska and Others v. Ukraine*, §§ 145; *Fadeyeva and Others v. Russia*, § 128.

<sup>233</sup> *Chapman v. the United Kingdom* [GC], judgment of 18 January 2001, § 82.

<sup>234</sup> *Chapman v. the United Kingdom* [GC], §§ 90-91.

## Chapter III

### The environment and the protection of property



#### 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.<sup>235</sup> 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.<sup>236</sup> In this context the Court has found that the environment is an increasingly important consideration.<sup>237</sup>**

103. The concept of “possessions” referred to in the Protocol has an autonomous meaning which is not limited to the ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as “property rights”, and thus as “possessions” for the purpose of this Convention. It always needs to be examined whether the circumstances of the case, considered as a whole, confer on the applicant a title to a substantive interest protected by Article 1 of Protocol No. 1.<sup>238</sup> The concept is not limited to existing possessions but may also cover assets, including 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.<sup>239</sup> A legitimate expectation of being able to continue having peaceful enjoyment of a property right of a possession must have a “sufficient basis in national law”.<sup>240</sup>

104. 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.<sup>241</sup> 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 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.

105. The Court has found that the above-mentioned general features of Article 1 of Protocol No. 1 apply in cases raising environmental issues based on the premise that the protection of one’s possession needs to be “practical and effective”. However, the Court has held that Article 1 of Protocol No. 1 does not necessarily

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<sup>235</sup> *Taşkın and Others v. Turkey*, decision of 29 January 2004, “law” part (available in French only).

<sup>236</sup> *Fredin v. Sweden*, judgment of 18 February 1991, § 41.

<sup>237</sup> *Fredin v. Sweden*, § 48; *Depalle v. France* [GC], judgment of 29 March 2010, § 81; *Brosset-Triboulet and Others v. France* [GC], judgment of 29 March 2010, § 84.

<sup>238</sup> *Iatridis v. Greece* [GC], judgment of 25 March 1999, § 54; *Öneriyıldız v. Turkey* [GC], judgment of 30 November 2004, § 124; *Hamer v. Belgium*, § 75; *Depalle v. France* [GC], § 62; *Brosset-Triboulet and Others v. France* [GC], § 65.

<sup>239</sup> *Hamer v. Belgium*, § 75; *Depalle v. France* [GC], § 63; *Brosset-Triboulet and Others v. France* [GC], § 66.

<sup>240</sup> *Kopecký v. Slovakia*, judgment of 28 September 2004, § 52; *Brosset-Triboulet and Others v. France*, §§ 66, Cf. Concurring Opinion of Judge Casadevall, § 3; *Depalle v. France* [GC], § 63.

<sup>241</sup> *Brosset-Triboulet and Others v. France* [GC], § 80.

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, or limiting its use creating a situation of *de facto* expropriation. Therefore, the Court attempts to look behind the appearance and investigate the realities of the situation in question.<sup>242</sup>

**(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.<sup>243</sup> Such restrictions should be lawful and proportionate to the legitimate aim pursued. Public authorities enjoy a wide margin of appreciation in deciding with regard both to the choice of the means of enforcement and to the ascertaining whether the consequences of enforcement are justified in the general interest.<sup>244</sup> However, the measures taken by public authorities must be proportionate and strike a fair balance between the interests involved,<sup>245</sup> and here environmental preservation plays an increasingly important role.**

106. 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. The Court has decided accordingly, for instance, with regard to the protection of the countryside, forests and the coastal areas. 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. Additionally, the Court reiterated that regional planning and environmental conservation policies, where the community's general interest is pre-eminent, confer on the State a margin of appreciation that is greater than when exclusively civil rights are at stake.<sup>246</sup>

107. 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

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<sup>242</sup> *Taşkın and Others v. Turkey*, decision of 29 January 2004, "law" part (available in French only).

<sup>243</sup> *Pine Valley Developments Ltd and Others v. Ireland*, judgment of 29 November 1991, § 57.

<sup>244</sup> *Fredin v. Sweden*, § 51; *Z.A.N.T.E. - Marathonisi A.E. v. Greece*, judgment of 6 December 2007 (in French only), § 50; *Brosset-Triboulet and Others v. France* [GC], § 81 and § 86; *Depalle v. France* [GC], § 83.

<sup>245</sup> *Chapman v. the United Kingdom* [GC], § 120; *Brosset-Triboulet and Others v. France* [GC], § 86; *Depalle v. France* [GC], § 83.

<sup>246</sup> *Brosset-Triboulet and Others v. France* [GC], § 87; *Depalle v. France* [GC], § 84.

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.

108. The *Pine Valley Developments Ltd and Others v. Ireland* judgment and the *Kapsalis and Nima-Kapsali v. Greece*<sup>247</sup> decision both concerned the withdrawal of permissions to build on land purchased for construction. 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 for everyone else. 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 Protocol No. 1.<sup>248</sup> 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.<sup>249</sup> 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.

109. The *Alatulkkila and Others v. Finland* case, concerned a number of applicants who were owners of water areas or fishermen, and elected representatives of their local fishing co-operative and association for joint ownership, in the Gulf of Bothnia.<sup>250</sup> In 1996 the Finish-Swedish Frontier Rivers Commission prohibited, *inter alia*, all fishing of salmon and sea trout in specified water areas during the 1996 and 1997 seasons.<sup>251</sup> This regulation was put in place as part of the

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<sup>247</sup> *Kapsalis and Nima-Kapsali v. Greece*, decision of 23 September 2004.

<sup>248</sup> *Pine Valley Developments Ltd and Others v. Ireland*, §§ 57-59.

<sup>249</sup> *Kapsalis and Nima-Kapsali v. Greece*, § 3, "law" part.

<sup>250</sup> *Alatulkkila and Others v. Finland* (Judgment) (28 July 2005), ECHR Application No. 33538/96, §

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<sup>251</sup> *Ibid.*, § 11

enactment of the Finish-Swedish Frontier Rivers Agreement, entitling the Frontier Rivers Commission to decide on the protection of a particular fish species or on the prohibition or restriction of fishing with equipment which had proved harmful for the species either in the entire fishing area or in a specific part thereof, provided such a measure was deemed necessary for the preservation of the species in question for a maximum period of two years at a time.<sup>252</sup> The applicants complained that the fishing prohibitions imposed violated their property rights under Article 1 of Protocol No. 1.<sup>253</sup> However, the Court found the reasons for interference by the Government with the applicants' property rights justified, as they were lawful and pursuing, proportionally, the legitimate and important general interest in protecting the fish stocks. The Court therefore considered it had no reason to doubt that the state of fish stocks required conservation measures and that the timing and application of the measures were geared to local conditions. The Court additionally noted that professional fishermen, whose livelihood was affected by the ban, were provided with the possibility of applying for compensation for economic losses, of which the applicants made use. Insofar as compensation was not available as such for loss of leisure or sporting possibilities, the Court has previously stated that the national authorities must enjoy a wide margin of appreciation in determining not only the necessity of the measure of control concerned but also the types of loss resulting from the measure for which compensation will be made. Therefore, the Court found that it was not unreasonable for the authorities to distinguish between losses linked to livelihood and the effects on enjoyment of property which are not so connected.<sup>254</sup> The Court found that there was no violation of Article 1 of Protocol No. 1.

110. The case of *Hamer v. Belgium*<sup>255</sup> related to the demolition of a holiday home, built in 1967 by the applicant's parents without a building permit. In 1994, the police had drawn up two reports: one concerning the cutting of trees on the property in breach of forestry regulations and the other on the construction without a permit of a house in an area of forest for which no permit could have been granted. The applicant had been ordered to restore the site to its original state. The Court acknowledged that the authorities had interfered with the applicant's right to respect for her property under Article 1 of Protocol No. 1, which, however, could be justified in the present case.

111. As to the proportionality of the impugned measure, the Court pointed out that the environment was an asset whose protection was a matter of considerable and constant concern to the public and hence to the authorities. Economic imperatives and even some fundamental rights such as the right to property should not be given precedence over environmental protection, particularly if the state had adopted legislation on the subject. As a result, the authorities had a responsibility, which should be translated into action at the appropriate time so as not to divest the environmental protection measures they had decided to implement of any useful effect. Thus, restrictions on the right to property could be permitted provided that a fair balance was struck between the collective and individual interests at stake.<sup>256</sup>

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<sup>252</sup> *Ibid.*, § 13

<sup>253</sup> *Ibid.*, § 55

<sup>254</sup> *Ibid.*, § 67

<sup>255</sup> *Hamer v. Belgium*, judgment of 27 November 2007 (in French only).

<sup>256</sup> *Hamer v. Belgium*, §§ 79-80.

112. Furthermore, the impugned measure had pursued the legitimate aim of protecting an area of forest in which building was prohibited, but what the Court had to decide was whether the advantage deriving from the proper development of the land and the protected forest area where the house was situated could be regarded as proportionate to the inconvenience caused.<sup>257</sup> In this connection, the Court noted that the owners of the holiday home had been in undisturbed and uninterrupted possession of it for a total of thirty-seven years and the authorities, who had known, or should have known, about the existence of the house for a long time, had failed to take the requisite measures and had hence helped to perpetuate a situation which could only undermine efforts to protect the forested area in question. Furthermore, no measure other than complete restoration seemed appropriate given the irrefutable damage that had been done to an area of forest in which building was prohibited. Moreover, in contrast with other cases in which the authorities had been found to have given their implicit consent,<sup>258</sup> this house had been built without permission. Consequently, the Court found that the applicant had not undergone a disproportionate infringement of her right to property and hence that there had been no violation of Article 1 of Protocol No. 1.

113. In the similar case of *Turgut and Others v. Turkey*,<sup>259</sup> the domestic courts had decided to register a piece of land for which the applicants had held a title deed for at least three generations in the name of the Treasury on the ground that the land was public forest. The decision to annul their title to property without compensation was, in the applicants' view, a disproportionate infringement of their right to respect for their property. The Court applied the same reasoning as in the *Hamer* case cited above, taking the view that the purpose of dispossessing the applicants, namely to protect nature and forests, fell within the scope of the public interest referred to in the second sentence of the first paragraph of Article 1 of Protocol No. 1,<sup>260</sup> and that protecting nature and forests and, more generally speaking, the environment was a valuable activity.<sup>261</sup> The Court found, nonetheless, that there had been a violation of Article 1 of Protocol No. 1 because the failure to compensate the applicants rendered the deprivation of property an excessive infringement. This reason was reaffirmed in *Satir v. Turkey* which equally dealt with the question of land expropriation without compensation.<sup>262</sup>

114. Nevertheless, in contrast to the above two more recent Grand Chamber judgments of *Depalle v. France* and *Brosset-Triboulet and Others v. France*<sup>263</sup> underline that even massive infringements on the right to property can be justified through environmental protection. In both cases the Court did not find a violation of Article 1 of Protocol No. 1. Both cases concerned an order for the applicants to demolish their homes that had been built on the seashore in an area of maritime public property where there was no formal right of property or right of temporary occupancy. It had been only by virtue of successive *ad hoc* decisions that the owners had been authorised, over half a century before, to occupy the dyke on the shoreline and to build houses temporarily, and none of these decisions had explicitly had the

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<sup>257</sup> *Hamer v. Belgium*, §§ 81-82.

<sup>258</sup> The cases of the "Turkish coast". See, for example, *N.A. and Others v. Turkey*, judgment of 11 October 2005.

<sup>259</sup> *Turgut and Others v. Turkey*, judgment of 8 July 2008 (in French only).

<sup>260</sup> See, *mutatis mutandis*, *Lazaridi v. Greece*, judgment of 13 July 2006 (in French only), § 34 and *Şakir Tuğrul Ansay and Others v. Turkey*, Decision of inadmissibility of 2 March 2006 (in French only).

<sup>261</sup> *Turgut v. Turkey*, § 90.

<sup>262</sup> *Satir v. Turkey*, judgment of 10 March 2009 (French only), §§ 33-35.

<sup>263</sup> *Depalle v. France* [GC] and *Brosset-Triboulet and Others v. France* [GC], judgments of 29 March 2010.

effect of recognising any property right over the state-owned public property.<sup>264</sup> The authorities ordered the applicants to restore the site to its original state “by demolishing the constructions built on the public property”, at their own cost and without compensation. Their decision was taken in the context of a desire to implement an active policy of environmental protection. Hence, the role of the Court was to ensure that a “fair balance” was achieved between the demands of the general interest of the community (environmental protection, free access to the shore) and those of the applicants, who wanted to keep their houses. In determining whether this requirement was met, the Court recognised that the State enjoyed a wide discretion in its decision-making, particularly in a case like the present one, concerning regional planning and environmental conservation policies where the community’s general interest was pre-eminent.<sup>265</sup>

115. The Court held that the applicants could not justifiably claim that the authorities’ responsibility for the uncertainty regarding the status of their houses had increased with the passage of time. On the contrary, they had always known that the decisions authorising occupation of the public property were precarious and revocable. The tolerance shown towards them by the State did not alter that fact.<sup>266</sup>

116. It went without saying that after such a long period of time demolition would amount to a radical interference with the applicants’ “possessions”.<sup>267</sup> However, this was part and parcel of a consistent and rigorous application of the law given the growing need to protect coastal areas and their use by the public, and also to ensure compliance with planning regulations.<sup>268</sup> The Court added lastly that the lack of compensation could not be regarded as a disproportionate measure used to control the use of the applicants’ properties, carried out in pursuit of the general interest. The principle that no compensation was payable, which originated in the rules governing public property, had been clearly stated in every decision authorising temporary occupancy of the public property issued to the applicants over decades.<sup>269</sup>

117. Having regard to all the foregoing considerations, the Court held that the applicants would not bear an individual and excessive burden in the event of demolition of their houses without compensation. Accordingly, the balance between the interests of the community and those of the applicants would not be upset. The Court considered that there had not been a violation of Article 1 of Protocol No. 1.

118. The case of *Valico S. R. L. v. Italy*<sup>270</sup> related to a decision by the national authorities to impose a fine on a company for not complying with rules on the construction of buildings designed to protect the landscape and the environment. The Court examined the complaint under Article 1 of Protocol No. 1 and found that the disputed measure was prescribed by law and pursued the legitimate aim of protecting the landscape and developing the land rationally and in a manner showing due regard for the environment, all of which was in accordance with the general interest. As to the balance between the demands of the general interest and the need to protect the applicant company’s fundamental rights, the Court found that even if the impugned change of the construction location, which had not been authorised by the authorities, had not damaged the environment, the simple fact of failing to satisfy the conditions imposed by the authorities responsible for spatial planning and

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<sup>264</sup> *Depalle v. France*, § 86.

<sup>265</sup> *Depalle v. France* [GC], §§ 83-84; *Brosset-Triboulet and Others v. France* [GC], §§ 84 and 86-87.

<sup>266</sup> *Depalle v. France* [GC], § 86; *Brosset-Triboulet and Others v. France* [GC], § 89.

<sup>267</sup> *Depalle v. France* [GC], § 88; *Brosset-Triboulet and Others v. France* [GC], § 92.

<sup>268</sup> *Depalle v. France* [GC], §§ 81 and 89.

<sup>269</sup> *Depalle v. France* [GC], § 91; *Brosset-Triboulet and Others v. France* [GC], § 94.

<sup>270</sup> *Valico S. R. L. v. Italy*, decision of 21 March 2006 (in French only).

development had constituted a breach of the relevant domestic legal regulations. Furthermore, while the penalty imposed on the applicant company might at first seem excessive, the change in the location of the building had substantially altered the original plans. This was also a large-scale project and the severity of the deterrent penalty had to be in keeping with the importance of the issues at stake. Lastly, there had been no order to demolish the building in question. In view of all of the foregoing, the Court found that the Italian authorities had struck the right balance between the general interest on the one hand and respect for the applicant company's right to property on the other. Accordingly, it considered that the interference had not imposed an excessive burden such as to make it disproportionate to the legitimate aim pursued and dismissed the applicant's complaint.

119. In the *Papastavrou and Others v. Greece* case<sup>271</sup> 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 European Court of Human Rights. 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 recognised 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.

120. In the case of *Z.A.N.T.E. - Marathonisi A.E. v. Greece*,<sup>272</sup> which concerned the compensation in connection with a dispute relating to a small islet which the applicant company had purchased, the Court pointed to the wide margin of appreciation that States were granted when implementing spatial planning policies and held that the interference with the applicant company's right to its property satisfied the requirement of being in the general interest. However, on the matter of compensation, the authorities had argued wrongly that it was impossible for the prohibition of building on the disputed land to infringe the right to protection of property as construction on the land in question was, at all events and by its very nature, impossible.

121. The Court inferred from this that the authorities had applied an irrefutable presumption which took no account of the distinctive features of each piece of land not covered by an urban zone and found that the lack of compensation would give rise to a violation of Article 1 of Protocol No. 1.<sup>273</sup>

122. In the *Beinarovič and Others v. Lithuania* case, the applicants complained that their property rights had been unlawfully annulled by domestic courts who had incorrectly found that the land given to the applicants had been covered by forests of national importance.<sup>274</sup> Although domestic courts initially granted the applicants the restoration of their property rights between 1992 and 1998, in 2002 the Government approved a plan of forests of national importance which partially covered the properties in question. Accordingly, the prosecutor of the Vilnius Region lodged a

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<sup>271</sup> *Papastavrou and Others v. Greece*, judgment of 10 April 2003, §§ 22-39.

<sup>272</sup> *Z.A.N.T.E. - Marathonisi A.E. v. Greece*, judgment of 7 December 2007 (in French only).

<sup>273</sup> *Z.A.N.T.E. - Marathonisi A.E. v. Greece*, §§ 50-52.

<sup>274</sup> *Beinarovič and Others v. Lithuania* (Judgment) (12 June 2018), ECHR Application No. 70520/10, § 121

claim with the Vilnius Regional Court, seeking to have a percentage of the applicants granted property rights annulled.<sup>275</sup> In 2009, the Vilnius Regional Court allowed the prosecutor's claim. The regional court observed that the Constitution and other legislation established that forests of national importance could only be owned by the State and emphasised the importance of forests to the environment and the obligation of the State to protect them in the public interest.<sup>276</sup> The Court did not contest the latter, and found that the protection of nature and forests indeed falls within the scope of public interest within the meaning of Article 1 of Protocol No. 1, and as such established that the interference with the applicants' property rights was pursued with a legitimate aim of public interest.<sup>277</sup> However, the Court did not find the interference proportionate. The Court concluded that all applicants had, prior to the decision by the Government to approve the plan of national forests, received their property in good faith.<sup>278</sup> The Court noted that state authorities which fail to put in place or adhere to their own procedures should not be allowed to profit from their wrongdoing or to escape their obligations. The risk of any mistake made by the State authority must be borne by the State itself and the errors must not be remedied at the expense of the individuals concerned.<sup>279</sup> Accordingly, the applicants should not have had to bear the burden of remedying the mistakes for which the authorities were solely responsible.<sup>280</sup> The State authorities were under an obligation to act promptly in correcting their mistake, but a wrongful decision may also necessitate the payment of adequate compensation or another type of appropriate reparation to its former *bona fide* holder.<sup>281</sup> The Court considered that, at least in case of the majority of the applicants, the Government had made the applicants undergo lengthy additional processes which had been disproportionate,<sup>282</sup> and therefore found a violation of Article 1 Protocol No. 1.<sup>283</sup>

123. In the *Kristiana Ltd. v. Lithuania* case, the applicant company alleged that the State had unlawfully and unreasonably restricted its property rights over privatized, former military buildings located in Curonian Spit National Park.<sup>284</sup> The authorities had refused to issue documents allowing it to reconstruct or carry out major repair work in respect of its buildings and their refusal to adopt a clear decision on the time-limits and compensation for the buildings that were to be demolished.<sup>285</sup> The Court observed that the applicant company had bought the buildings situated in the Curonian Spit National Park in 2000, which was established in 1991 and included on the UNESCO World Heritage List in 2000. This fact meant that the State's margin of discretion depended on its obligations to UNESCO and there was no doubt that the measures that had to be taken in respect of the UNESCO territory might be rigorous.<sup>286</sup> The Court also noted that the applicant company knew, or should reasonably have known, that under the domestic law in force at the time of the purchase, the property was designated for demolition.<sup>287</sup> The purchase had taken place six years after the restrictions preventing the development of property were

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<sup>275</sup> *Ibid.*, § 14

<sup>276</sup> *Ibid.*, § 18

<sup>277</sup> *Ibid.*, §§ 135, 137

<sup>278</sup> *Ibid.*, § 144

<sup>279</sup> *Ibid.*, § 140

<sup>280</sup> *Ibid.*, § 144

<sup>281</sup> *Ibid.*, § 140

<sup>282</sup> *Ibid.*, § 145

<sup>283</sup> *Ibid.*, § 164

<sup>284</sup> *Kristiana Ltd. v. Lithuania* (Judgment) (6 February 2018), ECHR Application No. 36184/13, §§ 6 – 8, 80

<sup>285</sup> *Ibid.*, § 80

<sup>286</sup> *Ibid.*, § 109

<sup>287</sup> *Ibid.*, § 110

already in existence. Although several provisions in the development plan had been changed over time, the provisions concerning the buildings remained the same.<sup>288</sup> Accordingly, the applicant company was never entitled to any compensation for demolition of the buildings, irrespective of when such demolition had to take place.<sup>289</sup> The Court concluded that there was no violation of Article 1 of Protocol No. 1.

124. The *O'Sullivan McCarthy Mussel Development Ltd v. Ireland* case concerned an applicant company engaged in the cultivation of mussels in Castlemaine harbour.<sup>290</sup> Its business involves fishing for mussel seed within the harbour each year and transporting them, for a two year cultivation process, in another part of the harbour before selling them.<sup>291</sup> However, since the European Commission was of the view that Ireland was not fulfilling its obligations under EC environmental law directives,<sup>292</sup> which was affirmed by the Court of Justice of the European Union (CJEU) in 2007,<sup>293</sup> the Minister considered that it was not legally possible to permit commercial activity in the mussel fishing sites until the necessary assessments had been completed, and thus prohibited mussel seed fishing around the Irish coast for the summer of 2008.<sup>294</sup> In October 2008, following successful negotiations between the Government and the European Commission, the applicant company was able to resume mussel seed fishing, however, natural predators had already decimated the mussel seed. Since mussels needed two years to grow to maturity, the applicant company sustained financial loss in 2010, having no mussels for sale.<sup>295</sup> The Court had to consider if the State's control of the use of property was in violation of Article 1 Protocol No. 1.<sup>296</sup> The Court noted that the applicant company was engaged in a commercial activity that was generally subject to strict and detailed regulation by the domestic authorities, and which operated in accordance with the conditions stipulated by authorisations from year to year. As the Minister, by virtue of EU law, could not allow for the uninterrupted continuance of traditional fishing activities in protected areas, this was reflected in the authorisations granted in 2008. As such, there was no legal basis for the applicant company to entertain a legitimate expectation of being permitted to operate as usual in 2008.<sup>297</sup> The Court additionally referred to the remarks made by the Supreme Court, underlining that the Minister had an overarching legal duty to comply with EU law, and the Minister's duty of care was owed to the wider community to protect the environment.<sup>298</sup> Despite the fact that the environmental assessment eventually showed that the blanked ban imposed for the summer of 2008 was unnecessary, the Court noted the Supreme Court judgment, which found that the Minister was required, as a matter of EU law, to be concerned with unproven risk but rather with proven absence of risk.<sup>299</sup> The Court therefore did not find a violation of Article 1 of Protocol No. 1.<sup>300</sup>

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<sup>288</sup> *Ibid.*

<sup>289</sup> *Ibid.*

<sup>290</sup> *O'Sullivan McCarthy Mussel Development Ltd v. Ireland* (Judgment) (8 June 2018), ECHR Application No. 44460/16, § 5

<sup>291</sup> *Ibid.*, §§ 5, 17

<sup>292</sup> *Ibid.*, § 11

<sup>293</sup> *Ibid.*, § 12

<sup>294</sup> *Ibid.*, § 14

<sup>295</sup> *Ibid.*, § 17

<sup>296</sup> *Ibid.*, § 104

<sup>297</sup> *Ibid.*, § 116

<sup>298</sup> *Ibid.*, § 125.

<sup>299</sup> *Ibid.*, § 127.

<sup>300</sup> *Ibid.*, § 131.

125. The *Yaşar v. Romania* case concerned the confiscation of the applicants vessel, after the Romanian coast guard found, *inter alia*, that the commander of the vessel (not the applicant) had no fishing permit and that recently used, unauthorised fishing equipment was present at the deck of the vessel.<sup>301</sup> The applicant complained that the confiscation of his vessel amounted to an unlawful and disproportionate interference with his right to the peaceful enjoyment of his possessions.<sup>302</sup> The Court found however, that the interference complained of pursued the legitimate aim of preventing offences relating to illegal fishing in the Black Sea; since such illegal fishing posed a serious threat to the biological resources in the area, this aim serves the general interest.<sup>303</sup> Therefore, the Court found no 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 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, particularly where there is a direct link between the measures an applicant may legitimately expect from the authorities and his or her effective enjoyment of his or her possessions.<sup>304</sup> The Court has found that such an obligation may arise in respect of dangerous activities and to a lesser extent in situations of natural disasters.<sup>305</sup>**

126. 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.

127. In *Öneriyıldız v. Turkey*,<sup>306</sup> 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 built illegally. 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. Because the Court considered that the treatment of waste, as a matter relating to industrial development and urban planning, is regulated and controlled by the State, it brought the accidents in this sphere within the State's responsibility. Therefore, the authorities were required to do everything within their power to protect private proprietary interests. Consequently, finding that certain suitable preventive measures existed, which the national authorities could have taken to avert the environmental

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<sup>301</sup> *Yaşar v. Romania*, judgment of 25 November 2019, § 8.

<sup>302</sup> *Ibid.*, § 38.

<sup>303</sup> *Ibid.*, § 59.

<sup>304</sup> *Öneriyıldız v. Turkey* [GC], § 134; *Budayeva and Others v. Russia*, judgment of 22 March 2008, § 172.

<sup>305</sup> *Öneriyıldız v. Turkey* [GC], §§ 134 and 135; *Budayeva and Others v. Russia*, §§ 172-182.

<sup>306</sup> For a short description of the case, see § 41 of the manual.

risk that had been brought to their attention, the Court concluded that the national authorities' failure to take the necessary measures amounted to a breach of their positive obligation under Article 1 of Protocol No. 1.

128. Similarly in the case of *Budayeva and Others v. Russia*,<sup>307</sup> the Court needed to consider to what extent the authorities were expected to take measures to protect property from natural disasters. However, the Court distinguished that natural disasters, which are as such beyond human control, do not call for the same extent of State involvement. Accordingly, its positive obligations as regards the protection of property from weather hazards do not extend necessarily as far as in the sphere of dangerous activities of a man-made nature.

129. The latter require national authorities to do everything in their power to protect lives.<sup>308</sup> Differentiating between the positive obligations under Article 2 of the Convention and those under Article 1 of Protocol No. 1 to the Convention the Court went on to state that while the fundamental importance of the right to life requires that the scope of the positive obligations under Article 2 includes a duty to do everything within the authorities' power in the sphere of disaster relief for the protection of that right, the obligation to protect the right to the peaceful enjoyment of possessions, which is not absolute, cannot extend further than what is reasonable in the circumstances. Accordingly, the authorities enjoy a wider margin of appreciation in deciding what measures to take in order to protect individuals' possessions from weather hazards than in deciding on the measures needed to protect lives.<sup>309</sup>

130. In this case the Court noted that the mudslide had been exceptionally powerful and that there had been no clear causal link between the State's failure to take measures and the extent of the physical damage. It also observed that the damage could not be unequivocally attributed in its entirety to State negligence as the alleged negligence had been no more than an aggravating factor contributing to the damage caused by natural forces. Moreover, it held that the procedural duty with regard to an independent inquiry or judicial response is also not comprehensive compared to Article 2.<sup>310</sup> Additionally, the Court considered that "the positive obligation on the State to protect private property from natural disaster cannot be construed as binding the State to compensate the full market value of destroyed property."<sup>311</sup> Consequently, it found that there had been no violation of Article 1 of Protocol No. 1.

131. In the *Dimitar Yordanov v. Bulgaria* case, the applicant complained that he had been deprived of the possibility to "use freely" his property.<sup>312</sup> The property in question consisted of a plot of land with a house and two smaller buildings in the village of Golyamo Buchino.<sup>313</sup> Around the end of the 1980s, the State created an opencast coalmine near the village, and accordingly expropriated properties around that area including that of the applicant, who would in return receive another plot of land in the village.<sup>314</sup> However, the expropriation was cancelled and the applicant had to stay in his house, while, over the years, the mine approached the house, due to its gradual enlargement.<sup>315</sup> Consequently, cracks appeared on the walls of the house and the other two buildings collapsed. Towards the beginning of 1997 the applicant's

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<sup>307</sup> *Budayeva and Others v. Russia*, judgment of 22 March 2008.

<sup>308</sup> *Budayeva and Others v. Russia*, § 174.

<sup>309</sup> *Budayeva and Others v. Russia*, § 175.

<sup>310</sup> *Budayeva and Others v. Russia*, §§ 176, 178 and 182.

<sup>311</sup> *Budayeva and Others v. Russia*, § 182.

<sup>312</sup> *Dimitar Yordanov v. Bulgaria*, judgment of 6 September 2018, § 28.

<sup>313</sup> *Ibid.*, § 6.

<sup>314</sup> *Ibid.*, §§ 7, 8.

<sup>315</sup> *Ibid.*, §§ 8, 9.

family moved out of the house, judging it too dangerous to stay.<sup>316</sup> While domestic courts acknowledged that the serious damage to his property coincided with the start of the detonation works in the mine, and that the carrying out of detonations by the mine close to the residential buildings was “indisputably” in breach of the domestic legislation, they still concluded the applicant had not proven that a causal link existed between the damage and the detonations.<sup>317</sup> The Court noted the affirmation by domestic courts that the mine represented an environmental hazard to which domestic health-and-safety laws applied. Those laws required “sanitation zones” around non-industrial buildings to be at least 500 metres wide, whereas the mine operated, at the closest, within 160-180 metres from the applicant’s house.<sup>318</sup> As, under Article 1 of Protocol No. 1, interference by public authorities with the enjoyment of possessions must be lawful, the Court noted that the State did not, as also recognised by the domestic courts, adhere to its own health-and-safety laws, and consequently, it was not lawful either for the purposes of the analysis under Article 1 of Protocol No. 1.<sup>319</sup>

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<sup>316</sup> *Ibid.*, § 9.

<sup>317</sup> *Ibid.*, §§ 14, 20.

<sup>318</sup> *Ibid.*, § 59.

<sup>319</sup> *Ibid.*, §§ 63 – 65.



## 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.

#### Article 11

##### Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association [...]
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

***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.<sup>320</sup>**

132. 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.

133. 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 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 under Article 10, 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.<sup>321</sup>**

<sup>320</sup> *Steel and Morris v. the United Kingdom*, judgment of 15 February 2005, § 89; *Vides Aizsardzibas Klubs v. Latvia*, judgment of 27 May 2004, § 40.

<sup>321</sup> *Vides Aizsardzibas Klubs v. Latvia*, § 40.

134. 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”.<sup>322</sup> 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.

135. 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 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 NGO specialised in the relevant area, the applicant organisation had been exercising its role of a public “watchdog”. That kind of participation by 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 judgment. 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.

136. In the cases of *Verein gegen Tierfabriken v. Switzerland*<sup>323</sup> the Court had to consider whether the national authorities’ refusal to register an advertisement of an animal protection association fulfilled the requirement of Article 10. The applicant association had made a television commercial in response to various advertisements produced by the meat industry, which showed, *inter alia*, a noisy hall with pigs in small pens, gnawing nervously at the iron bars. The voiceover compared the conditions in which pigs were reared to concentration camps, and added that the animals were pumped full of medicines. The film concluded with the exhortation: “Eat less meat, for the sake of your health, the animals and the environment!” The Court held that the refusal to register an advertisement that was necessary to be aired in Switzerland amounted to interference and continued to assess whether the interference might be justified through the condition set out in paragraph 2 of Article 10. It analysed whether it was prescribed by law, motivated by legitimate aims and

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<sup>322</sup> *E.g. The Observer and Guardian v. the United Kingdom*, judgment of 26 November 1991, § 59.

<sup>323</sup> *Verein gegen Tierfabriken v. Switzerland*, judgment of 28 June 2001; *Verein gegen Tierfabriken v. Switzerland*, judgment of 4 October 2007; *Verein gegen Tierfabriken v. Switzerland* (No. 2), judgment of 30 June 2009.

was necessary in a democratic society.<sup>324</sup> Thereby the law must be sufficiently precise, accessible and its consequences must be foreseeable.<sup>325</sup> The Court underlined that the phrase “necessary in a democratic society” requires a “pressing social need”.<sup>326</sup> The Court held that, because the content of the advertisement was not commercial but “political” and it pertained to the general European debate on the protection of animals and the manner in which they are reared, the extent of the margin of appreciation of whether public authorities can ban the advertisement is reduced. This is because it is not a given individual’s purely commercial interests that are at stake, but the participation in a debate affecting the general interest.<sup>327</sup> In consequence, the Court considered the ban disproportionate.

**(c) However, 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.<sup>328</sup>**

137. In *Guerra and Others v. Italy*,<sup>329</sup> 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, infringing 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 who should be receiving it.<sup>330</sup> 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.

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<sup>324</sup> *Verein gegen Tierfabriken v. Switzerland*, judgment of 28 June 2001, §§ 48-49.

<sup>325</sup> *Verein gegen Tierfabriken v. Switzerland*, judgment of 28 June 2001, §§ 55-57.

<sup>326</sup> *Verein gegen Tierfabriken v. Switzerland*, judgment of 28 June 2001, § 67.

<sup>327</sup> *Verein gegen Tierfabriken v. Switzerland*, judgment of 28 June 2001, §§ 70-71.

<sup>328</sup> *Guerra and Others v. Italy* [GC], § 53.

<sup>329</sup> For a short description of the case, see paragraph 79 of the manual.

<sup>330</sup> *Guerra and Others v. Italy* [GC], § 51.

***Right to assemble and associate to collectively  
act in the interest of environmental matters***

**(d) The right to freedom of peaceful assembly and freedom of association is guaranteed by Article 11 of the Convention. This includes the unobstructed right to peaceful assembly and the ability to form a legal entity (association), in order to act collectively in a field of mutual interest such as environmental matters. Restrictions by public authorities on the exercise of the right to freedom of peaceful assembly and the right to freedom of association with regard to environmental matters should be prescribed by law, pursue a legitimate aim and be necessary in a democratic society and proportionate to the legitimate aim pursued. A fair balance should be struck between the exercise of the right to freedom of assembly and freedom of association and the interests of the society as a whole.**

138. The freedom of assembly and association is closely related to the freedom of expression. In the Court's opinion, Article 10 is to be regarded as a *lex generalis* in relation to Article 11, which is a *lex specialis*.<sup>331</sup> The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11.<sup>332</sup>

139. As for freedom of peaceful assembly, the Court has attached importance to the fact that those taking part in an assembly are not only seeking to express their opinion, but to do so together with others.<sup>333</sup> The Court reiterates that the right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively. To avert the risk of a restrictive interpretation, the Court has refrained from formulating the notion of an assembly, which it regards as an autonomous concept, or exhaustively listing the criteria which would define it. It has specified in relevant cases that the right to freedom of assembly covered both private meetings and meetings in public places, whether static or in the form of a procession; in addition, it can be exercised by individual participants and by the persons organising the gathering. It has also emphasised that Article 11 of the Convention only protects the right to "peaceful assembly", a notion which does not cover gatherings where the organisers and participants have violent intentions or otherwise reject the foundations of a democratic society.<sup>334</sup>

140. Freedom of association, on the other hand, is concerned with the right to form or be affiliated with a group or organisation pursuing particular aims.<sup>335</sup> For an association to fall under the protection of Article 11, they have to have a private law

<sup>331</sup> *Primov and Others v. Russia* (Judgment) (12 June 2014), ECHR Application No. 17391/06, § 91.

<sup>332</sup> *Freedom and Democracy Party (ÖZDEP) v. Turkey* (Judgment) (8 December 1999), ECHR Application No. 23885/94, § 37.

<sup>333</sup> European Court of Human Rights, 'Guide on Article 11 of the European Convention on Human Rights' (Updated on 31 August 2020), p. 7, § 9.

<sup>334</sup> *Navalnyy v. Russia* (Judgment) (15 November 2018), ECHR Application No. 29580/12, § 98.

<sup>335</sup> *McFeeley v. the United Kingdom* (European Commission of Human Rights Decision) (15 May 1980), Application No. 8317/78, § 114.

character. However, were Contracting States able to use the classification of “public” or “para-administrative” at their discretion, this could lead to results incompatible with the object and purpose of the Convention.<sup>336</sup> Therefore, the concept of association has an independent scope: the qualification in national law has only a relative value and constitutes only a simple starting point.<sup>337</sup> In the case law of the Court, the criteria for determining whether an association should be considered private or public are as follows: foundation by individuals or by the legislator, integration or not into the State structures, existence or absence of administrative, normative and disciplinary prerogatives, and pursuit of an aim of general interest or not.<sup>338</sup>

141. The *Zeleni Balkani v. Bulgaria* case concerned an application made by a Bulgarian non-profit environmental protection organisation.<sup>339</sup> The applicant organisation claimed that there had been an unlawful interference with its right to freedom of peaceful assembly on account of the prohibition by the Plovdiv Municipality of a public rally planned for 19 April 2000.<sup>340</sup> The day before, the applicant organisation informed the municipality of its intention to hold a public rally in front of the municipality. The aim of the public rally was to protest against the municipality's actions and to demand that the disorderly uprooting and eradication of the river's plant life be stopped because it was destroying important alluvial trees and the habitat of rare, endangered birds.<sup>341</sup> However, the municipality informed the applicant organisation that it would not permit the rally.<sup>342</sup> Despite the finding of a domestic court that the prohibition issued by the municipality violated the provisions of the Meetings and Marches Act,<sup>343</sup> it did not acknowledge a breach of the right to freedom of peaceful assembly, nor did it afford redress for it.<sup>344</sup> The Court found that since the domestic court established there was a violation, the said prohibition represented an interference with the exercise of the applicant organisation's right to freedom of peaceful assembly which was not “prescribed by law” within the meaning of the second paragraph of Article 11 of the Convention.<sup>345</sup>

142. The *Koretskyy and Others v. Ukraine* case concerned applicants who founded an association named “Civic Committee for the Preservation of Wild (Indigenous) Natural Areas in Berezhnyak”.<sup>346</sup> The applicants complained that their rights under Article 11 of the Convention were violated, as the authorities refused to register their association.<sup>347</sup> The association's tasks and areas of activities included, *inter alia*, the collection of information and study of the indigenous nature of Berezhnyaky and the world experience of coexistence of cities and natural systems, creation of a publicly accessible database, cultural, educational and publishing activities, engaging with local and authorities to address issues connected to the preservation of natural ecosystems.<sup>348</sup> On 27 July 2000 the applicants filed an application for the State registration of the Civic Committee together with a copy of

<sup>336</sup> *Chassagnou and Others v. France* (Judgment) (29 April 1999), ECHR Application No. 25088/94, § 100.

<sup>337</sup> *Schneider v. Luxembourg* (Judgment) (10 July 2007), ECHR Application No. 2113/04, § 70.

<sup>338</sup> *Mytilinaios and Kostakis v. Greece* (Judgment) (3 December 2015), ECHR Application No. 29389/11, § 36.

<sup>339</sup> *Zeleni Balkani v. Bulgaria* (Judgment) (12 April 2000), ECHR Application No. 63778/00, § 1.

<sup>340</sup> *Ibid.*, § 4.

<sup>341</sup> *Ibid.*, § 8.

<sup>342</sup> *Ibid.*, § 9.

<sup>343</sup> *Ibid.*, § 19.

<sup>344</sup> *Ibid.*, § 33.

<sup>345</sup> *Ibid.*, § 38.

<sup>346</sup> *Koretskyy and Others v. Ukraine* (Judgment) (3 April 2008), ECHR Application No. No. 40269/02, § 5.

<sup>347</sup> *Ibid.*, § 25.

<sup>348</sup> *Ibid.*, § 7.

its articles of association with the Kyiv City Department of Justice.<sup>349</sup> However, the application and articles of association were returned to the applicants and they were advised to make changes to the text.<sup>350</sup> The applicants amended the text accordingly and re-submitted its association's articles. However, on 18 September 2000 the City Department informed the applicants of its refusal to register the Civic Committee on the ground that its articles had not been drafted in accordance with the domestic law.<sup>351</sup> The applicants complained before a district court stating that there was a violation of their right to form an association.<sup>352</sup> However, both the district court as well as the court of appeal rejected the applicants complaint.<sup>353</sup> When the Court analysed the provisions on which the Government had based its refusal to register the association, it noted that the law regulating the registration of associations was too vague to be sufficiently "foreseeable", and granted an excessively wide margin of discretion to authorities in deciding whether a particular association may be registered.<sup>354</sup> Additionally, the Court noted that the Government's main argument, as regards the necessity of the interference, was that the State enjoyed the exclusive right to regulate independently the activities of NGOs on its territory. In their view, the refusal to register the Civic Committee was necessary in order to ensure the well-functioning of the system of State registration of associations.<sup>355</sup> The Court observed that neither the courts' decisions nor the Government's submissions in the present case contained an explanation for, or even an indication of the necessity of the existing restrictions.<sup>356</sup> The Court found that the materials contained in the case file show that the Civic Committee intended to pursue peaceful and purely democratic aims and tasks, and that there was no indication that the association would have used violent or undemocratic means to achieve its aims. Nevertheless, the authorities used a radical, in its impact on the applicants, measure which went so far as to prevent the applicants' association from even commencing its main activities.<sup>357</sup> Therefore the Court found a violation of Article 11.

143. In the *Costel Popa v. Romania* case, the applicant complained about a breach of his right to freedom of association, arguing that the courts had failed to provide relevant and sufficient reasons for the restriction.<sup>358</sup> Together with others, the applicant founded the "EcoPolis" association, and commenced proceedings before the Bucharest district court to register the association and attain legal personality.<sup>359</sup> The association's goal was that of promoting the principles of sustainable development at the public policy level in Romania through a multitude of clearly defined objectives and activities.<sup>360</sup> Although the district court initially granted the association legal personality and ordered its registration, the public prosecutor's office lodged an appeal, stating that the association's declared goals belonged to that of a political party.<sup>361</sup> Political parties however, could not be registered under the domestic provision that governs the registration of associations. The country court allowed the appeal and rejected the organisation's request for registration.<sup>362</sup> The

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<sup>349</sup> *Ibid.*, § 6.

<sup>350</sup> *Ibid.*, § 8.

<sup>351</sup> *Ibid.*, § 10.

<sup>352</sup> *Ibid.*, §§ 12, 13.

<sup>353</sup> *Ibid.*, § 15.

<sup>354</sup> *Ibid.*, § 48.

<sup>355</sup> *Ibid.*, § 50.

<sup>356</sup> *Ibid.*, § 52.

<sup>357</sup> *Ibid.*, § 54.

<sup>358</sup> *Costel Popa v. Romania* (Judgment) (26 April 2016), ECHR Application No. 47558/10, § 3.

<sup>359</sup> *Ibid.*, § 6.

<sup>360</sup> *Ibid.*, § 7.

<sup>361</sup> *Ibid.*, §§ 8, 9.

<sup>362</sup> *Ibid.*, § 10.

Court, although accepting that the interference in question was prescribed by law,<sup>363</sup> did not find that the interference at stake, the refusal to register the association, was a “pressing social need” and “proportionate to the legitimate aims pursued”.<sup>364</sup> The Court noted that the first-instance court did not identify any irregularity in respect of the association’s application for registration and therefore allowed it. Following the appeal on points of law lodged by the public prosecutor’s office, the last-instance court identified some irregularities in the application. However, it did not appear from the evidence available in the case file that the applicant was either summoned in chambers or asked in writing to remedy those irregularities. Given that the national law aimed to give associations a chance to remedy any irregularities during the registration process, the decision of the last-instance court to dismiss the application for registration without allowing the applicant any time or giving him an opportunity to remedy the deficiencies identified by the court contradicted the purpose and spirit of the law.<sup>365</sup> Additionally, the Court found that there was no evidence that the association’s founding members had intended to use their association as a *de facto* political party.<sup>366</sup> Therefore, the Court considered that the reasons invoked by the authorities for refusing registration of the EcoPolis association were not guided by any “pressing social need”, nor were they convincing and compelling. Consequently, a measure as radical as the refusal to register the association, taken even before the association had started operating, appeared disproportionate to the aim pursued,<sup>367</sup> and could not be deemed necessary in a democratic society.<sup>368</sup> As such, there had been a violation of Article 11 of the Convention.<sup>369</sup>

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<sup>363</sup> *Ibid.*, § 34.

<sup>364</sup> *Ibid.*, § 45.

<sup>365</sup> *Ibid.*, § 40.

<sup>366</sup> *Ibid.*, § 41.

<sup>367</sup> *Ibid.*, § 45.

<sup>368</sup> *Ibid.*, § 46.

<sup>369</sup> *Ibid.*, § 47.

(e) Articles 2 and 8 of the Convention may however impose a specific positive obligation on public authorities to ensure a right of access to information in relation to environmental issues in certain circumstances.<sup>370</sup>

(f) This obligation to *ensure access to information* is generally complemented by the positive obligations of the public authorities to *provide information* to those persons whose right to life under Article 2 or whose right to respect for private and family life and home under Article 8 is threatened. 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.<sup>371</sup> Additionally, the Court held that States are duty-bound based on Article 2 to "adequately inform the public about any life threatening emergencies", including natural disasters.<sup>372</sup>

144. As mentioned under the previous principle, the Court stated in the *Guerra and Others v. Italy* case<sup>373</sup> 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 or her. 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.<sup>374</sup>

145. Likewise in *Tătar v. Romania*, a case in which the authorities had prolonged the operation permit of a gold mine that did not fulfil all required health and environmental standards, the Court examined whether the national authorities had adequately informed the villagers of nearby settlements about potential health risks and environmental impact.<sup>375</sup>

146. As to the right to information in circumstances where life is at risk, the Court considered in *Öneryıldız v. Turkey*<sup>376</sup> 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. Importantly, the Court sharpened the scope of the duty to inform derived from *Guerra and Others v. Italy*. The Court found a duty to inform exists in situation of "real and imminent dangers" either to the applicants' physical integrity or the sphere of their private lives. The Court held that the fact that the applicant was in the position to assess some of the risks, in particular health risks, does not absolve the public authorities from their duty to proactively inform the applicant. Therefore, the Court found that there was a violation of Article 2. The Court concluded in the present

<sup>370</sup> *Öneryıldız v. Turkey* [GC], § 90; *Guerra and Others v. Italy* [GC], § 60.

<sup>371</sup> *Öneryıldız v. Turkey* [GC], § 90.

<sup>372</sup> *Budayeva and Others v. Russia*, judgment of 22 March 2008 § 131.

<sup>373</sup> For a short description of the case, see paragraph 79 of the manual.

<sup>374</sup> *Guerra and Others v. Italy* [GC], § 60.

<sup>375</sup> *Tătar v. Romania*, judgment of 27 January 2009, §§ 101 and 113.

<sup>376</sup> For a short description of the case, see paragraph 127 of the manual. *Öneryıldız v. Turkey* [GC], §§ 67 and 84-87.

case that the administrative authorities knew or ought to have known that the inhabitants of certain slum areas were faced with a real and immediate risk both to their physical integrity and their lives on account of the deficiencies of the municipal rubbish tip. In addition to not remedying the situation, the authorities failed to comply with their duty to inform the inhabitants of this area of potential health and environmental risks, which might have enabled the applicant to assess the serious dangers for himself and his family without diverting State resources to an unrealistic degree. 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.

147. The Court reaffirmed this position in *Budayeva and Others v. Russia*<sup>377</sup> However, it added that the obligation on the part of the State to safeguard the lives of those within its jurisdiction includes substantive and procedural aspects, which *inter alia*, contains a positive obligation to not only take regulatory measures and to ensure that any occasion of death during life-threatening emergencies is adequately investigated, but also to adequately inform the public about any life-threatening emergencies. In this case the authorities had failed to share information about the possibility of mudslides with the population. This was reaffirmed in *Brândușe v. Romania*.<sup>378</sup>

**(g) Access to information is of importance to individuals because it can allay their fears and enables them to assess the environmental danger to which they may be exposed.**

148. 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.<sup>379</sup> 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.<sup>380</sup> 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.<sup>381</sup>

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<sup>377</sup> *Budayeva and Others v. Russia*, §§ 131-132.

<sup>378</sup> *Brândușe v. Romania*, judgment of 7 April 2009 (available in French only), § 63.

<sup>379</sup> *McGinley and Egan v. the United Kingdom* (Judgment) (9 June 1998), ECHR Application No. 10/1997/794/995-996, § 101.

<sup>380</sup> *Ibid.*, § 102.

<sup>381</sup> *Ibid.*, §§ 102, 103.

149. In the *Roche v. the United Kingdom* case, the Court considered that the State had not fulfilled the positive obligation to provide an effective and accessible procedure enabling the applicant to have access to all relevant and appropriate information that would allow him to assess any risk to which he had been exposed during his participation in toxic gas tests conducted under the auspices of the British armed forces.<sup>382</sup> The applicant had, between 1994 and 2001, made multiple efforts to obtain the medical records and the reports on the tests carried out on him but without success. He wrote multiple letters to the Ministry of Defence and Secretary of State and eventually commenced proceedings. Although a tribunal eventually directed the Secretary of State to disclose the documents to the applicant, he stated he was unable to give a definitive answer to the request for scientific and medical records. The Court found that this was a violation of the applicant's right to be informed about the risks he had been exposed to under Article 8 of the Convention. There is an obligation of disclosure, and individuals should not be required to obtain it through lengthy and complex litigation.<sup>383</sup>

150. 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.<sup>384</sup> The Court held likewise in *Giacomelli v. Italy*,<sup>385</sup> *Tătar v. Romania*,<sup>386</sup> and *Lemke v. Turkey*.<sup>387</sup>

151. The applicants in the *Vilnes and Others v. Norway* case were former divers, who were disabled as a result of (test) diving in the North Sea for oil companies drillings in the Norwegian Continental Shelf during the so-called "pioneer period" from 1965 to 1990. The applicants argued, *inter alia*, that the State had failed to take necessary measures to prevent the divers' lives from being put at risk that was avoidable, and had made it possible for the diving companies to use too-rapid decompression tables.<sup>388</sup> The so-called "diving/decompression tables" indicate how much time a diver needs to take to ascend after reaching certain depths, in order to adjust to the surrounding water pressure without incurring health implications. For lower labour costs however, the diving companies used shorter decompression time, and accordingly treated their diving tables as confidential information.<sup>389</sup> The Court noted that the decompression tables contained information that was essential for the assessment of risk to personal health.<sup>390</sup> However, the relevant State bodies did not require the diving companies to produce the diving tables in order to assess their safety before granting them authorisation to carry out individual diving operations,

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<sup>382</sup> *Roche v. the United Kingdom* (Judgment) (19 October 2005), ECHR Application No. 32555/96, § 167.

<sup>383</sup> *Ibid.*, § 165.

<sup>384</sup> *Taşkın and Others v. Turkey*, § 119.

<sup>385</sup> *Giacomelli v. Italy*, judgment of 2 November 2006, § 83.

<sup>386</sup> *Tătar v. Romania*, § 113.

<sup>387</sup> *Lemke v. France*, § 41.

<sup>388</sup> *Vilnes and Others v. Norway* (Judgment) (5 December 2013), ECHR Application nos. 52806/09 and 22703/10, § 179.

<sup>389</sup> *Ibid.*, § 80.

<sup>390</sup> *Ibid.*, § 240.

and as such, were left with little accountability *vis-à-vis* the authorities.<sup>391</sup> The Court stated that the authorities' role in authorising diving operations and in protecting the safety of such operations as well as the lack of scientific consensus at the time regarding the long-term effects of decompression sickness and the uncertainty about these matters which existed at the time, called for a very cautious approach. In the Court's view it would therefore have been reasonable for the authorities to take the precaution of ensuring that the companies observe full transparency about the diving tables used as well as on their concerns for the divers' safety and health, which constituted essential information that they needed to be able to assess the risk to their health and to give informed consent to the risks involved. By failing to do so the State had not fulfilled its obligation to secure the applicants' right to respect for their private life, which was considered a violation of Article 8 of the Convention.<sup>392</sup>

**(h) Moreover, the Court has established criteria on the construction of the procedures used to provide information. It held that 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.<sup>393</sup> Moreover, if environmental and health impact assessments are carried out, the public needs to have access to those study results.<sup>394</sup>**

152. In the *Brândușe v. Romania* case, the Court noted that the government had not stated what measures had been taken by the authorities to ensure that the inmates in the local prison, including the applicant, who had asked for information about the disputed rubbish tip in close proximity of the prison facility, would have proper access to the conclusions of environmental studies and information by means of which the health risks to which they were exposed could be assessed.<sup>395</sup> Consequently, the Court found that there was a violation of Article 8 based partially on the authorities' failure to secure the applicant's right to access to information.

153. Similarly, in the case of *Giacomelli v. Italy*,<sup>396</sup> which concerned a waste treatment factory, and *Lemke v. Turkey*,<sup>397</sup> which concerned the operation of a gold mine, the Court pointed out that a governmental decision-making process concerning complex issues of environmental and economic policy must in the first place involve appropriate investigations and studies. The importance of public access to the conclusions of such studies and to information enabling members of the public to assess the danger to which they are exposed is beyond question.<sup>398</sup>

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<sup>391</sup> *Ibid.*, § 238.

<sup>392</sup> *Ibid.*, § 244.

<sup>393</sup> *McGinley and Egan v. the United Kingdom*, judgment of 9 June 1998, §§ 97 and 101.

<sup>394</sup> *Brândușe v. Romania*, judgment of 7 April 2009, § 63.

<sup>395</sup> *Brândușe v. Romania*, judgment of 7 April 2009, §§ 63 and 74. Similarly *Guerra and Others v. Italy* [GC], § 60.

<sup>396</sup> *Giacomelli v. Italy*, judgment of 2 November 2006, § 83. For a short description of the case, see § 95 of the manual.

<sup>397</sup> *Lemke v. Turkey*, judgment of 5 June 2007. For a short description of the case, see § 98 of the manual.

<sup>398</sup> *Giacomelli v. Italy*, § 83 and *Lemke v. Turkey*, § 41.

154. In the *Brincat and Others v. Malta* case, the Court found violations of Articles 2 and 8 of the Convention, as the Government failed to take adequate measures to protect workers in a ship repair yard from the effects of their exposure to asbestos and the failure to provide adequate information for the workers to assess risks to their health and lives. The Court noted that no information was ever collected, or studies undertaken, or reports compiled specifically about the asbestos situation at the applicants' place of work. Furthermore, the Government did not even argue that any general information was, in fact, accessible or made available to the applicants. Instead, the Government, seemingly oblivious to the obligations arising from the Convention, opted to consider that it was not their responsibility to provide information at the outset and that anyone in such a work environment would in any case be fully aware of the hazards involved. The Court considered the latter statement to be in stark contrast to the Government's repeated argument that they (despite being employers and therefore well acquainted with such an environment) were for long unaware of the dangers. As such, no adequate information was provided or made accessible to the applicants during the relevant period of their careers at the ship repair yard,<sup>399</sup> which was in violation of the respective Articles of the Convention.

155. In the *Tătar v. Romania* case,<sup>400</sup> the Court had to decide whether the prolonged authorisation of the operation of gold mine complied with the authorities' obligations resulting from Article 8. With regard to the right to access to information, the Court noted that the national legislation on public debates had not been complied with as the participants in those debates had not had access to the conclusions of the study on which the contested decision to grant the company authorisation to operate was based. Interestingly, in this case, the Court referred once more to international environmental standards. It pointed out that the rights of access to information, public participation in decision-making and access to justice in environmental matters were enshrined in the Aarhus Convention<sup>401</sup> and that one of the effects of the Council of Europe's Parliamentary Assembly Resolution 1430 (2005) on industrial hazards was to extend the duty of States to improve dissemination of information in this sphere.<sup>402</sup>

156. Similarly, in the *Di Sarno and Others v. Italy* case, the Court also made reference to the Aarhus Convention. In this case, the Court ruled that, under the substantive limb of Article 8 of the Convention, the State failed to take adequate steps to ensure the proper functioning of the waste collection, treatment and disposal services in Campania. In analysing if the State had also breached the procedural aspect of Article 8, the Court recalled that it attaches particular importance to public access to information that enables people to assess the risks to which they are exposed. The Court noted that Article 5 § 1 (c) of the Aarhus Convention, which Italy has ratified, required each Party to ensure that "in the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected".<sup>403</sup> Nonetheless, as the civil emergency planning department made its

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<sup>399</sup> *Brincat and Others v. Malta* (Judgment) (24 July 2014), ECHR Application No. 60908/11, § 114.

<sup>400</sup> *Tătar v. Romania*, judgment of 27 January 2009.

<sup>401</sup> Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, adopted on 25 June 1998 in Aarhus, Denmark.

<sup>402</sup> *Tătar v. Romania*, §§ 93, 101, 113-116 and 118.

<sup>403</sup> *Di Sarno and Others v. Italy* (Judgment) (10 January 2012), ECHR Application No. 30765/08, § 107.

studies of the situation public in 2005 and 2008, the Court found that the Italian authorities discharged their duty to inform the people concerned, including the applicants, of the potential risks to which they were exposed themselves by continuing to live in Campania. Therefore, as for the procedural aspect, the Court found no violation of Article 8 of the Convention.<sup>404</sup>

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<sup>404</sup> *Ibid.*, § 113.

## Chapter V

### Decision-making processes in environmental matters and public participation in them



(a) When making decisions which relate to the environment, public authorities must take into account the interests of individuals who may be affected.<sup>405</sup> In this context, it is important that the public is able to make representations to the public authorities.<sup>406</sup>

(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.<sup>407</sup> 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.<sup>408</sup> 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.<sup>409</sup>

157. 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.

158. In *Hatton and Others v. the United Kingdom*,<sup>410</sup> for instance, which related to the noise<sup>411</sup> 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 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

<sup>405</sup> *Hatton and Others v. the United Kingdom* [GC], judgment of 8 July 2003, § 99; *Chapman v. the United Kingdom* [GC], judgment of 18 January 2001, § 92.

<sup>406</sup> *Hatton and Others v. the United Kingdom* [GC], § 128.

<sup>407</sup> *Hatton and Others v. the United Kingdom* [GC], § 128; *Taşkın and Others v. Turkey*, judgment of 10 November 2004, § 119.

<sup>408</sup> *Taşkın and Others v. Turkey*, § 119.

<sup>409</sup> *Hatton and Others v. the United Kingdom* [GC], §§ 104 and 128; *G. and E. v. Norway*, admissibility decision of 3 October 1983; *Giacomelli v. Italy*, judgment of 2 November 2007, § 82.

<sup>410</sup> For a short description of the case, see § 77 of the manual.

<sup>411</sup> *Taşkın and Others v. Turkey*, § 119.

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.

159. The Court concluded in the present 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.

160. The principles summarised in *Hatton and Others v. the United Kingdom* have been consistently applied throughout the Court's case law. They are repeated almost verbatim in numerous judgments, for instance *Giacomelli v. Italy*,<sup>412</sup> *Lemke v. Turkey*,<sup>413</sup> *Tătar v. Romania*,<sup>414</sup> *Taşkın and Others v. Turkey*,<sup>415</sup> *McMichael v. the United Kingdom*,<sup>416</sup> *Brândușe v. Romania*,<sup>417</sup> *Dubetska and Others v. Ukraine*<sup>418</sup> and *Grimkovskaya v. Ukraine*.<sup>419</sup>

161. However, considering the facts of the subsequent cases the scope of the required decision-making procedure has become more evident. For example, considering *Giacomelli v. Italy* the Court acknowledges that national authorities have failed to respect the procedural machinery provided for to respect the individual rights in the licensing of a waste treatment plant. In particular, they did not accord any weight to national judicial decisions and did not conduct an "environmental impact assessment" which is necessary for every project with potential harmful environmental consequences as prescribed also by national law.<sup>420</sup>

162. The Court's finding of a violation of Article 8 in *Grimkovskaya v. Ukraine*<sup>421</sup> resulted from the authority's negligence of minimal procedural safeguards which are necessary to strike a fair balance between the applicant's and the community's interest. Firstly, the Court noted that the decision to route the motorway through the city was not preceded by an adequate feasibility study, assessing the probability of compliance with applicable environmental standards and enabling interested parties to contribute their views. It criticised the absence of public access to relevant environmental information. Secondly, the Court required that at the time of taking the routing decision, the authorities should have put in place a reasonable policy for mitigating the motorways effects on the residents. This should have happened not

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<sup>412</sup> *Giacomelli v. Italy*, §§ 82-84 and 94.

<sup>413</sup> *Lemke v. Turkey*, judgment of 5 September 2007, § 41.

<sup>414</sup> *Tătar v. Romania*, judgment of 27 January 2009, §§ 88, 101 and 113.

<sup>415</sup> *Taşkın and Others v. Turkey*, §§ 118-119.

<sup>416</sup> *McMichael v. the United Kingdom*, judgment of 24 February 1995, § 87, also *McGinley and Egan v. the United Kingdom*, judgment of 9 June 1998, § 97.

<sup>417</sup> *Brândușe v. Romania*, judgment of 7 July 2009, §§ 62-63.

<sup>418</sup> *Dubetska and Others v. Ukraine*, §§ 66-69.

<sup>419</sup> *Grimkovskaya v. Ukraine*, §§ 66-69.

<sup>420</sup> *Giacomelli v. Italy*, §§ 94-95.

<sup>421</sup> For a short description of the case, see § 68 of the manual.

only as the result of repeated complaints by the residents. This did not happen. Lastly, the Court criticised the lack of the ability to challenge the authorities' decision before an independent authority (see Chapter VI below).<sup>422</sup>

163. The Court examined in *Dubetska and Others v. Ukraine*<sup>423</sup> whether the authorities had conducted sufficient studies to evaluate the risks of a potentially hazardous activity and whether, on the basis of the information available, they had developed an adequate policy vis-à-vis polluters and whether all necessary measures had been taken to enforce this policy in good time. The Court was particularly interested in the extent to which the individuals affected by the policy at issue were able to contribute to the decision-making. This included them having access to the relevant information and the ability to challenge the authorities' decision in an effective way. Moreover, the Court stated that the procedural safeguards available to the applicant may be rendered inoperative and the State may be found liable under the Convention where a decision-making procedure is unjustifiably lengthy or where a decision taken as a result remains for an important period unenforced.<sup>424</sup>

164. The cases of *Tătar v. Romania*<sup>425</sup> and *Taşkın and Others v. Turkey*<sup>426</sup> recognise and stress that despite the fact that Article 8 does not contain an explicit procedural requirement, the decision-making process leading to measures of interference must be fair and afford due respect to the interests of the individual as safeguarded by the article.<sup>427</sup> At the same time both cases, which concerned the operation of mines, underlined that only those specifically affected have a right to participate in the decision-making. An *actio popularis* to protect the environment is not envisaged by the Court.<sup>428</sup>

165. Moreover, even though the Court has not yet used the word “environmental impact assessment (EIA)” to describe the procedural aspect of Article 8 – it has only found that States neglected to conduct EIAs that were prescribed by national law (see *Giacomelli v. Italy* above) – the Court appears increasingly to require EIAs to fulfil the evaluation requirements set out by it. This is supported by the Court's finding in *Tătar v. Romania* which was based partially on the conclusion that the national authorities had failed in their duty to assess, in advance, possible risks of their activities in a satisfactory manner and take adequate measures capable of protecting specifically the right for private and family life and, more generally, the right to the enjoyment of a healthy and protected environment.<sup>429</sup> Overall, the Court is ever more willing to precisely rule on the proper procedures to take environmental matters into account.

166. In the *Flamenbaum and Others v. France* case, the Court had to establish, under the procedural limb, if France met its obligations under Article 8 by extending the runway of an airport next to the forest of Saint Gantien. The Court reiterated that the decision-making process must include carrying out the appropriate investigations and studies and allow public access to the conclusions of these studies.<sup>430</sup> The Court

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<sup>422</sup> *Grimkovskaya v. Ukraine*, §§ 66-69.

<sup>423</sup> For a short description of the case, see § 67 of the manual.

<sup>424</sup> *Dubetska and Others v. Ukraine*, §§ 143-144.

<sup>425</sup> For a short description of the case, see § of the manual.

<sup>426</sup> For a short description of the case, see § of the manual.

<sup>427</sup> *Tătar v. Romania*, § 88; *Taşkın and Others v. Turkey*, § 118.

<sup>428</sup> The incompatibility of *actio popularis* with the Convention system was confirmed also in *Ilhan v. Turkey*, judgment of 27 June 2000, §§ 52-53.

<sup>429</sup> *Tătar v. Romania*, § 112.

<sup>430</sup> *Flamenbaum and Others v. France* (Judgment) (13 December 2012), ECHR Application nos. 3675/04 and 23264/04, § 155.

noted that the runway extension project was preceded by a detailed impact study, which envisaged the effects of the project on the physical and biological environments as well as on activities, town planning, heritage and the landscape and noise pollution. Moreover, the project also gave rise to public inquiry, during which, the documents in the case having been made available in six town halls, the public was able to comment on the inquiry registers and meet the members of the inquiry commission. Additionally, the impact study and the file of the public inquiry were sent to the advisory commission on the environment at which the association for the defence of local residents of Deauville-Saint Gatien Airport (“the ADRAD”) had been represented. All the applicants were members of the ADRAD. The aeronautical clearance plan was also the subject of a public inquiry in the thirty-two town halls concerned during which the residents were able to make their observations, and another public inquiry preceded the adoption of the radio constraints plan.<sup>431</sup> The Court therefore concluded that that appropriate investigations and studies had been carried out and that the public had satisfactory access to their conclusions.<sup>432</sup> The applicants additionally complained about the “fragmentation” of the decision-making process, as they could not have the project as a whole be examined by a single judge. The Court however, recalled that the State had a certain margin of discretion when it came to the means to fulfil its obligations. In this sense, the Court took note of the argument made by the Government that domestic law did not allow this to be done otherwise.<sup>433</sup> Considering that the applicants had had the opportunity to participate in each stage of the decision-making process and to submit their observations, the Court did not find there to be any flaw in the implemented decision-making process.<sup>434</sup>

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<sup>431</sup> *Ibid.*, § 156.

<sup>432</sup> *Ibid.*, § 157.

<sup>433</sup> *Ibid.*, §159.

<sup>434</sup> *Ibid.*, §§159, 160.

## Chapter VI

### Access to justice and other remedies in environmental matters



#### Article 6 paragraph 1

##### Right to a fair trial

1. 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 and Article 1 of Protocol 1.<sup>435</sup> 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”.<sup>436</sup> This includes the right to see final and enforceable court decisions executed and implies that all parties, including public authorities, must respect court decisions.<sup>437</sup>**

167. Article 6, which guarantees the right to a fair trial, is one of the most litigated rights of the Convention. Therefore, a great deal of case law exists on the requirements of Article 6 paragraph 1 which calls for “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 another, and that each party should have the opportunity to comment on the arguments and evidence submitted by the other party. Additionally, the parties should normally be entitled to appear in person before the courts upon request and that courts should give reasoned decisions.

168. Moreover, although the text of the Convention alone does not contain an explicit reference to the right of access to a court, the Court has found that this right is also one of the components of the right to a fair trial protected by Article 6. Through its case law the Court 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 Article 6. In one of its early judgments, the Court held that Article 6 secures to everyone the right to have any claim related to his civil rights and obligations brought before a court or tribunal.<sup>438</sup>

169. In order for Article 6 paragraph 1 to be applicable in civil cases, there must be a “dispute” 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.<sup>439</sup> The outcome of the proceedings

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<sup>435</sup> For example, *Öneriyıldız v. Turkey* [GC], §§ 89-96; *Hatton and Others v. the United Kingdom* [GC], § 98.

<sup>436</sup> *Balmer-Schafroth and Others v. Switzerland* [GC], judgment of 26 August 1997, § 32; *Athanassoglou and Others v. Switzerland* [GC], judgment of 6 April 2000, § 43.

<sup>437</sup> *Kyrtatos v. Greece*, § 32; *Taşkın v. Turkey*, § 134; *Lemke v. Turkey*, judgment 5 June 2007, §§ 42 and 52.

<sup>438</sup> *Golder v. the United Kingdom*, judgment of 21 February 1975, § 36.

<sup>439</sup> *Taşkın and Others v. Turkey*, § 130.

must be directly decisive for the rights in question. The Court has given “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 “civil right or obligation” for these purposes.

170. 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 therefore constitute “civil rights” within the meaning of Article 6 paragraph 1.<sup>440</sup> 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.<sup>441</sup> 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 *Taşkın and Others* and *Öçkan and Others v. Turkey* the Court found Article 6 paragraph 1 applicable as the Turkish Constitution (Article 56) recognised the right to live in a healthy and balanced environment.<sup>442</sup> 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.<sup>443</sup>

171. In the *Howald Moor and Others v. Switzerland* case, Hans Moor was, during his work as a mechanic since 1965, exposed to asbestos dust while unaware of the risks. In 2004, he learned he had cancer caused by this exposure.<sup>444</sup> Since this occupational disease was assimilated in the Federal Law on Accident Insurance to an occupational accident, the Swiss National Accident Insurance Fund (CNA) had to pay the victim, and after his death in November 2005, his wife and daughters (the applicants).<sup>445</sup> However, after his death, the applicants additionally brought claims for compensation before the CNA, stating that the insurance was jointly liable for the mechanic’s death as it had failed to provide adequate safety, information and protection at work.<sup>446</sup> In response, the CNA pointed out that with respect to claims for compensation, the law provided that for there to be liability, the claim must have been brought within ten years after the damaging act. As the damaging act occurred before 1995, liability had already expired in 2005, regardless of the fact that the mechanic was unaware of the damage asbestos could cause at the time of his exposure.<sup>447</sup> This was upheld by national courts. The Court noted however, that considering the latency period of diseases linked to exposure to asbestos can extend over several decades, the absolute period of ten years - which according to the legislation in force begins to run on the date on which the interested party was

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<sup>440</sup> See *Balmer-Schafroth and Others v. Switzerland* [GC], § 33; *Athanassoglou and Others v. Switzerland* [GC], § 44; *Taşkın and Others v. Turkey*, § 90.

<sup>441</sup> *Okçay v. Turkey* [GC], judgment of 12 July 2005, §§ 67-69.

<sup>442</sup> *Öçkan and Others v. Turkey*, § 52; *Taşkın and Others v. Turkey*, §§ 130-134.

<sup>443</sup> For example, *Allan Jacobsson v. Sweden (No. 1)*, judgment of 19 February 1998, § 42; *Fredin v. Sweden (No. 1)*, judgment of 18 February 1991, § 63; *Ortenberg v. Austria*, judgment of 25 November 1994, § 28.

<sup>444</sup> *Howald Moor and Others v. Switzerland* (Judgment) (11 March 2014), ECHR Application nos. 52067/10 and 41072/11, §§ 7-11.

<sup>445</sup> *Ibid.*, §§ 12 – 16.

<sup>446</sup> *Ibid.*, § 17.

<sup>447</sup> *Ibid.*, §§ 18 – 25.

exposed to asbestos dust - will be expired.<sup>448</sup> Consequently, any action for damages is likely to fail, as it is being lapsed or time-barred even before asbestos victims have been able to objectively know their rights.<sup>449</sup> In this case, the Court did therefore not find the law proportionate, as it is likely that those concerned are deprived of the possibility of asserting their claims in court.<sup>450</sup> Moreover, when scientifically proven that a person is unable to know that he or she is suffering from a disease, such a circumstance should be taken into account when calculating the expiration or limitation period.<sup>451</sup> Therefore, the Court considered that the application deadlines or expiration of limitation had restricted access to a court to such an extent that the applicants' right was found infringed in its very substance, and that it thus violated Article 6 paragraph 1 of the Convention.<sup>452</sup>

172. In the *Karin Andersson and Others v. Sweden* case, the applicants complained under Article 6 of the Convention that they had been denied access to court with regard to their civil rights, as they had been refused a full legal review of the Government's decision to permit the construction of the railway, which was situated on or close to their properties. The latter decision had significantly affected the applicants' property as well as the environment in the area concerned.<sup>453</sup> In the present case, three of the applicants petitioned the Supreme Administrative Court for a judicial review of the Government's decision of 12 June 2003 to allow the construction of the railway in question. Given the binding nature of the Government's permissibility decision on the later proceedings, the Court considered it would seem natural for discontented property owners to challenge that very decision by the only means available, a petition for judicial review. However, the Supreme Administrative Court dismissed the petition without an examination of its merits in respect of all petitioners, as it considered that it could not be assessed with any certainty who would be sufficiently affected by the railway project until the railway plan had been drafted. The court added that a judicial review would instead be available of the later decision to adopt the railway plan.<sup>454</sup> Nevertheless, the courts in the subsequent proceedings, including the Supreme Administrative Court when it examined the railway plan, found, in accordance with the applicable rules, that they were bound by the Government's permissibility decision, and accordingly did not examine any issues that had been determined by that decision.<sup>455</sup> As such, the Court found that that the applicants were not able, at any time of the domestic proceedings, to obtain a full judicial review of the authorities' decisions, including the question whether the location of the railway infringed their rights as property owners. Thus, notwithstanding that the applicants were accepted as parties before the Supreme Administrative Court in 2008, they did not have access to a court for the determination of their civil rights in the case. There had therefore been a violation of Article 6 paragraph 1 of the Convention.<sup>456</sup>

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<sup>448</sup> *Ibid.*, § 74.

<sup>449</sup> *Ibid.*, § 74.

<sup>450</sup> *Ibid.*, § 77.

<sup>451</sup> *Ibid.*, § 78.

<sup>452</sup> *Ibid.*, § 79.

<sup>453</sup> *Karin Andersson and Others v. Sweden* (Judgment) (25 September 2014), ECHR Application No. 29878/09, § 43.

<sup>454</sup> *Ibid.*, § 58.

<sup>455</sup> *Ibid.*, § 69.

<sup>456</sup> *Ibid.*, § 70.

173. 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.<sup>457</sup>

174. The right of access to a court which is derived from Article 6 paragraph 1 is not an absolute right. Restrictions may be compatible with the Convention if they have a legitimate purpose and are proportionate to their aim. 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.

175. 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.<sup>458</sup> This holds true in cases related to the environment where issues under Article 6 arise. In the *Taşkın 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.<sup>459</sup> In *Kyrtatos v. Greece*,<sup>460</sup> 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.

176. In the *Apanasewicz v. Poland* case, the applicant brought civil proceedings before a district court, requesting the total cessation of the activities of a concrete plant next to her property based on the civil code and environmental protection laws.<sup>461</sup> In November 1997 the district court upheld the applicant's action and ordered the owner of the factory to refrain from disturbing her in the peaceful enjoyment of his property,<sup>462</sup> and so did the regional court in the appeal in 2001, with which the decision became final and enforceable.<sup>463</sup> However, between 2001 and 2009, the decision of the courts remained unenforced which caused the applicant to engage in a multitude of additional proceedings. Eventually, she brought the case before the Court, invoking her right to effective judicial protection as there was a prolonged failure to comply with the final decisions.<sup>464</sup> The Court recalled that Article 6 protects the implementation of final and binding judicial decisions, and that the execution of judicial decisions therefore cannot be prevented, invalidated or excessively delayed.<sup>465</sup> Consequently, in light of the overall duration of the proceedings, the lack of due diligence on the part of the authorities and their insufficient resources to coercive measures available, the Court found that the applicant had not benefitted from effective judicial protection. As such, the Polish authorities had violated Article 6 paragraph 1.<sup>466</sup>

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<sup>457</sup> *Ünver v. Turkey*, decision of 26 September 2000, § 2, "law" part.

<sup>458</sup> For example *Hornsby v. Greece*, judgment of 19 March 1997, § 40.

<sup>459</sup> *Taşkın and Others v. Turkey*, judgment of 10 November 2004, §§ 135 and 138.

<sup>460</sup> For a short description of the case, see § 15 of the manual.

<sup>461</sup> *Apanasewicz v. Poland* (Judgment) (3 May 2011), ECHR Application No. 6854/07, § 6.

<sup>462</sup> *Ibid.*, § 7.

<sup>463</sup> *Ibid.*, § 17.

<sup>464</sup> *Ibid.*, § 60.

<sup>465</sup> *Ibid.*, § 72.

<sup>466</sup> *Ibid.*, §§ 82, 83.

177. The *Bursa Barosu Başkanlığı and Others v. Turkey* case concerned the authorization by Turkish authorities of the construction and operation of a starch factory on agricultural land located in the town of Bursa from 1997 onwards,<sup>467</sup> and the amending of town and land-use plans on a number of occasions to allow the factory to be built. After a request by the Council of State in 1999 and 2000, scientific experts concluded that the construction of the factory was contrary to the main town plans, that it presented risks of groundwater pollution,<sup>468</sup> and that the lands concerned were among the agricultural zones and the water basins that needed to be preserved.<sup>469</sup> Moreover, the applicants brought cases before national courts claiming the project violated environmental protection legislation and drawing the court's attention to the impact of the project on groundwater reserves and on the habitat of the area concerned.<sup>470</sup> Although the administrative court suspended the execution of the construction and operation of the starch factory in 1999<sup>471</sup> and eventually entirely annulled the authorizations in 2004<sup>472</sup> (which was upheld by the Council of State in 2008 and thus became final)<sup>473</sup>, the factory was constructed between 1998 and 2000, and started operating from 2000 onwards,<sup>474</sup> which it still was at the time the case was heard in Strasbourg in 2018.<sup>475</sup> This led to continued administrative proceedings, action for damages and criminal complaints. Eventually, the applicants complained to the Court, stating that their right to effective judicial protection with regards to the dispute over their civil rights was violated, as there was a prolonged refusal from the administration to comply with the final and binding decisions that annulled the authorizations of the construction and operation of the factory.<sup>476</sup> The Court particularly noted the findings of the Court of Cassation in the action for damages, which stated that although the authorizations for construction and operation of the factory were suspended by court decisions, the Prime Minister informed the factory that it could continue its activities. As such, the Court of Cassation concluded that attempts were made by the authorities to create an administrative and legal basis for the pursuit of these activities regardless their subsequent definitive cancellation.<sup>477</sup> Consequently, the Court recalled that that one of the fundamental elements of the rule of law is the principle of the security of legal relations, which means, among other things, that the solution given definitively to any dispute by the courts no longer be called into question. The fact that the Prime Minister wanted to amend those final decisions could therefore endanger the rule of law, as it could negatively affect many other final or unenforced decisions.<sup>478</sup> Consequently, the Court found that, by abstaining from taking the necessary measures to comply with the several final decisions, the national authorities had deprived the applicants of effective judicial protection under Article 6 paragraph 1.<sup>479</sup>

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<sup>467</sup> *Bursa Barosu Başkanlığı and Others v. Turkey* (Judgment) (19 June 2018), ECHR Application No. 25680/05, § 6.

<sup>468</sup> *Ibid.*, § 18.

<sup>469</sup> *Ibid.*, § 20.

<sup>470</sup> *Ibid.*, § 28.

<sup>471</sup> *Ibid.*, § 29.

<sup>472</sup> *Ibid.*, § 33.

<sup>473</sup> *Ibid.*, § 35.

<sup>474</sup> *Ibid.*, § 137.

<sup>475</sup> *Ibid.*, § 13.

<sup>476</sup> *Ibid.*, § 122.

<sup>477</sup> *Ibid.*, §§ 78, 139.

<sup>478</sup> *Ibid.*, § 144.

<sup>479</sup> *Ibid.*, § 145.

**(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.<sup>480</sup> 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.<sup>481</sup>**

178. 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.

179. 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 on 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 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.

180. 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

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<sup>480</sup> *Balmer-Schafroth and Others v. Switzerland* [GC], § 40.

<sup>481</sup> *Balmer-Schafroth and Others v. Switzerland* [GC], § 40; *Taşkın and Others v. Turkey*, § 130.

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.

181. The Court reached the same conclusion in the *Athanassoglou and Others v. Switzerland* case.<sup>482</sup> 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 lifestyle). However, they will not necessarily enjoy a right of access to a court when they are only defending a broad public interest.**<sup>483</sup>

182. 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.

183. 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. Relying on Article 6 paragraph 1, the applicants submitted that they had not had a fair hearing. 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

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<sup>482</sup> *Athanassoglou and Others v. Switzerland* [GC], § 54.

<sup>483</sup> *Gorraiz Lizarraga and Others v. Spain*, judgment of 27 April 2004, §§ 46 and 47.

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 a 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 its personal 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. 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.

184. In the *L’Erablière A.B.S.L. v. Belgium* case, the applicant was a non-profit association whose aim, as stated in its articles of association, was “to protect the environment in the region of Marche-Nassogne. That region essentially covers the municipalities of Nassogne, La Roche-en-Ardenne, Marche-en-Famenne, Rendeux and Tenneville. Environment means the quality and diversity of ecosystems and natural or semi-natural spaces, land use and town planning, the value of landscape, water, air and other elements vital to human beings, and the tranquillity of spaces. It may take any action relating directly or indirectly to its aim...”<sup>484</sup> On 5 January 2004 the municipality of Tenneville wrote to the applicant association informing it that a cooperative society had been granted planning permission on 23 December 2003 to expand the class 2 and 3 technical landfill site, and that the applicant association could apply to the *Conseil d’Etat* for judicial review.<sup>485</sup> On 5 March 2004 the applicant association lodged an application for judicial review of the decision of the delegated official and requested for its suspension.<sup>486</sup> By an order of 8 September 2004, the *Conseil d’Etat* dismissed the request for the impugned decision to be suspended. It concluded that the documents attached to the request for the decision to be suspended could not be deemed to equate to a statement of the facts.<sup>487</sup> Regardless of the pleading the applicant association made in reply,<sup>488</sup> the *Conseil d’Etat* declared the association’s application for judicial review inadmissible on April 2007.<sup>489</sup> The applicant association complained to the Court that its right of access to a court under Article 6 of the Convention had been violated by the *Conseil d’Etat*.<sup>490</sup> Before the Court, the Government stated that the action of the association had concerned the protection of the general interest and not the protection of any “civil rights” to which that association could claim to be entitled on its own behalf.<sup>491</sup> However, the Court noted that the applicant association’s articles of association showed that its aim is limited in space and in substance, consisting in protecting the environment in the Marche-Nassogne region only. Moreover, all the founding members and administrators of the applicant association resided in the municipalities concerned, and could therefore be regarded as local residents directly affected by the plans to expand the landfill site, as the nuisance it would generate for their everyday quality of life and, in turn, on the market value of their properties in the municipalities concerned, which would be at risk of

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<sup>484</sup> *L’Erablière A.B.S.L. v. Belgium* (Judgment) (24 February 2009), ECHR Application No. 49230/07, § 5.

<sup>485</sup> *Ibid.*, §§ 7, 8.

<sup>486</sup> *Ibid.*, § 9.

<sup>487</sup> *Ibid.*, § 13.

<sup>488</sup> *Ibid.*, § 14.

<sup>489</sup> *Ibid.*, § 15.

<sup>490</sup> *Ibid.*, § 20.

<sup>491</sup> *Ibid.*, § 22.

depreciation as a result<sup>492</sup>. The Court pointed out that the reason why the Convention does not allow an *actio popularis* is to avoid cases being brought before the Court by individuals complaining of the mere existence of a law applicable to any citizen of a country, or of a judicial decision to which they are not party. In the present case, however, the Court considered that, in view of the circumstances, and in particular the nature of the impugned measure, the status of the applicant association and its founders and the fact that the aim it pursued was limited in space and in substance, that the general interest defended by the association in its application for judicial review cannot be regarded as an *actio popularis*.<sup>493</sup> The Court consequently held that there had been a violation of Article 6 paragraph 1 of the Convention.

**(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 Articles 2 and 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.**<sup>494</sup>

185. 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*<sup>495</sup> and in *Taşkın and Others v. Turkey*,<sup>496</sup> the Court recognised that environmental and economic policy must also be able to appeal to the courts against any decision, act or omission where they consider that their interests or their comments have not been given sufficient weight in the decision-making process. Hence, a fair decision-making process in environmental matters, required under Article 8, includes the right to access to court. This principle was confirmed additionally in *Öçkan and Others v. Turkey*, *Dubetska and Others v. Ukraine*, *Grimkovskaya v. Ukraine*, and *Tătar v. Romania*.

186. Interestingly, in *Tătar v. Romania* the Court indicated that it should not only be possible to seek redress in court against an improper decision-making process, but also against individual scientific studies requested by the public authorities and to seize a court if necessary, documents have not been made available publicly.<sup>497</sup> In this respect the right to access to a court based on Articles 2 and 8 appears broader than that of Article 6. The rights in Articles 2 and 8 do not require that the outcome of the court proceedings need to be decisive for the rights of the applicant or that there must be the possibility of grave danger.<sup>498</sup>

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<sup>492</sup> *Ibid.*, § 28.

<sup>493</sup> *Ibid.*, § 29.

<sup>494</sup> *Taşkın and Others v. Turkey*, judgment of 10 November 2004, § 119.

<sup>495</sup> For a short description of the case, see § [...] of the manual.

<sup>496</sup> *Taşkın and Others v. Turkey*, § 119. For a short description of the case, see § [...] of the manual.

<sup>497</sup> *Tătar v. Romania*, §§ 113, 116-117 and 119.

<sup>498</sup> *Öçkan and Others v. Turkey*, judgment of 28 March 2006 (in French only), §§ 39 and 44. *Tătar v. Romania*, 27 January 2009 (in French only), §§ 88 and 119.

187. In the case of *Giacomelli v. Italy* the Court reaffirmed that the decision-making process had to be fair and show due regard for the interests of the individual protected by Article 8. It repeated that the individuals concerned need to have had the opportunity to appeal to the courts against any decision, act or omission where they considered that their interest or their comments have not been given sufficient weight in the decision-making process.<sup>499</sup> In this case, the Court criticised the entire decision-making process and noted that it was impossible for any citizens concerned to submit their own observations to the judicial authorities and, where appropriate, obtain an order for the suspension of a dangerous activity.<sup>500</sup>

188. The case of *Grimkovskaya v. Ukraine*<sup>501</sup> clarifies the scope of the protection afforded by the procedural rights of Article 8. In this case the absence of the individual's ability to challenge an official act or omission affecting her rights before an independent authority was one of the three factors that led to the Court's finding of a violation of Article 8. The Court held that the applicant's civil claim against the local authorities was prematurely dismissed by the domestic courts. The reasoning contained in their judgments was too short and it did not include a direct response to the applicant's main arguments, on the basis of which she had sought to establish the local authorities' liability. Hence it was not the lack of access to an independent complaints authority, but the manner in which this authority dealt with the applicant's complaint that led the Court to find a breach of Article 8. Notably, the Court explicitly referred to the standards of the Aarhus Convention to consider whether it provided a meaningful complaints mechanism.<sup>502</sup> Although noting the difference in the nature of the interests protected by Articles 6 and 8 of the Convention, which may require separate examination of claims lodged under these provisions, in the case at hand, taking into account the Court's findings under Article 8 (concerning the lack of reasoning in the domestic judgments), the Court considered that it was not necessary to also examine the same facts under Article 6 of the Convention.<sup>503</sup>

**(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.<sup>504</sup>**

**(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**

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<sup>499</sup> *Giacomelli v. Italy*, § 82.

<sup>500</sup> *Giacomelli v. Italy*, § 94.

<sup>501</sup> For a short description of the case, see § [...] of the manual.

<sup>502</sup> *Grimkovskaya v. Ukraine*, §§ 69-72.

<sup>503</sup> *Ibid.*, § 77.

<sup>504</sup> *Leander v. Sweden*, judgment of 26 March 1987, § 77.

**available. However, neither Article 13 nor any other provision of the Convention guarantees a right to secure the prosecution and conviction of those responsible.<sup>505</sup>**

189. The objective 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 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.

190. 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.<sup>506</sup> 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.

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

- 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;
- 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.<sup>507</sup>

192. 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

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<sup>505</sup> *Öneryıldız v. Turkey* [GC], § 147.

<sup>506</sup> *Klass and Others v. Germany*, judgment of 6 September 1978, § 64; *Silver and Others v. the United Kingdom*, judgment of 25 March 1983, § 113.

<sup>507</sup> E.g. *Leander v. Sweden*, § 77.

principle e) - g)). 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.<sup>508</sup>

193. 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).

194. In *Hatton and Others v. the United Kingdom*,<sup>509</sup> 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.

195. In *Öneryıldız v. Turkey*<sup>510</sup> 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).

196. 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.

<sup>508</sup> *Keenan v. the United Kingdom*, judgment of 3 April 2001, §§ 123-130.

<sup>509</sup> For a short description of the case, see § 77 of the manual.

<sup>510</sup> For a short description of the case, see § 41 of the manual.

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.

197. 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.

198. In the case of *Budayeva and Others v. Russia*, the applicants complained of the lack of any effective remedy through which to make their claims, as required by Article 13 of the Convention. The Court found that the principles developed in relation to the judicial response to accidents resulting from dangerous activities also applied in the area of disaster relief.<sup>511</sup> It pointed out in particular that in relation to fatal accidents arising out of dangerous activities which fall within the responsibility of the State, Article 2 requires the authorities to carry out of their own motion an investigation, satisfying certain minimum conditions, into the cause of the loss of life. Without such an investigation, the individual concerned may not be in a position to use any remedy available to him for obtaining relief. This is because the knowledge necessary to elucidate facts, such as those in issue in the instant case, is often in the sole hands of State officials or authorities. Accordingly, the Court's task under Article 13 is to determine whether the applicant's exercise of an effective remedy was frustrated on account of the manner in which the authorities discharged their procedural obligation under Article 2. The Court considered that these principles must equally apply in the context of the State's alleged failure to exercise their responsibilities in the area of disaster relief.<sup>512</sup> In this case, the Court observed that the State's failings had given rise to a violation of Article 2 because of the lack of an adequate judicial response, as required in the event of alleged infringements of the right to life. When assessing the procedural aspect of the right to life, the Court addressed not only the lack of a criminal investigation but also the absence of other means for the applicants to secure redress for the alleged failure. Accordingly, it did not consider it necessary to examine the complaint separately under Article 13.

199. A similar conclusion was drawn in the *Kolyadenko and Others v. Russia* case. It concerned a number of applicants who lived in the Primorskiy Region, close to a man-made reservoir and a river. In August 2001, an urgent release of a large quantity of water from the reservoir caused a large area around the reservoir to instantly flood, including the area where the applicants resided.<sup>513</sup> Amongst claims for violations of Articles 2 and 8 of the Convention and Article 1 of Protocol No. 1, the applicants complained that, in violation of Article 13 of the Convention, they did not have effective domestic remedies in respect of their complaints under Articles 2 and 8 of the Convention.<sup>514</sup> Here the Court firstly noted that as it already found that Article 2 was inadequately protected by the proceedings brought by the public authorities under the criminal law, and that any other remedy, in particular the civil proceedings to which these applicants had recourse, could not have provided an adequate judicial response in respect of their complaint under Article 2 of the Convention.<sup>515</sup> In the light of this finding, the Court did therefore not consider it necessary to examine these applicants' complaint under Article 13, taken in conjunction with Article 2 of the

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<sup>511</sup> *Budayeva and Others v. Russia*, § 142.

<sup>512</sup> *Budayeva and Others v. Russia*, §§ 192 and 193.

<sup>513</sup> *Kolyadenko and Others v. Russia* (Judgment) (28 February 2012), ECHR Application No. 17423/05, § 32.

<sup>514</sup> *Ibid.*, § 218.

<sup>515</sup> *Ibid.*, § 227.

Convention, since it raised no separate issue in the circumstances of the present case.<sup>516</sup> In respect to Article 8 of the Convention and Article 1 of Protocol No. 1, the Court noted that Russian law provided the applicants with the possibility of bringing civil proceedings to claim compensation for damage done to their homes and property as a result of the flood of August 2001.<sup>517</sup> The domestic courts therefore had at their disposal the necessary materials to be able, in principle, in the civil proceedings to address the issue of the State's liability on the basis of the facts as established in the criminal proceedings, irrespective of the outcome of the latter proceedings. In particular, they were empowered to assess the facts established in the criminal proceedings, to attribute responsibility for the events in question and to deliver enforceable decisions.<sup>518</sup> Moreover, the domestic courts had addressed the applicants' arguments and had given reasons for their decisions. Thus, although the outcome of the proceedings in question were unfavourable to the applicants, as their claims were rejected, the Court viewed that this fact alone could not be said to have demonstrated that the remedy under examination did not meet the requirements of Article 13. In this respect, the Court recalled that the "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant.<sup>519</sup> Therefore, the Court concluded that there had not been a violation of Article 13 in conjunction with Article 8 and Article 1 of Protocol No. 1.<sup>520</sup>

200. The *Di Sarno and Others v. Italy* case concerned applicants who lived and worked in the municipality of Somma Vesuviana (in Campania), which was affected by a "waste crisis". Especially from the end of 2007 until May 2008, the applicants were forced to live in a polluted environment due to the tons of waste which were left to pile up for weeks in the streets of Naples and other towns in the province.<sup>521</sup> Amongst other things, the applicants complained that, although the "waste crisis" has persisted in Campania since 1994, no court decision recognizing the civil or criminal liability of public authorities or contractors had been issued. Although criminal proceedings were initiated in 2003 by the prosecution at the Naples court against those responsible, those were still pending. As such, the applicants concluded that the remedies provided for by Italian law offered them no chance of obtaining a judicial decision and of seeking a solution to the "waste crisis".<sup>522</sup> In this sense, the Court noted that even assuming that compensation for the damage constituted adequate redress for the alleged violations of the Convention, the Government had not shown that the applicants would have had a chance of success in pursuing this remedy.<sup>523</sup> The Government had not produced an administrative judicial decision awarding compensation,<sup>524</sup> nor did it cite any case law establishing that residents of areas affected by poor waste management were qualified to become civil parties in criminal proceedings aimed at sanctioning offenses against the public administration and the environment.<sup>525</sup> Additionally, although there was a possibility of requesting the Ministry of the Environment to bring an action for compensation for environmental damage under national law, it follows that the remedies provided under these provisions would not have allowed the applicants themselves to rely on the damage

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<sup>516</sup> *Ibid.*, § 228.

<sup>517</sup> *Ibid.*, § 229.

<sup>518</sup> *Ibid.*, § 230.

<sup>519</sup> *Ibid.*, § 231.

<sup>520</sup> *Ibid.*, § 232.

<sup>521</sup> *Di Sarno and Others v. Italy* (Judgment) (10 January 2012) ECHR Application No. 30765/08, §§ 36, 108.

<sup>522</sup> *Ibid.*, § 84.

<sup>523</sup> *Ibid.*, § 87.

<sup>524</sup> *Ibid.*

<sup>525</sup> *Ibid.*, § 88.

resulting from the environmental harm.<sup>526</sup> In light of the claims the applicants made with respect to a violation of Article 8 of the Convention, the Court noted that this was intertwined with the absence, in the Italian legal order, of effective remedies which would have enabled the applicants to obtain compensation of their damage under Article 13 of the Convention.<sup>527</sup> The Court reiterated that the purpose of Article 13 is to provide a means through which litigants can obtain, at the national level, redress for violations of their rights guaranteed by the Convention, before having to implement the international complaints mechanism before the Court.<sup>528</sup> As such, there had been a violation of Article 13 of the Convention.

201. The *Cordella and Others v. Italy* case concerned 180 applicants (of which 161 claims were declared admissible) who lived in and around the city of Taranto and complained about the scientifically proven impact of the toxic emissions produced by the local steel plant on the environment and the health of the local population.<sup>529</sup> The Court noted that the applicants' complaints related to the absence of measures aimed at ensuring the clean-up of the territory concerned. It also noted that the sanitation of the affected area has been an objective pursued for several years by the competent authorities, but without success. Having regard also to the material submitted by the applicants and in the absence of relevant case law precedents, the Court considered that, although the Government argued there was criminal, civil and administrative action available for the applicants, such action could not meet the objective of the present case (the clean-up of the territory).<sup>530</sup> This was particularly so as the relevant authorities had granted criminal and administrative immunity to the person in charge of the implementation of the recommended environmental plan and the future purchaser of the plant.<sup>531</sup> Similar to the *Di Sarno* case, the Court additionally noted that requesting the Ministry of the Environment to bring an action for compensation for environmental damage under national law would not grant the applicants themselves an effective remedy.<sup>532</sup> As such, considering the impossibility of obtaining measures that guaranteed the clean-up of the areas concerned by the harmful emissions of the steel plant, the Court considered that there had been a violation of Article 13 of the Convention.

**(h) Environmental protection concerns may in addition to Articles 6 and 13 impact the interpretation of other procedural articles, such as Article 5 which sets out the rules for detention and arrest of person. The Court has found that in the case of offences against the environment, like the massive spilling of oil by ships, a strong legal interest of the public exists to prosecute those responsible. The Court recognised that maritime environmental protection law has evolved constantly. Hence, it is in the light of those “new realities” that the Convention articles need to be interpreted. Consequently, environmental damage can be of a**

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<sup>526</sup> *Ibid.*, § 89.

<sup>527</sup> *Ibid.*, § 116.

<sup>528</sup> *Ibid.*, § 117.

<sup>529</sup> *Cordella and Others v. Italy* (Judgment) (24 January 2019), ECHR Application No. 54414/13 and 54264/15, §§ 13, 14, 15-31.

<sup>530</sup> *Ibid.*, § 123.

<sup>531</sup> *Ibid.*, § 124.

<sup>532</sup> *Ibid.*, § 126.

## **degree that justifies arrest and detention, as well as imposition of substantial amount of bail.**

202. The case of *Mangouras v. Spain*<sup>533</sup> is a telling example of the Court's reflex on an increased international concern for environmental protection. It is concerned with the correct interpretation of Article 5 paragraph 3 of the Convention. The applicant was the captain of the ship *Prestige*, which had been sailing off the Spanish coast in November 2002 when its hull had sprung a leak, spilling its cargo of fuel oil into the Atlantic Ocean and causing an ecological disaster whose effects on marine flora and fauna had lasted for several months and spread as far as the French coast. The case related to the applicant's complaints concerning his pre-trial detention for offences including an offence against natural resources and the environment and the bail (3 million euro) set to ensure that he would attend his trial. On the matter of whether the sum set for bail was proportionate to the applicant's personal circumstances and the seriousness of the offence (offences against the environment and, in particular, the marine environment), the Chamber considered that the amount of bail in the instant case, although high, was not disproportionate in view of the legal interest being protected, the seriousness of the offence and the disastrous consequences, both environmental and economic, stemming from the spillage of the ship's cargo.<sup>534</sup>

203. The Court considered that there is growing and legitimate concern both in Europe and internationally about offences against the environment. It noted in this regard the States' powers and obligations to prevent marine pollution and bring those responsible to justice.<sup>535</sup> The Court made explicit reference to the law of the sea which justified the raised perseverance of the domestic courts to bring those responsible to justice.

204. The Grand Chamber<sup>536</sup> agreed with the Chamber on all points. It stressed that the amount of bail can take into account the seriousness of the damage caused and the professional environment of the accused, i.e the ability of insurances and his employer to provide for the bail. The Grand Chamber also took note of the tendency to use criminal law as means of enforcing the environmental obligations imposed by European and international law. Moreover, the Court considered that "these new realities have to be taken into account in interpreting the requirements of Article 5 paragraph 3". The Grand Chamber agreed that if there are very significant implications in terms of both criminal and civil liability, like in the present case for instance "marine pollution on a seldom-seen scale causing huge environmental damage", the authorities can adjust the bail accordingly. In support of this position the Court took into account the practice of the International Tribunal for the Law of the Sea (ITLOS) in fixing its deposits.<sup>537</sup> The Court found that there had been no violation of Article 5 paragraph 3 of the Convention.

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<sup>533</sup> *Mangouras v. Spain*, judgment of 8 January 2009.

<sup>534</sup> *Mangouras v. Spain*, § 44.

<sup>535</sup> *Mangouras v. Spain*, § 41.

<sup>536</sup> *Mangouras v. Spain* [GC], judgment of 28 September 2010, § 81.

<sup>537</sup> *Mangouras v. Spain* [GC], §§ 86-88.

205. The case is remarkable as the Court, taking into account developing international environmental regulations, revised its existing case law, i.e. it found that a bail should not always be determined on the individual capacity of the accused to provide for it. The case, once again, underlines the direct impact of the development of international environmental standards and legal norms on the protection of human rights as afforded by the Court.

## Chapter VII

### Principles from the Court's case law: Territorial scope of the Convention's application



## Article 1

### Obligation to respect human rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

**(a) In general, the Convention applies to a State’s own territory. The notion of “jurisdiction” for the purpose of Article 1 of the Convention must be considered to reflect the term’s meaning in public international law.<sup>538</sup> Hence, the jurisdictional competence under Article 1 is territorial. Jurisdiction is presumed to be exercised normally throughout the States’ territory.<sup>539</sup>**

206. However, the presumption of the exercise of jurisdiction within one’s territory is not irrevocable. When a Contracting Party is not capable of exercising authority on the whole of its territory by a constraining *de facto* situation, such a situation reduces the scope of jurisdiction in that the undertaking given by the State under Article 1 must be considered by the Court only in the light of the Contracting State’s positive obligations towards persons within its territory.<sup>540</sup>

**(b) The concept of “jurisdiction” in Article 1 of the Convention is not necessarily restricted to the national territory of the High Contracting Parties. In exceptional circumstances, the acts of Contracting Parties performed or producing effects outside their territories can constitute an exercise of jurisdiction within the meaning of Article 1.<sup>541</sup>**

207. A key case with regard to the notion of the jurisdiction is *Loizidou v. Turkey*, in which the Court stated that “jurisdiction” under Article 1 of the Convention is not restricted to the national territory of the Contracting States. Accordingly, the responsibility of Contracting States can be involved by acts and omissions of their authorities which produce effects outside their own territory.<sup>542</sup>

208. There is extensive jurisprudence by the Court with respect to the exception to the principle of territoriality, the well-established case law is reiterated by the Court in the *M.N. and others v. Belgium* case.<sup>543</sup> It recognized that an exception to the principle that jurisdiction under Article 1 is limited to a State Party’s own territory occurs where that State exerts effective control over an area outside its national territory. The obligation to secure the rights and freedoms set out in the Convention

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<sup>538</sup> *Gentilhomme, Schaff-Benhadj and Zerouki v. France*, judgment of 14 May 2002 (French only), § 20; *Banković and Others v. Belgium and 16 Other Contracting States* [GC], decision of admissibility of 12 December 2001, §§ 59-61; *Assanidzé v. Georgia* [GC], judgment of 8 April 2004, § 137.

<sup>539</sup> *Al-Skeini and Others v. The United Kingdom* [GC], judgment of 7 July 2011; *Banković and Others v. Belgium and 16 Other Contracting States* [GC], decision of 12 December 2001, § 61.

<sup>540</sup> *Ilaşcu and Others v. Moldova and Russia* [GC], §§ 313, 333.

<sup>541</sup> The Court found that to be the case, for instance, when a Contracting Party exercises effective overall control over a foreign territory, or authority and control over an individual outside its own territory. See, *inter alia*, *Al-Skeini and Others v. the United Kingdom* [GC], § 131 and following; *Issa and Others v. Turkey*, judgment of 16 November 2004, §§ 68 and 71; *Isaak v. Turkey*, decision of admissibility of 28 September 2006; *Ilaşcu and Others v. Moldova and Russia* [GC], §§ 314 and 318. It may also be noted that, although this is not a form of extraterritorial jurisdiction, that in a number of cases concerning extradition or expulsion, the Court found that a Contracting Party may be responsible for acts or omissions on its own territory which have an effect in breach of the Convention outside its territory, if such consequences are foreseeable.

<sup>542</sup> *Loizidou v. Turkey (merits)* [GC], judgment of 18 December 1996, § 52. The position was reiterated in a number of other cases: e.g. *Cyprus v. Turkey (merits)* [GC], judgment of 10 May 2001, §§ 76, 77, 81. *Al-Skeini and Others v. The United Kingdom* [GC], § 131, *Issa and Others v. Turkey*, judgment of 16 November 2004, § 68, *Ilaşcu and Others v. Moldova and Russia* [GC], § 314.

<sup>543</sup> *M.N. and others v. Belgium* (Decision) (5 March 2020), ECHR Application No. 3599/18, § 101

in such an area derives from the fact of such control, whether it be exercised directly, through the Contracting State's own armed forces, or through a subordinate local administration.<sup>544</sup> Thus, the Court concluded that if a State was exercising its jurisdiction extraterritorially when, in an area outside its national territory, it exercised public powers such as authority and responsibility in respect of the maintenance of security.<sup>545</sup> Additionally, the Court repeated that the use of force by a State's agents operating outside its territory may, in certain circumstances, bring persons who thereby find themselves under the control of the State's authorities into the State's Article 1 jurisdiction,<sup>546</sup> and reiterated that a State Party's jurisdiction may arise from the actions or omissions of its diplomatic or consular officials when, in their official capacity, they exercise abroad their authority in respect of that State's nationals or their property.<sup>547</sup>

**(c) The Court has not decided on cases relating to environmental protection which raise extra-territorial and transboundary issues. The Court has however produced, in different contexts, ample case law elaborating the principles of the extraterritorial and transboundary application of the Convention, which could be potentially relevant for environmental issues. However, as they have been developed under very different factual circumstances, it will be up to the Court to determine if and, where appropriate, how they can be applied to cases concerning the environment.**

209. The Court came close to considering the extraterritorial application in environmental cases with the nuclear test cases against the United Kingdom, e.g. *L.C.B v. The United Kingdom*<sup>548</sup> and *McGinley and Egan v. The United Kingdom*.<sup>549</sup> In those cases the Court had to consider the health impact of British nuclear testing upon service members and their children on the Christmas Islands in the Pacific and which were conducted partially after the transfer of sovereignty over those islands to Australia in 1957. In both cases, the application of the Convention outside the territory was not discussed. The applications were considered inadmissible for other reasons.

210. In addition, it may be recalled that the Court in its case law has made reference to international environmental law standards and principles, which by their very nature may have transboundary characteristics.<sup>550</sup>

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<sup>544</sup> *Ibid.*, § 103

<sup>545</sup> *Ibid.*, § 104

<sup>546</sup> *Ibid.*, § 105

<sup>547</sup> *Ibid.*, § 106

<sup>548</sup> *L.C.B v. the United Kingdom*, judgment of 9 June 1998.

<sup>549</sup> *McGinley and Egan v. the United Kingdom*, judgment of 9 June 1998.

<sup>550</sup> For examples see Appendix III of this manual.

## Section B – Introduction - Principles derived from the European Social Charter and the Revised European Social Charter

211. The Charter<sup>551</sup> was adopted in 1961. It sets out social and economic rights and freedoms and establishes a supervisory mechanism guaranteeing their respect by the States Parties. Following its revision in 1996, the revised European Social Charter<sup>552</sup> came into force in 1999, and it is gradually replacing the initial treaty. At present, the two treaties coexist and are interconnected. Forty-three member States have either ratified the Social Charter or its revised version.<sup>553</sup> Upon ratification States Parties indicate, in accordance with Article 20 of the 1961 Charter or Article A of the Revised Charter, which provisions they intend to accept. The Committee decides on the conformity of national law and practice with the Charter. Its fifteen independent members are elected by the Council of Europe Committee of Ministers for a period of six years, renewable once. The Committee delivers its rulings in the framework of two procedures: a reporting procedure and a collective complaints procedure.

212. Based on yearly reports submitted by the States Parties on a selection of the accepted provisions and their implementation in law and practice, the Committee determines whether or not the national situations are in conformity with the Charter.<sup>554</sup> This system is currently evolving from a general and rather formal reporting by States on each Charter provision (that they have respectively accepted) to a targeted and strategic choice of issues that States are called upon to report, and that the Committee will examine.<sup>555</sup> In 1991 the Protocol Amending the European Social Charter (Turin Protocol),<sup>556</sup> was adopted. This protocol is intended to, *inter alia*, increase the “participation of social partners and non-governmental organisations”<sup>557</sup> in the state reporting procedure. However, in order to enter into force, the treaty needs the ratification of all Parties to the 1961 Charter. It currently

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<sup>551</sup> European Social Charter (ETS No. 35), adopted on 18 October 1961 and entered into force on 26 February 1965.

<sup>552</sup> European Social Charter (revised) (ETS No.163), adopted on 3 May 1996 and entered into force on 1 July 1999.

<sup>553</sup> States Parties to the 1961 Charter as of November 2020: Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, North Macedonia, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Turkey and the United Kingdom.

States Parties to the 1996 Revised Charter as of November 2020: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Republic of Moldova, Montenegro, Netherlands, North Macedonia, Norway, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Sweden, Turkey and Ukraine.

Liechtenstein and Switzerland have signed but not yet ratified the 1961 Charter. Monaco and San Marino have signed but not yet ratified the 1996 Revised Charter.

<sup>554</sup> Article 24 of the Charter as amended by the *Protocol Amending the European Social Charter* (1991) (ETS No. 142), Art. 2.

<sup>555</sup> Such targeted choice of issues are, for example, seen in: European Committee of Social Rights, ‘Questions on Group 2 provisions (Conclusions 2021) Health, social security and social protection’ (2020), Art. 11(3)-(e), p. 8 <<https://rm.coe.int/questions-to-states-parties-of-the-resc-conclusions-2021/16809f05c1>>.

<sup>556</sup> Protocol Amending the European Social Charter (1991), ETS No. 142.

<sup>557</sup> Council of Europe, ‘Details of Treaty No.142’ <<https://www.coe.int/en/web/conventions/full-list-/conventions/treaty/142>> accessed at 22 October 2020.

only has 23 ratifications,<sup>558</sup> and is therefore not formally in force. Nonetheless, “all key amendments [of this protocol] are reflected in practice or in force via the 1996 Revised Charter.”<sup>559</sup>

213. The Additional Protocol to the European Social Charter Providing for a System of Collective Complaints<sup>560</sup> only required five ratifications to enter into force; this happened in 1998. Under this protocol, which is currently ratified by 15 States,<sup>561</sup> certain national and European trade unions and employers’ organisations and certain international NGOs are entitled to lodge complaints of violations of the Charter with the Committee.<sup>562</sup> In addition, national NGOs may lodge complaints if the State concerned makes a declaration to this effect.<sup>563</sup> At present, 184 complaints have been processed by the Committee, and 104 thereof have been decided on their merits.<sup>564</sup> Once the Committee has reached a decision on a collective complaint, it then systematically examines the issues raised by the complaint in all the States Parties to the Charter when it next considers the reports on the relevant provision.<sup>565</sup>

214. The Committee, which is a quasi-judicial body,<sup>566</sup> has over the years developed a “case law”<sup>567</sup> which consists of all the sources in which the Committee sets out its interpretation of the Charter provisions.<sup>568</sup> These include conclusions arising from the reporting procedure, statements of interpretation contained in the volumes of conclusions and the decisions on collective complaints.

215. The deterioration of the environment is considered as having an impact on the enjoyment of many social rights.<sup>569</sup> Neglect of environmental issues by States

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<sup>558</sup> States Parties to the Protocol Amending the European Social Charter (1991) as of November 2020: Austria, Belgium, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Malta, Netherlands, North Macedonia, Norway, Poland, Portugal, Republic of Moldova, Slovak Republic, Spain, Sweden and Turkey.

States Parties that have signed the Protocol but not ratified as of November 2020: Luxembourg, Slovenia, and the United Kingdom

<sup>559</sup> Ufran Khaliq, *International Human Rights Documents* (2018, Cambridge University Press), p. 690.

<sup>560</sup> Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (1995), ETS No. 158.

<sup>561</sup> As of November 2020 Belgium, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, Netherlands, Norway, Portugal and Spain have ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (1995).

Austria, Denmark, Hungary, Slovak Republic and Slovenia have signed but not yet ratified the Protocol as of November 2020.

<sup>562</sup> Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (1995), ETS No. 158, Art. 1

<sup>563</sup> *Ibid.*, Art. 2. At present, only Finland has made a declaration enabling national NGOs to submit collective complaints.

<sup>564</sup> As of November 2020.

<sup>565</sup> Régis Brillat, ‘The Supervisory Machinery of the European Social Charter: Recent Developments and their Impact,’ in *Social Rights in Europe* (Gráinne de Búrca & Bruno de Witte eds., Oxford University Press, 2005), pp. 36-37.

<sup>566</sup> *Ibid.*, pp. 32-37

<sup>567</sup> “Case-law” is the term used by the Committee itself, see: Régis Brillat, ‘The Supervisory Machinery of the European Social Charter: Recent Developments and their Impact,’ in *Social Rights in Europe* (Gráinne de Búrca & Bruno de Witte eds., Oxford University Press, 2005), pp. 32-37

<sup>568</sup> Since 2008, the interpretation by the Committee of the different provisions of the revised Charter is presented in a “Digest of the case-law”. Although the content is not binding on the Committee, the digest is intended to give an indication to national authorities of how they are expected to implement the Charter provisions. The most recent version is updated and available here: <<https://www.coe.int/en/web/european-social-charter/-/new-version-of-the-digest-of-the-case-law-of-the-european-committee-of-social-rights>>.

<sup>569</sup> Giuseppe Palmisano, former President of the European Committee of Social Rights, Speech at the High-level Conference “Environmental Protection and Human Rights” (Strasbourg, 27 February 2020), p. 1.

therefore amounts to not complying with their obligation to fulfil such rights and, not taking measures to avoid or reduce deterioration of the environment may amount, in itself, to infringing specific social rights.<sup>570</sup> Such rights include, *inter alia*, the right to just conditions of work (Article 2), the right to safe and healthy working conditions (Article 3), the right to protection of health (Article 11), and the right to housing (Article 31). Article 11 of the Charter recognises that “[e]veryone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable”.<sup>571</sup> On this basis, the Committee has interpreted the right to health as including access to a “healthy environment” and therefore requires States, when submitting their periodic reports, to identify measures taken with a view to ensuring such an environment for individuals (and not just workers). As part of this, the Committee, *inter alia*, endeavours to obtain factual data on levels of pollution and the implementation of national action plans.<sup>572</sup>

216. The Committee has established that the protection and creation of a healthy environment is at the heart of the Charter’s system of guarantees and may be relevant to the application of a variety of Charter provisions more specifically.<sup>573</sup>

217. More information regarding the Charter and the Committee and notably the full text of the 1961 Charter and the 1996 Revised Charter as well as the practical conditions to lodge a collective complaint with the Committee are to be found on the following website: [www.coe.int/T/DGHL/Monitoring/SocialCharter/](http://www.coe.int/T/DGHL/Monitoring/SocialCharter/). There is also a database providing the full text of all the conclusions, statements of interpretation and decisions of the Committee at: <http://hudoc.esc.coe.int/esc2008/query.asp?language=en> .

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<sup>570</sup> *Ibid.*

<sup>571</sup> See European Social Charter (26 February 1961), ETS No. 35, and European Social Charter (Revised) (3 May 1996), ETS No. 163, Part I, para. 11, corresponding Article 11: “With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed *inter alia*: (1) to remove as far as possible the causes of ill-health; [...]”

<sup>572</sup> European Committee of Social Rights, Conclusions 2013, 6 December 2013, 2013/def/FRA/11/3/EN.

<sup>573</sup> *ATTAC ry, Globaali sosiaalityö ry and Maan ystävät ry v. Finland* (Decision on Admissibility and on Immediate Measures) (22 January 2019), ECSR Complaint No. 163/2018, para. 12.

## Chapter I

### The environment the right to just conditions of work, and to safe and healthy working conditions



## Article 2

### The right to just conditions of work

#### Part I

[...]

2 All workers have the right to just conditions of work.<sup>574</sup>

#### Part II – 1961 Charter<sup>575</sup>

With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake:

[...]

4. to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed;

#### Part II – Revised Charter<sup>576</sup>

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

[...]

4. to eliminate risks inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;

<sup>574</sup> Text of Part I (2) of the 1996 Revised Charter are unchanged from the 1961 European Social Charter,

<sup>575</sup> *European Social Charter* (26 February 1961), ETS No. 35, Art. 2(4).

<sup>576</sup> *European Social Charter (Revised)* (3 May 1996), ETS No. 163, Art. 2(4).

## Article 3

### The right to safe and healthy working conditions

#### Part I

[...]

3 All workers have the right to safe and healthy working conditions.<sup>577</sup>

#### Part II – 1961 Charter<sup>578</sup>

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Contracting Parties undertake:

1. to issue safety and health regulations;
2. to provide for the enforcement of such regulations by measures of supervision;
3. to consult, as appropriate, employers' and workers' organisations on measures intended to improve industrial safety and health.

#### Part II – Revised Charter<sup>579</sup>

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations:

1. to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment;
2. to issue safety and health regulations;
3. to provide for the enforcement of such regulations by measures of supervision;
4. to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions;

<sup>577</sup> Text of Part I (3) of the 1996 Revised Charter are unchanged from the 1961 European Social Charter,

<sup>578</sup> *European Social Charter* (26 February 1961), ETS No. 35, Art. 3.

<sup>579</sup> *European Social Charter (Revised)* (3 May 1996), ETS No. 163, Art. 3.

**(a) The right to just conditions of work is protected under Article 2 paragraph 4 of the Charter. In addition, Article 3 guarantees workers the right to safe and healthy working conditions. Where pollution could result in an infringement of these rights, States must adopt, apply, and effectively monitor safety and health regulations, and provide additional benefits for workers engaged in dangerous or unhealthy occupations, such as mining.**

218. The *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*<sup>580</sup> case concerned a complaint made by an international NGO against Greece on the basis that, *inter alia*, the occupational health risk of excessive exposure of mineworkers to air pollution stemming from mining activities violated Article 3 (the right to safe and healthy working conditions) and Article 2 (the right to just conditions of work) of the 1961 Charter, as Greece did not effectively monitor and enforce the legislation on safety and security of persons and failed to grant benefits to workers engaged in mining, which is considered a dangerous and unhealthy occupation.<sup>581</sup>

219. The Committee elaborated that in areas such as the right to safety and health at work, States have a duty to provide precise and plausible explanations and information on developments in the number of occupational accidents and on measures taken to ensure the enforcement of regulations and hence to prevent accidents.<sup>582</sup> The Committee recalled that although Greece had safety and health legislation in place in line with Article 3(1) of the Charter, compliance with the Charter cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised.<sup>583</sup> Consequently, the Committee considered that the enforcement of health and safety regulations required by Article 3(2) of the Charter is therefore essential if the right embodied in Article 3 of the Charter is to be effective.<sup>584</sup> In the case at hand, the Committee considered that Greece had failed to honour its obligation to effectively monitor the enforcement of regulations on health and safety at work with respect to air pollution in line with Article 3(2) of the Charter, particularly as the Government recognised the lack of inspectors and was unable to supply precise data on the number of accidents in the mining sector.<sup>585</sup>

220. Additionally, the Committee considered that the mining industry is still one of the particularly dangerous industries in which workers' health and safety risks cannot be eliminated, and that Greek law still classifies mining as an arduous and hazardous occupation. Therefore, in addition to preventive and protective measure, Greece was required to provide for compensation in this sector but had failed to do so, violating Article 2, paragraph 4 of the Charter.<sup>586</sup>

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<sup>580</sup> *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits) (6 December 2006), ECSR Complaint No. 30/2005.

<sup>581</sup> *Ibid.*, para. 1.

<sup>582</sup> *Ibid.*, para. 231.

<sup>583</sup> *Ibid.*, para. 228.

<sup>584</sup> *Ibid.*

<sup>585</sup> *Ibid.*, para. 231.

<sup>586</sup> *Ibid.*, para. 235.

**(b) Under Article 3 paragraph 1 of the 1961 Charter and Article 3 paragraph 2 of the Revised Charter, States are obliged to pay particular attention to workers exposed to the dangers of asbestos and ionizing radiation. States must produce evidence that workers at risk are protected up to a level at least equivalent to that set by international reference standards.<sup>587</sup>**

221. As asbestos can give rise to environmental hazards and affect the health of workers, States have to align their national legislation with the framework of standards of protection as stated in Recommendation 1369(1998) of the Parliamentary Assembly of the Council of Europe on the dangers of asbestos for workers and the environment.<sup>588</sup> The international reference standards, which determine minimum exposure limit values to be implemented at national level, are ILO Asbestos Convention No. 162 (1986), the Rotterdam Convention (2004) and Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work (as amended).<sup>589</sup> Such measures include, amongst others, to:

- extend the protection and information measures concerning the harmful effects of asbestos to workers in all potentially hazardous occupations,<sup>590</sup>
- eliminate the use of technologies allowing the release of free asbestos fibres into the environment,<sup>591</sup> and
- provide proper medical supervision for workers by strengthening the role and resources of occupational medical services.<sup>592</sup>

222. National standards with regard to ionizing radiation must take account of the recommendations made in 2007 by the International Commission on Radiological Protection (ICRP, publication No. 103), relating in particular to maximum doses of exposure in the workplace but also to persons who, although not directly assigned to work in a radioactive environment, may be exposed to radiation occasionally.<sup>593</sup> Accordingly, States Parties must have implemented Directive 2013/59/Euratom of the Council of 5 December 2013, taking up the ICRP's recommendations.<sup>594</sup> Other Euratom Council directives, on maritime transport of radioactive waste, the nuclear

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<sup>587</sup> European Committee of Social Rights (ECSR), 'Digest of the Case Law of the European Committee of Social Rights' (December 2018), p. 77.

<sup>588</sup> Parliamentary Assembly, Recommendation 1369 (1998) Danger of asbestos for workers and the environment, <<https://pace.coe.int/en/files/16610/html>> accessed on 23 October 2020; ECSR, Conclusions 2013, Malta, Article 3(2), Doc. ID. 2013/def/MLT/3/2/EN, "Levels of prevention and protection".

<sup>589</sup> European Committee of Social Rights (ECSR), 'Digest of the Case Law of the European Committee of Social Rights' (December 2018), p. 77.

<sup>590</sup> Parliamentary Assembly, Recommendation 1369(1998) Danger of asbestos for workers and the environment, para. 8.5(a), <<https://pace.coe.int/en/files/16610/html>> accessed at 23 October 2020

<sup>591</sup> *Ibid.*, para. 8.5(b).

<sup>592</sup> *Ibid.*, para. 8.5(c).

<sup>593</sup> European Committee of Social Rights (ECSR), 'Digest of the Case Law of the European Committee of Social Rights' (December 2018), p. 77; ECSR, Conclusions 2009, Andorra, Article 3(2), Doc. ID. 2009/def/AND/3/2/EN, "Protection of workers against ionising radiation".

<sup>594</sup> European Committee of Social Rights (ECSR), 'Digest of the Case Law of the European Committee of Social Rights' (December 2018), p. 77; ECSR, Conclusions 2005, Cyprus, Article 3(2), Doc. ID. 2005/def/CYP/3/2/EN, "Regulations on health and safety at work".

safety of nuclear installations, supervision and control of shipments of radioactive waste and spent fuel and the nuclear safety of nuclear installations, also have to be implemented in national jurisdictions.<sup>595</sup>

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<sup>595</sup> European Committee of Social Rights (ECSR), 'Digest of the Case Law of the European Committee of Social Rights' (December 2018), p. 77; ECSR, Conclusions 2013, Bulgaria, Article 3(3), Doc. ID. 2013/def/BGR/3/2/EN, "Risks covered by the regulations".



## Chapter II

### The environment and the right to protection of health



## Article 11<sup>596</sup>

### The right to protection of health

#### Part I

[...]

11. Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.

#### Part II

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed inter alia:

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.<sup>597</sup>

<sup>596</sup> European Social Charter (Revised) (3 May 1996), ETS No. 163, Art. 11.

<sup>597</sup> Text of Part I and Part II of Art. 11 of the 1996 Revised Charter are unchanged from the 1961 European Social Charter, except for the addition of the words “as well as accidents” at the end of Part II, Art. 11, para. 3 of the Revised Charter.

(a) **Article 11 on the right to protection of health has been interpreted by the Committee as including the right to a healthy environment.<sup>598</sup> The Committee has noted the complementarity between the right to health under Article 11 of the Charter and Articles 2 and 3 of the European Convention on Human Rights<sup>599</sup> – given that health care is a prerequisite for human dignity – as well as Article 8 of the Convention.<sup>600</sup> As a consequence, the Committee has concluded on several State reports regarding the right to health that measures required under Article 11, paragraph 1, should be designed to remove the causes of ill health resulting from environmental threats such as pollution (principle of prevention).<sup>601</sup> Thus, not taking measures to avoid or reduce deterioration of the environment may amount to the infringement of specific social rights.<sup>602</sup>**

223. In the decision of *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*,<sup>603</sup> the Committee took the opportunity to reaffirm that the Charter is a living instrument, whose purpose is to protect rights not merely theoretically but also in fact.<sup>604</sup> The rights and freedoms set out in the Charter should therefore be interpreted in light of present-day conditions,<sup>605</sup> including the current environmental situation. Taking into account the growing link made between the protection of health and a healthy environment, by both States Parties to the Social Charter and other international bodies, the Committee interpreted Article 11 of the Charter (right to protection of health) as including the right to a healthy environment.<sup>606</sup> It went on to say that it was guided in its interpretation of this right by the principles established by the European Court of Human Rights, the Inter-American Court of Human Rights, the African Commission on Human and Peoples' Rights, the UN Committee on Economic, Social and Cultural Rights and the Court of Justice of the European Union.<sup>607</sup> The Committee also referred to studies by WHO and “independent researchers” on the harmful effects of lignite on human health.

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<sup>598</sup> *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits) (6 December 2006), ECSR Complaint No. 30/2005, paras. 195, 196

<sup>599</sup> 2005 Conclusions XVII-2, Volume 1, General Introduction, para. 5; *Marangopoulos v. Greece*, para. 202.

<sup>600</sup> *International Federation of Human Rights Leagues (FIDH) v. Greece* (Decision on the Merits) (23 January 2013) ECSR Complaint No. 72/2011, paras. 50, 51

<sup>601</sup> Conclusions 2001, Poland, Article 11, para. 1; Giuseppe Palmisano, former President of the European Committee of Social Rights, Speech at the High-level Conference “Environmental Protection and Human Rights” (Strasbourg, 27 February 2020), p. 1

<sup>602</sup> Mirja Trilsch, ‘European Committee of Social Rights: The right to a healthy environment’ (July 2009) *International Journal of Constitutional Law*, Vol. 7 p. 535; Giuseppe Palmisano, former President of the European Committee of Social Rights, Speech at the High-level Conference “Environmental Protection and Human Rights” (Strasbourg, 27 February 2020), p. 2.

<sup>603</sup> *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits) (6 December 2006), ECSR Complaint No. 30/2005

<sup>604</sup> The Committee adopted this dynamic interpretative approach in its very first collective complaint decision from 1999, *International Commission of Jurists v. Portugal* (Decision on the merits) (9 December 1999), para. 32. This decision echoes the approach and the language used by the European Court of Human Rights in its judgment *Tyler v. The United Kingdom* (Judgment) (25 April 1978), ECHR Application No. 5856/72, para. 31.

<sup>605</sup> *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits) (6 December 2006), ECSR Complaint No. 30/2005, para.194.

<sup>606</sup> *Ibid.*, para. 195.

<sup>607</sup> *Ibid.*, para. 196.

224. As the *MFHR v. Greece* complaint concerned air pollution which partially preceded 1 August 1998, when the Protocol on the collective complaint procedure had not yet entered into force for Greece, the Committee's *ratione temporis* had to be considered. The Committee considered that under these circumstances, the main question raised by the complaint was how to make the distinction between performed and continued wrongful acts, bearing in mind the State's particular duty to take all reasonable measures to ensure that a given event does not occur.<sup>608</sup> In this regard, the Committee particularly noted Article 14 of the Articles on the Responsibility of States for Internationally Wrongful Acts (2001) prepared by the International Law Commission.<sup>609</sup> This article provides that when a State is under an international obligation to take preventive action against a certain event, but fails to do so, the State remains in breach over the entire period during which the event continues. Consequently, the Committee considered it had the competent *ratione temporis* to consider the complaint as the issues raised therein may constitute a breach of the obligation to prevent damage arising from air pollution for as long as the pollution continues, and that the breach might even be compounded, progressively, if sufficient measures were not taken to put an end to it.<sup>610</sup>

225. In *International Federation of Human Rights Leagues (FIDH) v. Greece*,<sup>611</sup> the complainants alleged that pollution of the water of the River Asopos was having harmful effects on local residents. The Committee noted that the right to a healthy environment was included in the Social Charter, as acknowledged in *MFHR v. Greece*, and that the right to protection of health under Article 11 of the Charter complemented Articles 2 and 3 of the European Convention on Human Rights – given that health care was a prerequisite for human dignity – as well as Article 8 of the Convention.<sup>612</sup> The Committee emphasised a government's duty to take preventive measures and held that lack of scientific certainty should not be used as a reason for postponing measures.<sup>613</sup>

**(b) The obligation of States to take measures to create a healthy environment is at the heart of the Charter's system of guarantees and may be relevant to the application of a variety of Charter provisions more specifically.**<sup>614</sup>

226. The Committee has recognised the central position of environmental concerns in the Charter's system of guarantees which may be relevant to the application of a variety of Charter provisions more specifically.<sup>615</sup> In the case *ATTAC ry, Globaali sosiaalityö ry and Maan ystävät ry v. Finland* the Committee recognised that an international trade agreement may potentially have far-reaching consequences for the implementation of the social rights guaranteed by the Charter. However, the legal assessment of whether these consequences entail an infringement of obligations flowing from substantive Charter provisions can only be appropriately made by the Committee in the context of the national law and practice that may result from the operation and implementation of an international trade

<sup>608</sup> *Ibid.*, para. 193.

<sup>609</sup> See "Glossary". Appendix I.

<sup>610</sup> *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits) (6 December 2006), ECSR Complaint No. 30/2005, para. 193.

<sup>611</sup> *International Federation of Human Rights Leagues (FIDH) v. Greece* (Decision on the Merits) (23 January 2013) ESCR Complaint No. 72/2011.

<sup>612</sup> *Ibid.*, paras. 50, 51.

<sup>613</sup> *Ibid.*, para. 145.

<sup>614</sup> *ATTAC ry, Globaali sosiaalityö ry and Maan ystävät ry v. Finland* (Decision on Admissibility and on Immediate Measures) (22 January 2019), ECSR Complaint No. 163/2018, para. 12.

<sup>615</sup> *Ibid.*

agreement,<sup>616</sup> and can thus not be concluded prior to such an agreement has actually entered into force.<sup>617</sup>

**(c) States are under an obligation to apply the precautionary principle when there are reasonable grounds to believe that there is a risk of serious damage to human health.**

227. In *FIDH v. Greece*,<sup>618</sup> the Committee considered that when there are threats of serious damage to human health, lack of full scientific certainty should not be used as a reason for postponing appropriate measures.<sup>619</sup> When a preliminary scientific evaluation indicates that there are reasonable grounds for concern regarding potentially dangerous effects on human health, the State must take precautionary measures consistent with the high level of protection provided for in Article 11 aimed at preventing those potentially dangerous effects.<sup>620</sup> By requiring the precautionary principle, the Committee has applied, in the field of social rights, one of the principles of environmental protection.<sup>621</sup>

228. The Committee considered that the Greek State had failed to take appropriate measures to remove as far as possible the causes of ill-health and to prevent as far as possible diseases.<sup>622</sup> This was concluded on the basis of: the delay with which the Greek authorities acknowledged the seriousness of the pollution of the Asopos River and its negative effects on the health of the population;<sup>623</sup> the delay in initiatives to remedy the problems at stake which exacerbated the causes of ill-health and hampered the prevention of diseases;<sup>624</sup> the deficiencies in the implementation of existing regulations and programmes regarding the pollution of the Asopos River and its negative effects on health; the difficulties encountered in the co-ordination of the relevant administrative activities by competent bodies at national, regional and local level; the shortcomings regarding spatial planning; the poor management of water resources and waste; the problems in the control of industrial emissions and the lack of appropriate initiatives with respect to the presence of Cr-6 in the water.<sup>625</sup>

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<sup>616</sup> *ATTAC ry v. Finland*, para. 16. On this subject, see Petros Stangos, “La protection des droits sociaux dans le cadre du libre-échange régulé par l’Union européenne”, *Concerting civilisations. Mélanges en l’honneur d’Alain Supiot*, Seuil, 2020, pp. 417-428 (French only).

<sup>617</sup> *ATTAC ry, Globaali sosiaalityö ry and Maan ystävät ry v. Finland* (Decision on Admissibility and on Immediate Measures) (22 January 2019), ECSR Complaint No. 163/2018, para. 16

<sup>618</sup> *International Federation of Human Rights Leagues (FIDH) v. Greece* (Decision on the Merits) (23 January 2013) ECSR Complaint No. 72/2011.

<sup>619</sup> *Ibid.*, para. 145.

<sup>620</sup> Giuseppe Palmisano, former President of the European Committee of Social Rights, Speech at the High-level Conference “Environmental Protection and Human Rights” (Strasbourg, 27 February 2020), p. 3; *International Federation of Human Rights Leagues (FIDH) v. Greece* (Decision on the Merits) (23 January 2013) ECSR Complaint No. 72/2011, paras. 150 – 152.

<sup>621</sup> Giuseppe Palmisano, former President of the European Committee of Social Rights, Speech at the High-level Conference “Environmental Protection and Human Rights” (Strasbourg, 27 February 2020), p. 3.

<sup>622</sup> *International Federation of Human Rights Leagues (FIDH) v. Greece* (Decision on the Merits) (23 January 2013) ECSR Complaint No. 72/2011, para. 153.

<sup>623</sup> *Ibid.*, para. 130.

<sup>624</sup> *Ibid.*

<sup>625</sup> *Ibid.*, para. 153.

**(d) States must make it a public health priority to publicly disseminate information about environmental harm through awareness-raising campaigns and education.**

229. In *FIDH v. Greece* the Committee considered that the competent Greek authorities should have required the design and implementation of a systematic information and awareness-raising programme for the population concerned, with the active and regular contribution of all the administrative institutions concerned (at national, regional and local level).<sup>626</sup> The Committee stated that informing the public, particularly through awareness-raising campaigns, must be a public health priority. The precise extent of these activities may, however, vary according to the nature of the public health problems in the countries concerned.<sup>627</sup> Additionally, States must demonstrate through concrete measures that they implement a public health education policy in favour of population groups affected by specific problems.<sup>628</sup>

**(e) States are responsible for activities which are harmful to the environment whether they are carried out by the public authorities themselves or by a private company.**

230. In the admissibility phase of *MFHR v. Greece*, the Greek Government claimed that since the mining operations causing environmental harm were undertaken by a private entity, the State could not be held accountable for its actions.<sup>629</sup> The Committee, in the decision on the merits, however, pointed out that, regardless of the company's legal status, Greece was required to ensure compliance with its undertakings under the Charter,<sup>630</sup> and could therefore not, in such manner, circumvent its responsibilities.

231. Similarly, in the *FIDH v. Greece* case, the Committee, as indeed the claimant organisation argued, although the start of the pollution of the waters of the Asopos River in the late 1960s, and the extent to which it had subsequently increased, was the result of the activities of the private industries that had established themselves on the riverside, the Committee noted that the Greek authorities had not been able to establish that the pollution had been caused by the activities of the private companies that had established themselves on the river<sup>631</sup>, it is the Government that is held responsible for the adverse effects of these activities on the health of the inhabitants of the region, because it did not ensure that the conditions for compliance with the environmental rules that it had been able to impose on the companies concerned were fully applied.<sup>632</sup>

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<sup>626</sup> *International Federation of Human Rights Leagues (FIDH) v. Greece* (Decision on the Merits) (23 January 2013) ESCR Complaint No. 72/2011, para. 157.

<sup>627</sup> *Ibid.*, 158.

<sup>628</sup> *Ibid.*

<sup>629</sup> *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on Admissibility) (10 October 2005), ECSR Complaint No. 30/2005, para. 4.

<sup>630</sup> *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits) (6 December 2006), ECSR Complaint No. 30/2005, para. 192.

<sup>631</sup> *International Federation of Human Rights Leagues (FIDH) v. Greece* (Decision on the Merits) (23 January 2013) ESCR Complaint No. 72/2011, para. 54 and onwards.

<sup>632</sup> *International Federation of Human Rights Leagues (FIDH) v. Greece* (Decision on the Merits) (23 January 2013) ESCR Complaint No. 72/2011, para. 142.

**(f) Overcoming pollution is an objective that can only be achieved gradually. Nevertheless, States must strive to attain this objective within a reasonable time, by showing measurable progress and making best possible use of the resources at their disposal.<sup>633</sup> The measures taken by States with a view to overcoming pollution are assessed with reference in light of States' national legislation efforts and agreements entered into with regard to the European Union and the United Nations,<sup>634</sup> and the actual application thereof in practice.**

232. While acknowledging in *MFHR v. Greece* that the use of lignite and, by extension, its mining serve legitimate objectives under the Charter (such as energy independence, access to electricity at a reasonable cost, and economic growth), the Committee, nonetheless, identified several areas in which the State's efforts fell short of Greece's national and international undertakings to overcome pollution, which, in turn, had resulted in a failure to protect the health of the population. The Committee assessed Greece's overall efforts to overcome pollution in the light of its international undertakings for emission control and found that the National Allocation Plan for greenhouse gas emissions drawn up by Greece in accordance with EU law<sup>635</sup> was much less demanding than the binding targets for Greece under the Kyoto Protocol.<sup>636</sup> Based on these and other facts, the Committee found no real evidence of Greece's commitment to improve the situation with regards to air pollution within a reasonable time.<sup>637</sup> In this decision, the Committee set a precedent for examining a State party's compliance with its international environmental obligations. The same line of reasoning can now be found in the Committee's conclusions on State reports regarding the protection of health.<sup>638</sup>

**(g) In order to combat air pollution, in light of the right to a healthy environment, States are required to implement an appropriate strategy which should include the following measures.<sup>639</sup>**

- **develop and regularly update sufficiently comprehensive environmental legislation and regulations,<sup>640</sup>**
- **take specific steps, such as modifying equipment, introducing threshold values for emissions and**

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<sup>633</sup> *Ibid.*, para. 204

<sup>634</sup> Conclusions XV-2, Italy, Article 11(3).

<sup>635</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community.

<sup>636</sup> *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits) (6 December 2006), ECSR Complaint No. 30/2005, paras. 204, 206

<sup>637</sup> *Ibid.*, paras. 203, 205

<sup>638</sup> Conclusion XV-1, Article 11 paragraph 1, for all States. See also Régis Brillat, 'The Supervisory Machinery of the European Social Charter: Recent Developments and their Impact' in *Social Rights in Europe* (Gráinne de Búrca & Bruno de Witte eds., Oxford Univ. Press, 2005), p. 39. Among the member states who have also obligations under the Kyoto Protocol Italy has been recently analysed (Conclusions of the 15<sup>th</sup> cycle: XV 2, Italy, Article 11, paragraph 3).

<sup>639</sup> *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits) (6 December 2006), ECSR Complaint No. 30/2005, para. 203

<sup>640</sup> *Ibid.*, Conclusions 2007, Albania, Article 11(3).

measuring air quality, to prevent air pollution at local level<sup>641</sup> and to help to reduce it on a global scale;<sup>642</sup>

- ensure that environmental standards and rules are properly applied, through appropriate supervisory machinery;<sup>643</sup>
- inform and educate the public, including pupils and students at school, about both general and local environmental problems;<sup>644</sup>
- assess health risks through epidemiological monitoring of the groups concerned.<sup>645</sup>

233. Although the Committee, in *MFHR v. Greece*, found that the Greek Constitution included protection of the environment, that Greece adopted adequate environmental protection legislation and regulations, implemented the process required by the Aarhus Convention and set limit values for exposure to pollution from lignite mining the relevant measures were not applied and enforced in an effective manner, only a limited number of environmental inspectorates were appointed,<sup>646</sup> limited information and education was provided by the State on health and the environment,<sup>647</sup> and monitoring of health risks was not sufficiently organised.<sup>648</sup> Accordingly, the Committee concluded that, notwithstanding the margin of discretion granted to national authorities in such matters, Greece had not managed to strike a reasonable balance between the interests of persons living in the lignite mining areas and the general interest, and thus violated its obligations under Article 11, paragraphs 1, 2 and 3 of the Charter.<sup>649</sup>

234. The Committee also addresses the domestic measures taken by States to contribute to the reduction of global air pollution in the light of their obligations under universal agreements on climate change.<sup>650</sup>

235. With regard to public awareness and education on environmental issues, with a view to developing a sense of individual responsibility for health, the Committee calls upon States to integrate, *inter alia*, environmental protection into school curricula. The Committee also calls upon States to ensure that environmental protection should be part of public awareness initiatives, with the aim of developing a sense of individual responsibility for health.<sup>651</sup>

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<sup>641</sup> Conclusions 2005, Volume 2, Republic of Moldova, Article 11(3).

<sup>642</sup> *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits) (6 December 2006), ECSR Complaint No. 30/2005, para. 203

<sup>643</sup> *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits) (6 December 2006), ECSR Complaint No. 30/2005, paras. 203, 209, 210, 215.

<sup>644</sup> *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits) (6 December 2006), ECSR Complaint No. 30/2005, para. 203; Conclusions 2005, Volume 2, Republic of Moldova, Article 11(2).

<sup>645</sup> *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits) (6 December 2006), ECSR Complaint No. 30/2005, para. 203

<sup>646</sup> *Marangopoulos Foundation for Human Rights (MFHR) v. Greece* (Decision on the Merits) (6 December 2006), ECSR Complaint No. 30/2005, para. 208.

<sup>647</sup> *Ibid.*, para. 219.

<sup>648</sup> *Ibid.*, para. 220.

<sup>649</sup> *Ibid.*, para. 221.

<sup>650</sup> Conclusions 2007, Albania, Article 11(3); Conclusions XV-2, Italy, Article 11(3)

<sup>651</sup> Conclusions 2007, Luxembourg, Article 11(2).

**(h) States must take preventive and protective measures to ensure access to safe drinking water.**

236. The Committee considers that having access to safe drinking water is central to living a life in dignity and upholding human rights. It therefore requires States to take measures to improve access of rural populations to safe water.<sup>652</sup>

**(i) States must take measures to guarantee food safety in order to eliminate the threat posed by food-borne diseases and the outbreaks of such diseases.**

237. Food safety is threatened by numerous contaminants, which can originate from environmental pollution.<sup>653</sup> Consequently, States Parties must establish national food hygiene standards with legal force that take account of relevant scientific data, establish and maintain machinery for monitoring compliance with these standards throughout the food chain, develop, implement and regularly update systematic prevention measures, particularly through labelling, and monitor the occurrence of food-borne diseases.<sup>654</sup>

**(j) States must adopt regulations and legal rules on the prevention and reduction of noise pollution.<sup>655</sup>**

238. States have to establish general noise regulations and adopt legal rules governing noise pollution which make noise prevention one element of regional/land-use planning; impose easy to monitor restrictions on temporary noisy activities; provide for noise reduction plans for the worst situations; surveillance plans for the main sources of ambient noise and; noise maps.<sup>656</sup>

239. Measures taken to prevent and combat noise pollution in practice additionally include:

- the prevention of locally generated noise linked to commercial activities: garages, restaurants, laundries and so on;
- measures to reduce noise caused by urban transport and airports;
- epidemiological studies of health problems linked to noise.<sup>657</sup>

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<sup>652</sup> Conclusions 2013, Georgia, Article 11(3), Doc. ID. 2013/def/GEO/11/3/EN, “Healthy environment”.

<sup>653</sup> Agneta Oskarsson, ‘Environmental contaminants and food safety’ (2012) *Acta Veterinaria Scandinavica* 54(Suppl 1):S5.

<sup>654</sup> European Committee of Social Rights (ECSR), ‘Digest of the Case Law of the European Committee of Social Rights’ (December 2018), p. 135; Conclusions XV-2 (2001), Cyprus, Article 11(3), Doc. ID. XV-2/def/CYP/11/3/EN, “Food safety”.

<sup>655</sup> Conclusions XVII-2 (2005), Portugal, Article 11(3), Doc. ID. XVII-2/def/PRT/11/3/EN.

<sup>656</sup> *Ibid.*

<sup>657</sup> *Ibid.*

**(k) States are required to protect their population against the consequences of nuclear accidents taking place abroad and having an effect within their territory.<sup>658</sup> Additionally, where the State receives (part of) its energy source from nuclear power plants, it is under the obligation to prevent related hazards for the communities living in the potential risk areas.**

240. The Committee has held that the dose limits of radiation on the population should be established in accordance with the 1990 Recommendation of the International Commission for Radiation Protection. For EU member States there is a need to transpose into domestic law the Community Directive 96/29/Euratom on the protection of the health of workers and the general public against the dangers arising from ionising radiation. The assessment of conformity with Article 11(3) will vary from one country to another depending on the extent to which energy production is based on nuclear power.<sup>659</sup>

**(l) Under Article 11 States must apply a policy which bans the use, production and sale of asbestos and products containing it.<sup>660</sup>**

241. The Committee has held that States under Article 11(3) must also adopt legislation requiring the owners of residential property and public buildings to search for any asbestos and where appropriate remove it, and imposing obligations on companies concerning waste disposals.<sup>661</sup>

**(m) States are under an obligation to ensure equal access to the protection of health and adopt protective measures to ensure that environmental pollution does not stem from or contribute to discrimination, in line with Article E of the Revised Charter and the Preamble of the 1961 Charter. The Committee recalls that Article 11 of the Charter imposes a range of positive obligations to ensure an effective exercise of the right to health, and the Committee assesses compliance with this provision paying particular attention to the situation of disadvantaged and vulnerable groups.<sup>662</sup>**

242. In *European Roma Rights Centre (ERRC) v. Bulgaria*,<sup>663</sup> the Committee acknowledged Bulgaria's inclusive health insurance system<sup>664</sup> and the efforts made to ensure that some of the most disadvantaged sections of the community have access to health care.<sup>665</sup> Nevertheless, the Committee considered that there was sufficient evidence showing that Roma communities do not live in healthy environments, and partially attributed this to the State's failure to adopt adequate

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<sup>658</sup> Conclusion XV-2, Denmark, Article 11 paragraph 3.

<sup>659</sup> Conclusions XV-2, France, Article 11 paragraph 3

<sup>660</sup> Conclusions XVII-2, Portugal, Article 11 paragraph 3.

<sup>661</sup> Conclusions XVII-2, Latvia, Article 11 paragraph 3.

<sup>662</sup> *European Roma Rights Centre (ERRC) v. Bulgaria* (Decision on the Merits) (3 December 2008), ECSR Complaint No. 46/2007, para. 45.

<sup>663</sup> *European Roma Rights Centre (ERRC) v. Bulgaria* (Decision on the Merits) (3 December 2008), ECSR Complaint No. 46/2007.

<sup>664</sup> *Ibid.*, para. 41.

<sup>665</sup> *Ibid.*, para. 42.

prevention policies.<sup>666</sup> This included the lack of protective measures to guarantee clean water in Romani neighbourhoods and insufficient measures to ensure public health standards in housing in such neighbourhoods.<sup>667</sup> The Committee also considered that there had been a lack of systematic, long-term government measures to promote health awareness.<sup>668</sup> It therefore concluded that Bulgaria had failed to meet its positive obligations to ensure that Roma enjoy adequate access to health care, in particular by failing to take reasonable steps to address the specific problems faced by Roma communities stemming from their often unhealthy living conditions and difficult access to health services.<sup>669</sup> This was in breach of Article 11(1), (2) and (3) of the Revised Charter in conjunction with Article E (Non-discrimination).<sup>670</sup>

243. In *European Roma and Travellers Forum (ERTF) v. Czech Republic*,<sup>671</sup> the Committee reached similar conclusions. The Committee considered that there was sufficient evidence showing that Roma communities in the Czech Republic in many cases do not live in healthy environments.<sup>672</sup> Attributing this in part, similar to the complaint against Bulgaria, to the failure to adopt relevant policies by the State, *inter alia*, due to the lack of protective measures to guarantee clean water in Romani neighbourhoods, as well as inadequacy of measures to ensure public health standards in housing in such neighbourhoods.<sup>673</sup> Although the Czech Republic had adopted the Strategy for Combating Social Exclusion 2011-2015, which included the concept of health as part of Roma integration, too little effect and progress had been made to realize their rights,<sup>674</sup> constituting a breach of article 11(1), (2) and (3) of the 1961 Charter in light of the Preamble.<sup>675</sup>

244. In *Médecins du Monde - International v. France*,<sup>676</sup> Médecins du Monde complained that the environmental risks to which the migrant Roma were exposed in France were all linked to their living conditions in the camps.<sup>677</sup> The international NGO attested that the living conditions were degrading, as harmful and polluting piles of waste, lack of access to drinking water, the general state of dampness, poor ventilation and harmful effects of heating methods (resulting from the authorities' failure to install electricity) caused infectious respiratory, cutaneous and gastrointestinal diseases and scabies.<sup>678</sup> Additionally, the international NGO stated that the poor living conditions caused multiple accidents such as burns, gas poisoning and fires.<sup>679</sup> After considering the evidence, the Committee concluded that the Roma communities did indeed not live in healthy environments,<sup>680</sup> and recalled that States Parties have to take appropriate measures to prevent, as far as possible,

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<sup>666</sup> *Ibid.*, para. 47.

<sup>667</sup> *Ibid.*

<sup>668</sup> *Ibid.*, para. 48.

<sup>669</sup> *Ibid.*, para. 49.

<sup>670</sup> *Ibid.*, para. 51.

<sup>671</sup> *European Roma and Travellers Forum (ERTF) v. Czech Republic* (Decision on the Merits) (17 May 2016), ECSR Complaint No.104/2014.

<sup>672</sup> *Ibid.*, para. 124.

<sup>673</sup> *Ibid.*

<sup>674</sup> *Ibid.*, paras. 125, 126.

<sup>675</sup> *Ibid.* para. 128.

<sup>676</sup> *Médecins du Monde - International v. France* (Decision on the Merits) (11 September 2012), ECSR Complaint No. 67/2011.

<sup>677</sup> *Ibid.*, para. 154.

<sup>678</sup> *Ibid.*, para. 154.

<sup>679</sup> *Ibid.*, para. 156.

<sup>680</sup> *Ibid.*, para. 158.

epidemic, endemic and other diseases as well as accidents.<sup>681</sup> As France had failed to meet its positive obligation to address the specific problems faced by Roma communities stemming from their unhealthy living conditions,<sup>682</sup> raise adequate awareness on environmental health related issues,<sup>683</sup> and take specific measures in order to address particular problems,<sup>684</sup> the Committee established that there had been a breach of Article E in conjunction with Article 11(1), (2) and (3).<sup>685</sup>

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<sup>681</sup> *Ibid.*, para. 159.

<sup>682</sup> *Ibid.*, para. 144.

<sup>683</sup> *Ibid.*, para. 152.

<sup>684</sup> *Ibid.*, para. 163.

<sup>685</sup> *Ibid.*, paras. 145, 153, 164.



## Chapter III

### The environment and the right to housing



## Article 31<sup>686</sup>

### The right to housing

#### Part I

[...]

31. Everyone has the right to housing.

#### Part II

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;

[...]

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<sup>686</sup> European Social Charter (Revised) (3 May 1996), ETS No. 163, Art. 31(1).

**(a) The Committee has recalled that the right to housing under Article 31, Part I, of the Revised Charter, in conjunction with Article E on non-discrimination, includes the obligation of States to adopt measures to combat any forms of segregation on racial grounds in environmentally hazardous areas. States are required to assist disadvantaged and vulnerable groups in improving their living conditions and the environment, and to ensure housing in ecologically healthy surroundings.**

245. In *Médecins du Monde - International v. France*, the Committee referred to a Committee of Ministers' Recommendation on improving the housing conditions of Roma and Travellers in Europe,<sup>687</sup> affirming, *inter alia*, that member States should take measures to combat any forms of segregation on racial grounds in environmentally hazardous areas. This includes investing in the development of safe locations and taking steps to ensure that Roma communities have practical and affordable housing alternatives, so as to discourage settlements in, near or on hazardous areas,<sup>688</sup> Roma who are permanently and legally settled in derelict or unhealthy surroundings should receive assistance in order to improve the sanitary conditions of their homes, including the improvement of their environment, and;<sup>689</sup> member States, through their relevant authorities, should ensure that Roma housing is located in areas that are fit for habitation and in ecologically healthy surroundings. The existing settlements which cannot be removed from unsuitable locations should be improved by appropriate and constructive environmental measures.<sup>690</sup> The Committee therefore found that there had been a breach of Article E in conjunction with Article 31(1), the right to housing, due to the lack of access to housing of an adequate standard and degrading housing conditions.<sup>691</sup>

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<sup>687</sup> Recommendation Rec(2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe (Adopted by the Committee of Ministers on 23 February 2005 at the 916th meeting of the Ministers' Deputies).

<sup>688</sup> Recommendation Rec(2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe (Adopted by the Committee of Ministers on 23 February 2005 at the 916th meeting of the Ministers' Deputies), para. 21; *Médecins du Monde - International v. France* (Decision on the Merits) (11 September 2012), ESCR Complaint No. 67/2011, para. 21.

<sup>689</sup> *Ibid.*, para. 34; *Ibid.*, para. 21.

<sup>690</sup> *Ibid.*, para. 48; *Ibid.*, para. 21.

<sup>691</sup> *Médecins du Monde - International v. France* (Decision on the Merits) (11 September 2012), ESCR Complaint No. 67/2011, para. 183.

# APPENDICES





# Appendix I

## GLOSSARY



### Actio popularis

The Latin term *actio popularis* refers to actions taken to obtain remedy by a person or a group in the name of the general public. Those persons or groups are neither themselves victims of a violation nor have been authorised to represent any victims. An *actio popularis* to protect the environment is not envisaged by the European Court of Human Rights as reiterated in its case law, for example in its judgment in the case of *Bursa Barosu Başkanlığı and Others v. Turkey*.

### Air pollution

According to Article 1(a) of the Convention on Long-range Transboundary Air Pollution, adopted on 13 November 1979, air pollution means the introduction by man, directly or indirectly, of substances or energy into the air resulting in deleterious effects of such a nature as to endanger human health, harm living resources and ecosystems and material property and impair or interfere with amenities and other legitimate uses of the environment, and "air pollutants" shall be construed accordingly.

### Applicant

Any person, non-governmental organisation or group of persons that brings a case before the European Court of Human Rights. The right to raise a complaint with the Court 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 was adopted on 25 June 1998, (commonly referred to as the Aarhus Convention). Article 1 of the Aarhus Convention acknowledges "rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention" "[i]n order to contribute to the protection of the right of every person of present and future generations [...]". The Convention is considered one of the cornerstones of environmental procedural rights in Europe. It grants cross-cutting procedural rights to members of the public and

environmental NGOs but does not contain legal provisions on specific environmental sectors. As of March 2021, there are 47 Parties to the Convention (42 Council of Europe member states), 38 Parties to the Protocol on Pollutant Release and Transfer Registers adopted on 21 May 2003 (26 Council of Europe member states) and 32 Parties to the amendment on public participation in decisions on the deliberate release into the environment and placing on the market of genetically modified organisms adopted on 27 May 2005 (26 Council of Europe member states).

### Civil rights

The Court has not sought to provide a comprehensive definition of what is meant by a “civil right or obligation” for the purposes of the Convention. However, it recognised that with regard to environmental pollution, applicants may invoke their rights to have their physical integrity and the enjoyment of their property adequately protected since they are recognised in the national law of most European countries. In addition, an enforceable right to live in a healthy and balanced environment if enshrined in national law can serve to invoke Article 6, paragraph 1.

### Climate change

Climate change, in the usage of the Intergovernmental Panel on Climate Change (IPCC), refers to a change in the state of the climate that can be identified (e.g., by using statistical tests) by changes in the mean and/or the variability of its properties and that persists for an extended period, typically decades or longer. It refers to any change in climate over time, whether due to natural variability or as a result of human activity.<sup>692</sup> This usage differs from that in the United Nations Framework Convention on Climate Change (UNFCCC) which defines in Article 1(2) climate change as “a change in climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable periods of time.”

### Common but differentiated responsibilities principle

This principle is built upon the understanding that states, because they are in different stages of development, have contributed and are contributing to different degrees to environmental pollution and have also distinct technological and financial capabilities. At the same time, it recognises that only comprehensive and co-ordinated actions can address the global environmental degradation appropriately. This

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<sup>692</sup> United Nations Framework Convention on Climate Change, *Fact sheet: Climate change science - the status of climate change science today*

principle was first stressed in the Rio Declaration (Principle 7) of 1992.

### Complainant

Under the European Social Charter, a collective complaints mechanism exists (Part IV Article D). Three types of institutions are qualified to submit complaints: international organisations of employers and trade unions, other international non-governmental organisations which have consultative status with the Council of Europe and have been put on a special list; representative national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they intent to lodge a complaint.

### Continuing violation

A continuing violation of the Convention<sup>693</sup> or of the Charter<sup>694</sup> exists whenever a conduct for which the state is responsible is persistent and by virtue of the ongoing conduct the state is breaching its obligations. This also includes sustained inaction of the state where it has a positive obligation to act. However, instantaneous acts that might carry ensuing effects do not in themselves give rise to any possible continuous situation in breach of a provision of the Convention or Charter.

### Convention on Biological Diversity

Known informally as the Biodiversity Convention was adopted on 5 June 1992, opened for signature at the Rio Earth Conference and entered into force the following year. The preamble of the Biodiversity Convention recognises the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components, and aims to conserve and sustainably use biological diversity for the benefit of present and future generations. The convention strives for “the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.” (Article 1). The Convention has two protocols, the Cartagena Protocol and Nagoya Protocol. The Cartagena Protocol on Biosafety, adopted on 29 January 2000, aims to ensure the safe handling, transport and use of living modified organisms (LMOs) resulting from modern biotechnology that may have adverse effects

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<sup>693</sup> *Loizidou v. Turkey*, judgment of 18 December 1996, Application No. 15318/89, § 41, see also *Veeber v. Estonia*, judgment of 7 November 2002, Application No. 37571/97 and *Dudgeon v. Ireland*, judgment of 22 October 1981, Application No. 7525/76, § 40.

<sup>694</sup> *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, decision on admissibility of 10 October 2005, Complaint No. 30/2005, §§ 15-17.

on biological diversity, taking also into account risks to human health. The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, adopted on 29 October 2021, aims at sharing the benefits arising from the utilization of genetic resources in a fair and equitable way.

### Co-operation / provision of information principles

These two principles stem from general public international law. In essence, they require states to inform and consult other states that might be affected by various projects, e.g. the construction of a dam or factory. It has been enshrined in numerous bi- and multilateral treaties. It has been reaffirmed, for example, in the ICJ cases of Pulp Mills and Gabcikovo Nagymaros.<sup>695</sup>

### Dangerous activities

The Court uses this notion in the context of Articles 2 and 8 of the Convention, as well as Article 1 of Protocol No. 1 to the Convention. So far, the Court has not given a general definition of the concept. In the context of Article 2 of the Convention, 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.<sup>696</sup> The substances deemed “hazardous” or “dangerous” are usually listed in appendices to those instruments. These substance-related criteria may be coupled with a quantity criterion.<sup>697</sup> If not appearing in

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<sup>695</sup> Case concerning Pulp Mills on the River Uruguay (*Argentina v. Uruguay*), Judgment of 20 April 2010, ICJ General List 135, available at: [www.icj-cij.org/docket/files/135/15877.pdf](http://www.icj-cij.org/docket/files/135/15877.pdf), *Gabcikovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment of 25 September 1997, ICJ Reports (1997) 7.

<sup>696</sup> 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.

<sup>697</sup> 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

the lists, a substance may also be qualified “hazardous” on the basis of indicative criteria, namely the nature of its characteristics. Another way of identifying hazardous substances is to cumulatively apply the substance and the characteristics criteria.<sup>698</sup>

### 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 international law. In addition, neither the Convention nor the Charter nor the “case law” of the Court and the Committee attempt to define it. The Court’s and the Committee’s purpose is the protection of human rights enshrined in their respective instruments 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 and the Committee have not had to give a general definition of the environment. In the framework of the Council of Europe, the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment endeavours to define the scope of the concept of the environment. It holds that the environment includes natural resources both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors, property which forms part of the cultural heritage; and the characteristic aspects of the landscape. Moreover, the International Court of Justice has attempted to define the notion in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons. It held that “the environment is not an abstraction but represents the living space, the quality of life and the very health

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substances – Seveso II.

<sup>698</sup> Basel Convention article 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).

of human beings, including generations unborn”.<sup>699</sup> Considering the various definitions, it appears to be commonly accepted that the environment includes a wide range of elements including 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 (see also Rio Declaration).

**Equitable utilisation / equitability principle**

The principles of “equitable utilisation” and “equitability” are closely related. They hold that states need to co-operate with a view to controlling, preventing, reducing or eliminating adverse environmental effects which may result from the utilisation of shared natural resources. Moreover, the benefits from the use of those resources must be shared equitably. The Lac Lanoux arbitral award confirmed this principle.

**European Committee of Social Rights (“the Committee”)**

The European Committee of Social Rights ascertains whether countries have honoured the undertakings set out in the Charter. Its fifteen independent, impartial members are elected by the Council of Europe Committee of Ministers for a term of six years, renewable once. Every year the States Parties submit a report indicating how they implement the Charter in law and in practice. The Committee examines the reports and decides whether or not the situations in the countries concerned are in conformity with the Charter. Its decisions, known as “conclusions”, are published every year. In addition, it hears collective complaints (see *Complainant*). If a state takes no action on a Committee decision to the effect that it does not comply with the Charter, the Committee of Ministers addresses a recommendation to that state, asking it to remedy the situation in law and/or in practice.

**European Convention on Human Rights (“the Convention”)**

The Convention is a Council of Europe treaty which guarantees, for the most part, civil and political rights. It was adopted in 1950 and entered into force in 1953. The full title is the “Convention for the Protection of Human Rights and Fundamental Freedoms”. The full text of the Convention and its additional Protocols is available in 29 languages at [www.echr.coe.int](http://www.echr.coe.int). The chart of signatures and ratifications as well as the text of declarations and reservations made by states parties can be consulted at <http://conventions.coe.int>.

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<sup>699</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory opinion of 8 July 1996, ICJ Reports (1996) 226, § 29.

**European Court of Human Rights (“the Court”)**

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 European Convention on Human Rights (adopted on 4 November 1950). Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the High Contracting Parties to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in a single-judge formation, in committees of three judges, in Chambers of seven judges and in exceptional cases as Grand Chamber of seventeen judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court’s judgments.

**European Social Charter (“the Charter”)**

The Charter is a Council of Europe treaty which guarantees social and economic human rights pertaining to housing, health, education, employment, legal and social protection, free movement of persons, and non-discrimination. It was adopted on 18 October 1961 and revised on 3 May 1996. Besides setting out rights and freedoms, it establishes a supervisory mechanism guaranteeing their respect by the states parties. The full text of the Charter and its additional Protocols is available in 22 languages at [www.coe.int/en/web/european-social-charter/charter-texts](http://www.coe.int/en/web/european-social-charter/charter-texts). The chart of signatures and ratifications as well as the text of declarations and reservations made by states parties can be consulted at <http://conventions.coe.int>.

**“Living instrument” doctrine (also known as the “evolutive doctrine”)**

According to the evolutive doctrine, the Convention and the Charter are living instruments which must be interpreted in light of present-day conditions. The Convention has evolved to reflect the rapid evolution of societal norms and attitudes in every area of human life and the Court has recognized that in today’s society the protection of the environment is an increasingly important consideration. This is seen throughout the extensive case law in which the Court examined environmental matters through existing human rights. Similarly, the Committee of the Charter has recognised that the Charter is a living instrument, whose purpose is to protect rights not merely theoretically but also in fact, and therefore interprets the rights and freedoms set out in the Charter in the light of current conditions.

**Fair balance**

The Convention and the Charter (see especially Part V Article G) provide 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*.

### Harmon doctrine

The theory that states have exclusive or sovereign rights over the waters flowing through their territory which they can use regardless of their infringement of the rights of other states.

### Home

Article 8 of the Convention guarantees to every individual the enjoyment of his/her home. 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. The Court has not limited the concept of “home” to its traditional interpretation, but has described it with the broad notion of “living space”, i.e. the physically defined area, where private and family life develops. For example, the Court has considered that a prison cell fulfils the requirements and comes within the protection of Article 8 (see *Giacomelli v. Italy*).

### ILC Articles on the Responsibility of States for Internationally Wrongful Acts

In 2001, the UN International Law Commission adopted 59 Draft Articles on the Responsibility of States for Internationally Wrongful Acts which have been subsequently endorsed by the General Assembly (GA Res. 56/84 (2001)). According to the articles every internationally wrongful act of a State entails international responsibility of that State (Article 1). A conduct (act or omission) must constitute a breach of international law and be attributable to a State to engage its responsibility (Article 2). However, exceptionally, acts that are generally internationally wrongful may be justified (Chapter V), for instance in case of consent of the impacted State, self-defence, acts which are considered “counter-measures”, force majeure, distress, and necessity.<sup>700</sup>

### Interference

Any instance where the enjoyment of a right set out in the Convention and Charter is limited. Not every interference will mean that there has been violation of the right in question. An interference may be justified by the restrictions provided for in the Convention itself.

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<sup>700</sup> The articles were used by the ICJ in the case concerning Pulp Mills on the River Uruguay (*Argentina v. Uruguay*), Judgment of 20 April 2010, ICJ General List 135, available at: [www.icj-cij.org/docket/files/135/15877.pdf](http://www.icj-cij.org/docket/files/135/15877.pdf), § 273. Legal Consequences of the *Construction of a Wall in the Occupied Palestinian Territory*, Advisory opinion of 9 July 2004, ICJ Reports (2004) 136, § 140.

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*.

### Johannesburg Declaration

The Johannesburg Declaration is the final document of the 2002 UN Environmental Summit (26 August to 4 September), sometimes also referred to as Rio+10 Conference. The Summit improved the Rio Declaration by including the goal of poverty eradication (Principle 11), referred to the private sector (Principle 27) and stressing its liability (Principle 29).

### Kyoto Protocol

The Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) is an international treaty adopted on 11 December 1997. It contains legally binding commitments, in addition to those included in the UNFCCC. Countries included in Annex B of the Protocol (mostly OECD countries and countries with economies in transition) agreed to reduce their anthropogenic greenhouse gas (GHG) emissions by at least 5% below 1990 levels in the first commitment period (2008–2012). The Kyoto Protocol entered into force on 16 February 2005 and was ratified by 191 States as well as the European Union. A second commitment period was agreed in December 2012 at COP18, known as the Doha Amendment to the Kyoto Protocol, in which a new set of Parties committed to reduce GHG emissions by at least 18% below 1990 levels in the period from 2013 to 2020. The amendment entered into force on 31 December 2020.

### Legitimate aim

Some rights of the Convention and the Charter can be restricted. 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 (see Article 8, 9, 10 and 11 of the Convention and Article G Part V of the Charter). Article 8 of the Convention, for instance, lists the broad categories of aims which can be considered as legitimate to justify an interference with the right to private and family life, 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. Despite not being part of this explicit list, the Court found that the protection of

the environment can be subsumed under the aim of the protection of the rights of others.<sup>701</sup>

### Margin of appreciation

Once it is established that measures imposing restrictions on the Convention/Charter 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. It is in the context of this examination that 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 is that national authorities are often better placed to assess matters falling under the Articles concerned. 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. However, this margin of appreciation should not 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.

### Natural disaster

The Court has not defined the notion of “natural disaster”. However, it has used the concept in distinction to dangerous activities in order to describe the scope of the positive obligations resulting from Articles 2 and 8 which are upon a state to protect individuals. It found that as natural disasters are not man-made and in general beyond a state’s control, its obligations are therefore different in this situation. Public authorities are still under the obligation to inform, prevent and mitigate impact of natural disasters, to which the Court also refers to as natural hazard, as far as foreseeable and reasonable.<sup>702</sup>

### “No harm” principle

The principle of “no harm” (*sic utere tuo ut alienum non laedas*) is at the core of international environmental law. According to the principle no state may act in a manner which inflicts damages on foreign territory, the population of the territory or foreign property.<sup>703</sup> The International Court of Justice has reaffirmed the application of this principle to the environment in its

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<sup>701</sup> See especially Part I, Section A: Chapter III. For instance, *Pine Valley Developments Ltd and Others v. Ireland*, Judgment of 9 February 1993, Application No. 12472/87, §§ 57-59.

<sup>702</sup> See *Budayeva and Others v. Russia*, judgment of 20 March 2008, Application No. 15339/02, § 158.

<sup>703</sup> However, only serious damages may invoke international state responsibility under public international law.

Advisory Opinion on Nuclear Weapons.<sup>704</sup> Moreover, the Trail Smelter case affirmed the existence of a positive obligation to protect other states (and hence their population) from damage by private companies.<sup>705</sup> The principle has also been included in Principle 2 of the 1992 Rio Declaration and 2001 ILC the Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities.<sup>706</sup>

### Paris Agreement

The Paris Agreement under the United Nations Framework Convention on Climate Change (UNFCCC) was adopted on 12 December 2015 in Paris, France, at the 21st session of the Conference of the Parties (COP21) to the UNFCCC. The agreement entered into force on 4 November 2016 and has been ratified by 191 Parties including the European Union. One of the goals of the Paris Agreement is 'Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels', recognising that this would significantly reduce the risks and impacts of climate change. Additionally, the agreement aims to strengthen the ability of countries to deal with the impacts of climate change.

### Polluter pays principle

The *polluter pays principle* stems from general international law and means that he or she who damages the environment should bear the cost of rectifying that damage. In a broader sense producers of goods and other items should be responsible for any pollution which the process of production causes and therefore must also pay for prevention or rectification of the damage caused to the environment by such pollution.<sup>707</sup> It is, *inter alia*, contained in Principle 16 of the Rio Declaration. The *user pays principle* is a variation of the polluter-pays principle that calls upon the user of a natural resource to bear the cost of running down natural capital.<sup>708</sup>

### 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

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<sup>704</sup> *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*, Advisory opinion of 8 July 1996, ICJ Reports (1996) 226, § 29

<sup>705</sup> *Trail Smelter (USA v. Canada)*, Arbitral Award of 16 April 1938 and 11 March 1941, UN Reports of International Arbitral Awards, Vol. III pp. 1905-1982.

<sup>706</sup> ILC Draft Articles on Prevention of Transboundary Harm, ILC Report (2001) GAOR A/56/10, 66, available at: [http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9\\_7\\_2001.pdf](http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_7_2001.pdf).

<sup>707</sup> Svitlana Kravchenko, Tareq M.R. Chowdhury, Md Jahid Hossain Bhuiyan. 27 Sep 2012, Principles of international environmental law from: Routledge Handbook of International Environmental Law Routledge, p. 50.

<sup>708</sup> European Environment Agency (EEA) Glossary, 18 May 2021.

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 as 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, in *Budayeva and Others v. Russia* the Court found that the authorities are responsible under Article 2 of the Convention for implementing a defence and warning infrastructure to prevent the loss of life as result of natural disasters.<sup>709</sup> Considering the European Social Charter it is in fact evident that the majority of its provisions are by their very nature positive obligations, e.g. the obligation to guarantee a healthy working environment.

### 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. 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.

### Precautionary principle

The *precautionary principle* takes account of the effect that it is often difficult, if not impossible, to assess the precise impact of human action on the environment and that some actions can cause irreparable harm. It requires that if there is a strong suspicion that a certain activity may have detrimental environmental consequences, it is better to control that activity now rather than to wait for incontrovertible scientific evidence. It has been, *inter alia*, included in Article 15 of the Rio Declaration, and it played a role in justifying import restrictions in the WTO regime arguing that products had not been produced in a sustainable manner.

### Prevention principle

The *prevention principle* is closely related to the precautionary principle. The prevention principle holds that it is generally cheaper and more efficient to prevent environmental catastrophes than to remedy their consequences. Consequently, when assessing

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<sup>709</sup> See *Budayeva and Others v. Russia*, judgment of 20 March 2008, Application No. 15339/02.

the feasibility of preventive action versus remedial action, in the light of, for example, the interference with civil and political rights, preventive actions should be preferred. The principle has been included *inter alia* in the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 1989 and has also served as inspiration for the 1983 European Community (EC) Environmental Action Programme.

### Proportionate Measures / proportionality

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 (Article 8) 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 of all government branches carrying out activities of a public nature. They will therefore include municipalities as well as prefects or ministries.

### Public interest / general interest

The terms *public interest* and *general interest* appear in Article 1 of the first Protocol of the Convention (Protection of Property). They have also been used by the Court with reference to other articles to assess whether an *interference* by a public authority with an individual's rights can be justified. An interference may serve a legitimate objective in the *public* or *general interest* even if it does not benefit the community as a whole but advances the *public interest* by benefiting a section of the community.<sup>710</sup>

### Public participation principle

The principle is at the core of the Aarhus convention. In general, it requires states to take the public into account and offer procedural means to have its concerns voiced and considered.

### Rio Declaration

The Rio Declaration on Environment and Development<sup>711</sup> was concluded on 3 – 14 June in 1992 at the United Nations “Conference on Environment and Development” with the adoption of 27 principles intended to guide future sustainable development around the world. The declaration stresses the principle of sustainable development (Principles 4 and 8), the precautionary and preventive principle (Principle 15), the polluter/user-pays

<sup>710</sup> See *James and Others v. the United Kingdom*, Judgment of 21 February 1986, §§ 39-46.

<sup>711</sup> Adopted on 14 June 1992, available at:

[www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163](http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163).

principle (Principle 16), the principle of common but differentiated responsibilities (Principle 7), and the right to the exploitation of one's own resources save the absence of harm of one's neighbours (Principle 2). It also mentions the right to development (Principle 3).

### **Stockholm Declaration**

The Stockholm Declaration<sup>712</sup> is the final document of the United Nations Conference on the Human Environment on 5 – 16 June 1972 – the first UN conference on the environment. A right to a healthy environment is proclaimed in the declaration for the first time.

### **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 cases where the national level has not offered the protection or redress needed.

### **Sustainable Development Goals (SDGs)**

The 17 global goals for development elaborated through a participatory process launched at the United Nations Conference on Sustainable Development (UNCSD) in Rio de Janeiro on 20 – 22 June 2012 which on 25 September 2015 concluded in the adoption of the 2030 Agenda for Sustainable Development to which the development goals are annexed. They include ending poverty and hunger; ensuring health and well-being, education, gender equality, clean water and energy, and decent work; building and ensuring resilient and sustainable infrastructure, cities and consumption; reducing inequalities; protecting land and water ecosystems; promoting peace, justice and partnerships; and taking urgent action on climate change.

### **Sustainable development principle**

The guiding principle of sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.<sup>713</sup> Sustainable development recognises the need to balance environmental, social and economic concerns. (See Principles 3, 4 and 8 of the Rio Declaration).

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<sup>712</sup> Adopted on 16 June 1972, available at:

[www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503](http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503).

<sup>713</sup> Report of the World Commission on Environment and Development: *Our Common Future* (Brundtland report), 1987.

**United Nations  
Framework  
Convention on  
Climate Change  
(UNFCCC)**

The UNFCCC was adopted on 9 May 1992 and opened for signature at the 1992 United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro. It entered into force in March 1994 and has been ratified by 196 States and the European Union. The Convention's objective is the 'stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.' The provisions of the Convention are pursued and implemented by the following treaties: first the 1997 Kyoto Protocol until 2012, the Doha Amendment to the Kyoto Protocol until 2020 and from 2015 by the Paris Agreement.



## Appendix II

### Judgments and decisions of the European Court of Human Rights relevant to the environment<sup>714</sup>



| Case  | Decision on admissibility or Judgment | Date<br>DD/MM/YYYY | Articles of the Convention |   |   |                          |   |    |                          |                          |    |      |                          |
|---|---------------------------------------|--------------------|----------------------------|---|---|--------------------------|---|----|--------------------------|--------------------------|----|------|--------------------------|
|   |                                       |                    | 2                          | 3 | 5 | 6 (1)                    | 7 | 13 | 8                        | 10                       | 11 | 1-P1 |                          |
| <a href="#"><i>Alatulkkila and Others v. Finland</i></a>          | Judgment                              | 28/07/2005         |                            |   |   | <input type="checkbox"/> |   |    |                          |                          |    |      | <input type="checkbox"/> |
| <a href="#"><i>Apanasewicz v. Poland</i></a> (French only)        | Judgment                              | 03/05/2011         |                            |   |   | <input type="checkbox"/> |   |    |                          | <input type="checkbox"/> |    |      |                          |
| <a href="#"><i>Aparicio Benito v. Spain</i></a> (French only)     | Partly inadmissible and adjourned     | 04/05/2004         | <input type="checkbox"/>   |   |   |                          |   |    | <input type="checkbox"/> | <input type="checkbox"/> |    |      |                          |
| <a href="#"><i>Aparicio Benito v. Spain</i></a> (French only)     | Inadmissible                          | 13/11/2006         | <input type="checkbox"/>   |   |   |                          |   |    |                          | <input type="checkbox"/> |    |      |                          |
| <a href="#"><i>Arrondelle v. the United Kingdom</i></a> *         | Admissible (friendly settlement)      | 15/07/1980         |                            |   |   |                          |   |    | <input type="checkbox"/> | <input type="checkbox"/> |    |      | <input type="checkbox"/> |
| <a href="#"><i>Ashworth and Others v. the United Kingdom</i></a>  | Inadmissible                          | 20/01/2004         |                            |   |   |                          |   |    | <input type="checkbox"/> | <input type="checkbox"/> |    |      | <input type="checkbox"/> |
| <a href="#"><i>Athanassoglou and Others v. Switzerland</i></a>    | Judgment (GC)                         | 06/04/2000         |                            |   |   | <input type="checkbox"/> |   |    | <input type="checkbox"/> |                          |    |      |                          |
| <a href="#"><i>Băcilă v. Romania</i></a> (French only)            | Judgment                              | 30/03/2010         |                            |   |   |                          |   |    |                          | <input type="checkbox"/> |    |      |                          |
| <a href="#"><i>Baggs v. the United Kingdom</i></a> *              | Partially admissible                  | 16/10/1985         |                            |   |   | <input type="checkbox"/> |   |    | <input type="checkbox"/> | <input type="checkbox"/> |    |      | <input type="checkbox"/> |
| <a href="#"><i>Balmer-Schafroth and Others v. Switzerland</i></a> | Judgment (GC)                         | 26/08/1997         |                            |   |   | <input type="checkbox"/> |   |    | <input type="checkbox"/> |                          |    |      |                          |

<sup>714</sup> See also Factsheet – Environment and the ECHR available on the Court's website, download available at: <<https://www.echr.coe.int/Pages/home.aspx?p=press/factsheets>>











|  |                      |            |                          |  |  |                          |  |                          |                          |                          |  |  |  |  |  |  |  |  |                          |
|--|----------------------|------------|--------------------------|--|--|--------------------------|--|--------------------------|--------------------------|--------------------------|--|--|--|--|--|--|--|--|--------------------------|
| <a href="#"><u>Öçkan and Others v. Turkey</u></a><br>(French only)           | Judgment             | 28/03/2006 | <input type="checkbox"/> |  |  | <input type="checkbox"/> |  | <input type="checkbox"/> | <input type="checkbox"/> |                          |  |  |  |  |  |  |  |  |                          |
| <a href="#"><u>Okay and Others v. Turkey</u></a>                             | Judgment             | 12/07/2005 |                          |  |  | <input type="checkbox"/> |  |                          |                          |                          |  |  |  |  |  |  |  |  |                          |
| <a href="#"><u>Öneriyıldız v. Turkey</u></a>                                 | Judgment (GC)        | 30/11/2004 | <input type="checkbox"/> |  |  |                          |  | <input type="checkbox"/> | <input type="checkbox"/> |                          |  |  |  |  |  |  |  |  | <input type="checkbox"/> |
| <a href="#"><u>O'Sullivan McCarthy Mussel Development Ltd v. Ireland</u></a> | Judgment             | 07/06/2018 |                          |  |  | <input type="checkbox"/> |  |                          |                          |                          |  |  |  |  |  |  |  |  | <input type="checkbox"/> |
| <a href="#"><u>Özel and Others v. Turkey</u></a>                             | Judgment             | 17/11/2015 | <input type="checkbox"/> |  |  | <input type="checkbox"/> |  | <input type="checkbox"/> |                          |                          |  |  |  |  |  |  |  |  | <input type="checkbox"/> |
| <a href="#"><u>Pagliccia and Others v. Italy</u></a>                         | Inadmissible         | 07/09/2000 |                          |  |  |                          |  |                          | <input type="checkbox"/> |                          |  |  |  |  |  |  |  |  |                          |
| <a href="#"><u>Papastavrou and Others v. Greece</u></a>                      | Judgment             | 10/04/2003 |                          |  |  |                          |  |                          |                          |                          |  |  |  |  |  |  |  |  | <input type="checkbox"/> |
| <a href="#"><u>Piermont v. France</u></a>                                    | Judgment             | 27/04/1995 |                          |  |  |                          |  |                          |                          | <input type="checkbox"/> |  |  |  |  |  |  |  |  |                          |
| <a href="#"><u>Pine Valley Development Ltd v. Ireland</u></a>                | Judgment             | 29/11/1991 |                          |  |  | <input type="checkbox"/> |  |                          |                          |                          |  |  |  |  |  |  |  |  | <input type="checkbox"/> |
| <a href="#"><u>Powell and Rayner v. the United Kingdom</u></a>               | Judgment             | 21/02/1990 |                          |  |  | <input type="checkbox"/> |  | <input type="checkbox"/> | <input type="checkbox"/> |                          |  |  |  |  |  |  |  |  |                          |
| <a href="#"><u>Primov and Others v. Russia</u></a>                           | Judgment             | 12/06/2014 |                          |  |  |                          |  |                          |                          |                          |  |  |  |  |  |  |  |  | <input type="checkbox"/> |
| <a href="#"><u>Rayner v. the United Kingdom*</u></a>                         | Partially admissible | 16/07/1986 |                          |  |  | <input type="checkbox"/> |  |                          | <input type="checkbox"/> |                          |  |  |  |  |  |  |  |  | <input type="checkbox"/> |
| <a href="#"><u>Roche v. the United Kingdom</u></a>                           | Judgment (GC)        | 19/10/2005 |                          |  |  | <input type="checkbox"/> |  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |  |  |  |  |  |  |  |  | <input type="checkbox"/> |
| <a href="#"><u>S. v. France*</u></a>   | Inadmissible         | 17/05/1990 |                          |  |  |                          |  |                          | <input type="checkbox"/> |                          |  |  |  |  |  |  |  |  | <input type="checkbox"/> |
| <a href="#"><u>Satir v. Turkey</u></a><br>(French only)                      | Judgment             | 10/03/2009 |                          |  |  | <input type="checkbox"/> |  |                          |                          |                          |  |  |  |  |  |  |  |  | <input type="checkbox"/> |





## Appendix III

# Conclusions and decisions of the European Committee of Social Rights relevant to the environment



| Conclusions                        | Document ID             | Date<br>(DD/MM/YYYY) | Article of the Charter<br>and Heading(s)                         |
|------------------------------------|-------------------------|----------------------|--|
| Conclusions 2005,<br>Cyprus        | 2005/def/CYP/3/2/EN     | 30/06/2005           | Article 3(2), "Regulations on health and safety at work"         |
| Conclusions 2009,<br>Andorra       | 2009/def/AND/3/2/EN     | 02/01/2010           | Article 3(2), "Protection of workers against ionising radiation" |
| Conclusions 2013,<br>Malta         | 2013/def/MLT/3/2/EN     | 06/12/2013           | Article 3(2), "Levels of prevention and protection"              |
| Conclusions 2013,<br>Bulgaria      | 2013/def/BGR/3/2/EN     | 06/12/2013           | Article 3(3), "Risks covered by the regulations"                 |
| Conclusions XV-2,<br>Poland        | XV-2/def/POL/11/1/EN    | 31/12/2001           | Article 11(1), "Life expectancy and principal causes of death"   |
| Conclusions 2005,<br>Moldova       | 2005/def/MDA/11/2/EN    | 30/06/2005           | Article 11(2), "Health education in schools"                     |
| Conclusions XVIII-2,<br>Luxembourg | XVIII-2/def/LUX/11/2/EN | 30/06/2007           | Article 11(2), "Health education in schools"                     |
| Conclusions XV-2,<br>Cyprus        | XV-2/def/CYP/11/3/EN    | 01/07/2001           | Article 11(3), "Food safety"                                     |
| Conclusions XV-2,<br>Denmark       | XV-2/def/DNK/11/3/EN    | 31/12/2001           | Article 11(3), "Reduction of environmental risks"                |
| Conclusions XV-2,<br>France        | XV-2/def/FRA/11/3/EN    | 31/12/2001           | Article 11(3), "Reduction of environmental risks"                |
| Conclusions XV-2,<br>Italy         | XV-2/def/ITA/11/3/EN    | 31/12/2001           | Article 11(3), "Reduction of environmental risks"                |
| Conclusions XVII-2,<br>Latvia      | XVII-2/def/LVA/11/3/EN  | 30/06/2005           | Article 11(3), "Reduction of environmental risks"                |
| Conclusions 2005,<br>Moldova       | 2005/def/MDA/11/3/EN    | 30/06/2005           | Article 11(3), "Reduction of environmental risks"                |
| Conclusions XVII-2,<br>Portugal    | XVII-2/def/PRT/11/3/EN  | 30/06/2005           | Article 11(3), "Reduction of environmental risks"                |

|                           |                      |            |  |
|---------------------------|----------------------|------------|--|
| Conclusions 2007, Albania | 2007/def/ALB/11/3/EN | 31/10/2007 | Article 11(3), "Reduction of environmental risks", "Food safety" |
| Conclusions 2013, Georgia | 2013/def/GEO/11/3/EN | 06/12/2013 | Article 11(3), "Healthy environment"                             |

| Case   | Decision on admissibility or on the merits | Date (DD/MM/YYYY) | Articles of the Charter   |
|--|--|-------------------|---|
| <u>Marangopoulos Foundation for Human Rights (MFHR) v. Greece</u>        | Decision on the merits                     | 06/12/2006        | Violation of Articles 11-1, 11-2, 11-3, 2-4 and 3-2.  |
| <u>European Roma Rights Centre (ERRC) v. Bulgaria</u>                    | Decision on the merits                     | 03/12/2008        | Violation of Articles 11-1, 11-2, 11-3 and 13-1.<br>Articles invoked: 13-2, 13-3.   |
| <u>Médecins du Monde - International v. France</u>                       | Decision on the merits                     | 11/09/2012        | Violation of Articles 11-1, 11-2, 11-3, 13-1, 13-4, 16, 17-2, 30, 31-1, 31-2 and 19-8.                                    |
| <u>International Federation of Human Rights Leagues (FIDH) v. Greece</u> | Decision on the merits                     | 23/01/2013        | Violation of Articles 11-1, 11-2 and 11-3   |
| <u>European Roma and Travellers Forum (ERTF) v. Czech Republic</u>       | Decision on the merits                     | 17/05/2016        | Violation of Articles 11 and 16.  |
| <u>ATTAC ry, Globaali sosiaalityö ry and Maan ystävät ry v. Finland</u>  | Inadmissible                               | 22/01/2019        | Articles invoked: 1, 2, 3-1, 4-2, 4-3 and 4-5, 5, 6, 7-1, 7-3, 11, 12, 13, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30 and 31. |

## Appendix IV

### Reference to other instruments relevant to the environment in the Court's case law and in the Committee's conclusions and decisions



#### A. Reference to other instruments relevant to the environment in ECHR case law

246. The Court in its case law has often made reference to international environmental law standards and principles.

247. For instance, a core principle referred to by the Court is *sic utere tuo ut alienum non laedas* (principle of “no harm”),<sup>715</sup> which has replaced the doctrine of absolute sovereignty.<sup>716</sup> According to this principle no State may act in a manner which inflicts damages on foreign territory, the population of the territory or foreign property. The International Court of Justice has reaffirmed its application in the realm of the environment in its Advisory Opinion on Nuclear Weapons.<sup>717</sup> Moreover, the *Trail Smelter* case affirmed the existence of a positive obligation to protect other States (and hence their population) from damage inflicted by private companies.<sup>718</sup> This also appears in Principle 2 of the 1992 Rio Declaration<sup>719</sup> and in the 2001 ILC Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities.<sup>720</sup>

248. The Court mentioned in *Tatar v. Romania* Principles 2 and 14 of the Rio Declaration under the list of relevant law. More importantly, it held in paragraph 111-112, as part of its reasoning: “Concernant ce dernier aspect, la Cour rappelle, dans l’esprit des principes no 21 de la Déclaration de Stockholm et no 14 de la Déclaration de Rio, le devoir général des autorités de décourager et prévenir les transferts dans d’autres États de substances qui provoquent une grave détérioration de l’environnement [...]. La Cour observe également qu’au-delà du cadre législatif national instauré par la loi sur la protection de l’environnement, des normes internationales spécifiques existaient, qui auraient pu être appliquées par les autorités roumaines.” In the same case the Court referred in paragraphs 69 and 120 to the related “precautionary principle”.

<sup>715</sup> See also Appendix 1 “Glossary”.

<sup>716</sup> Also known with respect to environmental matters as “Harmon-Doctrine”.

<sup>717</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory opinion of 8 July 1996, ICJ Reports (1996) 226, paragraph 29.

<sup>718</sup> *Trail Smelter (USA v. Canada)*, arbitral award of 16 April 1938 and 11 March 1941, UN Reports of International Arbitral Awards, Vol. III, pp. 1905-1982.

<sup>719</sup> Rio Declaration on Environment and Development, United Nations Conference on Environment and Development, 14 June 1992, available at

[:www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163](http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163), also Stockholm Declaration Principle 21, 16 June 1972, available at:

[www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503](http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503)

<sup>720</sup> ILC Draft Articles on Transboundary Harm, ILC Report (2001) GAOR A/56/10, 66, available at: [http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9\\_7\\_2001.pdf](http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_7_2001.pdf).

249. To mention another example, the “polluter pays” principle<sup>721</sup>, contained e.g. in the Rio Declaration, holds that the polluter should in principle bear the cost of pollution regardless of where it occurs. The Court included in a number of cases<sup>722</sup> in the list of relevant law the EU directive 2004/35/EC, which aims to establish a framework of environmental liability based on the “polluter pays” principle, with a view to preventing and remedying environmental damage. Moreover, in *Öneriyıldız v. Turkey* it referred to the Convention on Civil Liability for Damage resulting from activities dangerous for the environment whose provision are an elaboration of the principle.

250. Judgments of the European Court of Human Rights which refer explicitly to other international environmental protection instruments are displayed in chronological order hereafter, with the relevant extracts [...].

| Case                              | Reference to                     | Quotation/Comment   | Paragraph | Date of decision |
|-----------------------------------|----------------------------------|---|-----------|------------------|
| <i>Guerra and Others v. Italy</i> | <b>PACE resolution</b>           | “Of particular relevance among the various Council of Europe documents in the field under consideration in the present case is Parliamentary Assembly Resolution 1087 (1996) on the consequences of the Chernobyl disaster, which was adopted on 26 April 1996 (at the 16th Sitting). Referring not only to the risks associated with the production and use of nuclear energy in the civil sector but also to other matters, it states “public access to clear and full information ... must be viewed as a basic human right”.” (List of relevant Council of Europe text) | 34        | 18/02/1998       |
| <i>Kyrtatos v. Greece</i>         | <b>International instruments</b> | “Neither Article 8 nor any of the other Articles of the Convention are specifically designed to provide general protection of the environment as such; to that effect, other international instruments and domestic legislation are more pertinent in dealing with this particular aspect.”   | 52        | 22/05/2003       |

<sup>721</sup> See also Appendix 1 “Glossary”.

<sup>722</sup> For example *Tatar v. Romania*, judgment of 27.01.2009 and *Mangouras v. Spain*, judgment of 8 January 2009.

|                                    |  |  |     |            |
|------------------------------------|--|--|-----|------------|
| <i>Taskin and Others v. Turkey</i> | <b>Rio Declaration on Environment and Development</b>  | (List of relevant law)   | 98  | 10/11/2004 |
| <i>Taskin and Others v. Turkey</i> | <b>Aarhus Convention (Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters)</b> | (List of relevant law)   | 99  | 10/11/2004 |
| <i>Taskin and Others v. Turkey</i> | <b>PACE recommendation</b>   | Recommendation 1614 (2003) on Environment and Human Rights (List of relevant law)  | 100 | 10/11/2004 |
| <i>Öneryıldız v. Turkey (GC)</i>   | <b>PACE resolution</b>   | Resolution 587 (1975) on problems connected with the disposal of urban and industrial waste, Resolution 1087 (1996) on the consequences of the Chernobyl disaster, Recommendation 1225 (1993) on the management, treatment, recycling and marketing of waste (List of relevant Council of Europe text) | 59  | 30/11/2004 |
| <i>Öneryıldız v. Turkey (GC)</i>   | <b>Committee of Ministers recommendation</b>   | Recommendation No. R (96) 12 on the distribution of powers and responsibilities between central authorities and local and regional authorities with regard to the environment. (List of relevant Council of Europe text)   | 59  | 30/11/2004 |
| <i>Öneryıldız v. Turkey (GC)</i>   | <b>Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment (ETS No 152)</b>                                    | (List of relevant Council of Europe text)  | 59  | 30/11/2004 |
| <i>Öneryıldız v. Turkey (GC)</i>   | <b>Convention on the Protection of the Environment through Criminal Law (ETS No. 172)</b>  | (List of relevant Council of Europe text)  | 59  | 30/11/2004 |

|   |  |  |           |                   |
|---|--|--|-----------|-------------------|
| <p><i>Öneryıldız v. Turkey (GC)</i></p> | <p><b>European standards</b></p>   | <p>"It can be seen from these documents that primary responsibility for the treatment of household waste rests with local authorities, which the governments are obliged to provide with financial and technical assistance. The operation by the public authorities of a site for the permanent deposit of waste is described as a "dangerous activity", and "loss of life" resulting from the deposit of waste at such a site is considered to be "damage" incurring the liability of the public authorities."</p>   | <p>60</p> | <p>30/11/2004</p> |
| <p><i>Öneryıldız v. Turkey (GC)</i></p> | <p><b>Convention on the Protection of the Environment through Criminal Law (ETS No. 172)</b></p> | <p>"In that connection, the Strasbourg Convention calls on the Parties to adopt such measures" as may be necessary to establish as criminal offences" acts involving the "disposal, treatment, storage ... of hazardous waste which causes or is likely to cause death or serious injury to any person ...", and provides that such offences may also be committed "with negligence" (Articles 2 to 4). Although this instrument has not yet come into force, it is very much in keeping with the current trend towards harsher penalties for damage to the environment, an issue inextricably linked with the endangering of human life. [...] Article 6 of the Strasbourg Convention also requires the adoption of such measures as may be necessary to make these offences punishable by criminal sanctions which take into account the serious nature of the offences; these must include imprisonment of the perpetrators."</p> | <p>61</p> | <p>30/11/2004</p> |

|                                   |                            |  |    |            |
|-----------------------------------|----------------------------|--|----|------------|
| <i>Öneryıldız v. Turkey (GC)</i>  | <b>European standards</b>  | “Where such dangerous activities are concerned, public access to clear and full information is viewed as a basic human right; for example, the above-mentioned Resolution 1087 (1996) makes clear that this right must not be taken to be limited to the risks associated with the use of nuclear energy in the civil sector.”   | 62 | 30/11/2004 |
| <i>Öneryıldız v. Turkey (GC)</i>  | <b>European standards</b>  | “Referring to the examples provided by cases such as [...] and to the European standards in this area, the Chamber emphasised that the protection of the right to life, as required by Article 2 of the Convention, could be relied on in connection with the operation of waste-collection sites, on account of the potential risks inherent in that activity.”   | 65 | 30/11/2004 |
| <i>Öneryıldız v. Turkey (GC)</i>  | <b>European standards</b>  | “The Court considers that this obligation must be construed as applying in the context of any activity, whether public or not, in which the right to life may be at stake, and a fortiori in the case of industrial activities, which by their very nature are dangerous, such as the operation of waste-collection sites (“dangerous activities” – for the relevant European standards, see paragraphs 59-60 above).” | 71 | 30/11/2004 |
| <i>Okçay and Others v. Turkey</i> | <b>Rio Declaration</b>     | (List of relevant law)   | 51 | 12/07/2005 |
| <i>Okçay and Others v. Turkey</i> | <b>PACE recommendation</b> | Recommendation 1614 (2003) on Environment and Human Rights (List of relevant law)  | 52 | 12/07/2005 |

|                                     |  |   |    |            |
|-------------------------------------|--|---|----|------------|
| <i>Borysiewicz v. Poland</i>        | <b>International environmental standards</b>   | "[T]he Court notes that the applicant has not submitted [...] noise tests which would have allowed the noise levels in her house to be ascertained, and for it to be determined whether they exceeded the norms set either by domestic law or by applicable international environmental standards, or exceeded the environmental hazards inherent in life in every modern town."  | 53 | 01/07/2008 |
| <i>Demir and Bayakara v. Turkey</i> | <b>Aarhus Convention (Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters)</b> | "In the <i>Taşkın and Others v. Turkey</i> case, the Court built on its case law concerning Article 8 of the Convention in matters of environmental protection (an aspect regarded as forming part of the individual's private life) largely on the basis of principles enshrined in the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (ECE/CEP/43) (see <i>Taşkın and Others v. Turkey</i> , No. 49517/99, §§ 99 and 119, 4 December 2003). Turkey had not signed the Aarhus Convention." | 83 | 12/11/2008 |
| <i>Mangouras v. Spain</i>           | <b>International Convention for the Prevention of Pollution from Ships</b>   | (List of relevant law)  | 20 | 08/01/2009 |
| <i>Mangouras v. Spain</i>           | <b>United Nations Convention on the Law of the Sea</b>   | (List of relevant law)  | 20 | 08/01/2009 |
| <i>Mangouras v. Spain</i>           | <b>EC directive</b>  | Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (List of relevant law)   | 20 | 08/01/2009 |
| <i>Mangouras v. Spain</i>           | <b>EC directive</b>  | Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements (List of relevant law)   | 20 | 08/01/2009 |

|                         |  |   |    |            |
|-------------------------|--|---|----|------------|
| <i>Tâtar v. Romania</i> | <b>EC directive</b>  | Directive No. 2004/35/CE (List of relevant law)   | 69 | 27/01/2009 |
| <i>Tâtar v. Romania</i> | <b>Stockholm Declaration</b>   | (List of relevant law)  | 69 | 27/01/2009 |
| <i>Tâtar v. Romania</i> | <b>Rio Declaration</b>   | (List of relevant law)  | 69 | 27/01/2009 |
| <i>Tâtar v. Romania</i> | <b>Aarhus Convention</b>   | (List of relevant law)  | 69 | 27/01/2009 |
| <i>Tâtar v. Romania</i> | <b>ICJ judgment</b>  | <i>Gabcikovo Nagymaros (Hungary v. Slovakia)</i> (List of relevant law)   | 69 | 27/01/2009 |
| <i>Tâtar v. Romania</i> | <b>PACE resolution</b>   | Resolution 1430 (2005) on Industrial hazards (List of relevant law)   | 69 | 27/01/2009 |
| <i>Tâtar v. Romania</i> | <b>EU directive</b>  | Directives 2006/21/CE and 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage (List of relevant law)  | 69 | 27/01/2009 |
| <i>Tâtar v. Romania</i> | <b>EU Commission Communication</b>   | COM/2000/0664 final on security of mining activities (List of relevant law)   | 69 | 27/01/2009 |
| <i>Tâtar v. Romania</i> | <b>Precautionary principle (ECJ, Maastricht, Amsterdam Treaty)</b><br><br>(available only in French) | "En vertu du principe de précaution, l'absence de certitude compte tenu des connaissances scientifiques et techniques du moment ne saurait justifier que l'État retarde l'adoption de mesures effectives et proportionnées visant à prévenir un risque de dommages graves et irréversibles à l'environnement. Dans l'histoire de la construction européenne, le principe de précaution a été introduit par le Traité de Maastricht [...]. Cette étape marque, au niveau européen, l'évolution du principe d'une conception philosophique vers une norme juridique. Les lignes directrices du principe ont été fixées par la Commission européenne dans sa communication du 2 février 2000 sur le recours au principe de précaution. La jurisprudence communautaire a fait application de ce principe dans des affaires concernant surtout la santé, | 69 | 27/01/2009 |

|                                |   |  |                  |                   |
|--------------------------------|---|--|------------------|-------------------|
|                                |   | <p>alors que le traité n'énonce le principe qu'en ce qui concerne la politique de la Communauté dans le domaine de l'environnement. La Cour de justice des Communautés européennes (« CJCE ») considère ce principe, à la lumière de l'article 17 § 2, 1er alinéa, CE, comme l'un des fondements de la politique de protection d'un niveau élevé poursuivie par la Communauté dans le domaine de l'environnement. Selon la jurisprudence de la CJCE, lorsque « des incertitudes subsistent quant à l'existence ou à la portée des risques pour la santé des personnes, les institutions peuvent prendre des mesures sans avoir à attendre que la réalité et la gravité de ces risques soient pleinement démontrées » [Royaume Uni/Commission, Aff C-180/96, et CJCE, National Farmer's Union, C-157/96.] "</p> |                  |                   |
| <p><i>Tâtar v. Romania</i></p> | <p><b>UN and EU reports</b><br/><br/>(available only in French)</p> | <p>"La Cour observe qu'au moins pendant un certain laps de temps après l'accident écologique de janvier 2000 différents éléments polluants (cyanures, plomb, zinc, cadmium) dépassant les normes internes et internationales admises ont été présents dans l'environnement, notamment à proximité de l'habitation des requérants. C'est ce que confirment les conclusions des rapports officiels établis après l'accident par les Nations unies (UNEP/OCHA), l'Union européenne (Task Force) et le ministère roumain de l'Environnement (voir les paragraphes 26, 28 et 63 ci-dessus). La Cour ne voit aucune raison de douter de la sincérité des observations formulées par les requérants à cet égard."</p>   | <p>95<br/>96</p> | <p>27/01/2009</p> |

|                                |   |   |                    |                   |
|--------------------------------|---|---|--------------------|-------------------|
| <p><i>Tâtar v. Romania</i></p> | <p><b>Rio Declaration</b><br/><br/>(available only in French)</p>       | <p>"Concernant ce dernier aspect, la Cour rappelle, dans l'esprit des principes no 21 de la Déclaration de Stockholm et no 14 de la Déclaration de Rio, le devoir général des autorités de décourager et prévenir les transferts dans d'autres États de substances qui provoquent une grave détérioration de l'environnement (voir pp. 21 et 23 ci-dessus). La Cour observe également qu'au-delà du cadre législatif national instauré par la loi sur la protection de l'environnement, des normes internationales spécifiques existaient, qui auraient pu être appliquées par les autorités roumaines"</p> | <p>111<br/>112</p> | <p>27/01/2009</p> |
| <p><i>Tâtar v. Romania</i></p> | <p><b>Stockholm Declaration</b><br/><br/>(available only in French)</p> | <p>"Concernant ce dernier aspect, la Cour rappelle, dans l'esprit des principes no 21 de la Déclaration de Stockholm et no 14 de la Déclaration de Rio, le devoir général des autorités de décourager et prévenir les transferts dans d'autres États de substances qui provoquent une grave détérioration de l'environnement (voir pp. 21 et 23 ci-dessus). La Cour observe également qu'au-delà du cadre législatif national instauré par la loi sur la protection de l'environnement, des normes internationales spécifiques existaient, qui auraient pu être appliquées par les autorités roumaines"</p> | <p>111<br/>112</p> | <p>27/01/2009</p> |
| <p><i>Tâtar v. Romania</i></p> | <p><b>Aarhus Convention</b><br/><br/>(available only in French)</p>     | <p>"Au niveau international, la Cour rappelle que l'accès à l'information, la participation du public au processus décisionnel et l'accès à la justice en matière d'environnement sont consacrés par la Convention d'Aarhus du 25 juin 1998, ratifiée par la Roumanie le 22 mai 2000 (voir p. 23, c). Dans le même sens, la Résolution no 1430/2005 de l'Assemblée parlementaire du Conseil de l'Europe sur les risques</p>   | <p>118</p>         | <p>27/01/2009</p> |

|  |   |   |           |            |
|--|---|---|-----------|------------|
|  |   | industriels renforce, entre autres, le devoir pour les États membres d'améliorer la diffusion d'informations dans ce domaine (voir p. 25, f)."  |           |            |
| <i>Tâtar v. Romania</i>                            | <b>Precautionary principle</b>  | ".....appeared for the first time in the Rio declaration"   | 120       | 27/01/2009 |
| <i>Brosset-Triboulet and Others v. France (GC)</i> | <b>Committee of Ministers recommendation</b>  | Recommendation No. R (97) 9 of the Committee of Ministers on a policy for the development of sustainable environment-friendly tourism (List of relevant law)  | 55        | 29/03/2010 |
| <i>Brosset-Triboulet and Others v. France (GC)</i> | <b>European Code of Conduct for Coastal Zones</b>   | (List of relevant law)  | 55        | 29/03/2010 |
| <i>Depalle v. Drance (GC)</i>                      | <b>Committee of Ministers recommendation</b>  | Recommendation No. R (97) 9 of the Committee of Ministers on a policy for the development of sustainable environment-friendly tourism (List of relevant law)  | 54        | 29/03/2010 |
| <i>Depalle v. Drance (GC)</i>                      | <b>European Code of Conduct for Coastal Zones</b>   | (List of relevant law)  | 54        | 29/03/2010 |
| <i>Florea v. Romania</i>                           | <b>Conclusions of the European Committee for the Prevention of Torture (CPT), Recommendation of the Committee of Ministers of the Council of Europe</b><br><br>(available only in French) | "33. Les conclusions du Comité européen pour la prévention de la torture (CPT) rendues à la suite des visites effectuées dans des prisons de Roumanie, tout comme les observations à caractère général du CPT, sont résumées dans les arrêts Bragadireanu c. Roumanie (no 22088/04, §§ 73-76, 6 décembre 2007) et Brândușe c. Roumanie, no 6586/03, § 33, CEDH 2009-... (extraits). Par ailleurs, les paragraphes pertinents de la Recommandation (98)7 du Comité des Ministres du Conseil de l'Europe relative aux aspects éthiques et organisationnels des soins de santé en milieu pénitentiaire, adoptée le 8 août 1998, sont reproduits dans l'arrêt Huylyu c. Turquie (no 52955/99, § 53, 16 novembre 2006)." | 33-34, 56 | 14/09/2010 |
| <i>Mangouras v. Spain (GC)</i>                     | <b>EC directive</b>   | Directive 2005/35/EC on ship-source pollution (List of relevant law)  | 37        | 28/09/2010 |

|                                |   |   |       |            |
|--------------------------------|---|---|-------|------------|
| <i>Mangouras v. Spain</i> (GC) | <b>ECJ judgment</b>   | Case C-308/06 on validity of Directive 2005/35/EC (List of relevant law)  | 39-40 | 28/09/2010 |
| <i>Mangouras v. Spain</i> (GC) | <b>United Nations Convention on the Law of the Sea</b>                      | (List of relevant law)  | 44    | 28/09/2010 |
| <i>Mangouras v. Spain</i> (GC) | <b>ITLOS case law</b>   | (List of relevant law)  | 46-47 | 28/09/2010 |
| <i>Mangouras v. Spain</i> (GC) | <b>International Convention for the Prevention of Pollution from Ships</b>  | (List of relevant law)  | 53    | 28/09/2010 |
| <i>Mangouras v. Spain</i> (GC) | <b>International Convention on Civil Liability for Oil Pollution Damage</b> | (List of relevant law)  | 54    | 28/09/2010 |
| <i>Mangouras v. Spain</i> (GC) | <b>The London P&amp;I Rules</b>   | (List of relevant law)  | 55    | 28/09/2010 |
| <i>Mangouras v. Spain</i> (GC) | <b>European and international law</b>                                       | <p>“[T]he Court cannot overlook the growing and legitimate concern both in Europe and internationally in relation to environmental offences. This is demonstrated in particular by States’ powers and obligations regarding the prevention of maritime pollution and by the unanimous determination of States and European and international organisations to identify those responsible, ensure that they appear for trial and, if appropriate, impose sanctions on them (see “Relevant domestic and international law” above). A tendency can also be observed to use criminal law as a means of enforcing the environmental obligations imposed by European and international law.</p> <p>The Court considers that these new realities have to be taken into account in interpreting the requirements of Article 5§3 in this regard. It takes the view that the increasingly high standard being required in the area of the protection of</p> | 86    | 28/09/2010 |

|                                  |                            |   |    |            |
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|                                  |                            | human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies. [...]”   |    |            |
| <i>Mangouras v. Spain (GC)</i>   | <b>ITLOS case law</b>      | “It takes the view that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies.”  | 89 | 28/09/2010 |
| <i>Grimkovskaya a v. Ukraine</i> | <b>Aarhus Convention</b>   | (List of relevant law)  | 39 | 21/7/2011  |
| <i>Grimkovskaya a v. Ukraine</i> | <b>PACE recommendation</b> | Recommendation 1614 (2003) of 27 June 2003 on environment and human rights (List of relevant law)   | 40 | 21/7/2011  |
| <i>Grimkovskaya a v. Ukraine</i> | <b>Aarhus Convention</b>   | “[The Court] also notes that as of 30 October 2001 the Aarhus Convention, which concerns access to information, participation of the public in decision-making and access to justice in environmental matters has entered into force in respect of Ukraine.”  | 69 | 21/7/2011  |
| <i>Grimkovskaya a v. Ukraine</i> | <b>Aarhus Convention</b>   | “72. Overall, the Court attaches importance to the following factors. First, the Government's failure to show that the decision [...] was preceded by an adequate environmental feasibility study and followed by the enactment of a reasonable environmental management policy. Second, the Government did not show that the applicant had a meaningful opportunity to contribute to the related decision-making processes, including by challenging the municipal policies before an independent authority. Bearing those two factors and the Aarhus Convention [...] in mind, the Court cannot conclude that a fair balance was struck in the present case.” | 72 | 21/7/2011  |

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| <p><i>Di Sarno and Others v. Italy</i></p> | <p><b>Judgments of the Court of Justice of the European Union, European Union law</b></p> | <p>Case no. C-297/08, Directive 75/442/EEC of the Council of the European Union (of 15 July 1975) on waste (as amended by Council Directive 91/156/EEC of 18 March 1991); Council Directive 91/689/EEC on hazardous waste (of 12 December 1991); Council Directive 1999/31/EC on the landfill of waste (of 26 April 1999); Directive 2006/12/CE of the European Parliament and of the Council (of 5 April 2006) on waste; precautionary principle enshrined in Article 174 of the Treaty establishing the European Community; case law of the Court of Justice of the European Communities ("ECJ")</p> | <p>52<br/>56<br/>71<br/>75</p> | <p>10/01/2012</p> |
| <p><i>Di Sarno and Others v. Italy</i></p> | <p><b>Aarhus Convention</b></p>   | <p>"[...] It further reiterates that Article 5 § 1 (c) of the Aarhus Convention, which Italy has ratified, requires each Party to ensure that "in the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected". ..."</p>   | <p>107</p>                     | <p>10/01/2012</p> |
| <p><i>Brincat and Others v. Malta</i></p>  | <p><b>World Health Organisation (WHO)</b></p>   | <p>"According to the WHO website, all forms of asbestos are carcinogenic to humans and may cause mesothelioma and cancers of the lung, larynx and ovary. Asbestos exposure is also responsible for other diseases, such as asbestosis (fibrosis of the lungs), pleural plaques, thickening and effusions. According to the most recent WHO estimates, more than 107,000 people die each year from asbestos-related lung cancer, mesothelioma and asbestosis resulting from exposure at work."</p>  | <p>38</p>                      | <p>24/07/2014</p> |

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|------------------------------------|--|---|-----------------|------------|
| <i>Brincat and Others v. Malta</i> | <b>International Labour Organisation (ILO) Recommendations and Conventions</b> | The ILO Occupational Cancer Recommendation (1974, R147) concerning the prevention and control of occupational hazards caused by carcinogenic substances and agents; the ILO Asbestos Recommendation ( 1986, R172) concerning safety in the use of asbestos; the ILO Convention concerning Safety in the Use of Asbestos (C 162 - the 1986 Asbestos Convention); the ILO Convention concerning Prevention and Control of Occupational Hazards caused by Carcinogenic Substances and Agents (C 139 - Occupational Cancer Convention, 1974)  | 39<br>40<br>105 | 24/07/2014 |
| <i>Brincat and Others v. Malta</i> | <b>European Union (“EU”) Directives</b>  | Council Directive 87/217/EEC of 19 March 1987 on the prevention and reduction of environmental pollution by asbestos; EU Directive on the protection of workers from the risks related to exposure to asbestos at work (83/477/EEC, amended in March 2003)  | 33<br>41        | 24/07/2014 |
| <i>Kristiana Ltd. v. Lithuania</i> | <b>UNESCO World Heritage (Tentative) List</b>                                  | “Turning to the circumstances of the present case, the Court observes that the applicant company bought the buildings in question in 2000. The buildings were situated in the Curonian Spit National Park, which was established in 1991 and included on the UNESCO World Heritage List in 2000 (until then it was included on the UNESCO World Heritage Tentative List) (see paragraph 69 above). This fact means that the State’s margin of discretion depended on its obligations to UNESCO and there are no doubts that the measures that have to be taken in respect of the UNESCO territory could be rigorous.” | 109             | 06/02/2018 |

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| <i>O'Sullivan<br/>McCarthy<br/>Musel<br/>Development<br/>Ltd v. Ireland</i> | <b>Court of Justice of the European Union case and measures adopted by the respondent State following the CJEU judgment</b> | Commission v. Ireland (C-418/04, EU:C:2007:780)  | 11<br>31                          | 07/06/2018 |
| <i>O'Sullivan<br/>McCarthy<br/>Musel<br/>Development<br/>Ltd v. Ireland</i> | <b>EU Directives</b>  | Council Directive 79/409/EEC (of 2 April 1979) on the conservation of wild birds;<br>Council Directive 92/43/EEC (of 21 May 1992) on the conservation of natural habitats and of wild fauna and flora<br><br>“127. [...] as the unanimous Supreme Court judgment on the absence of legitimate expectation found, the Minister was required, as a matter of EU law, to be concerned not with unproven risk but rather with proven absence of risk (see paragraph 42 above).”<br><br>“130. [...] The Court [...] has recognised the weight of the objectives pursued, and the strength of the general interest in the respondent State in achieving full and general compliance with its obligations under EU environmental law. It is not persuaded that the impugned interference in this case constituted an individual and excessive burden for the applicant company, or that the respondent State failed in its efforts to find a fair balance between the general interest of the community and the protection of individual rights.” | 9<br>10<br>65<br>66<br>127<br>130 | 07/06/2018 |
| <i>Cordella and Others v. Italy</i>   | <b>Judgment of the Court of Justice of the European Union</b>   | Case C-50/10   | 83<br>86                          | 24/01/2019 |

## B. Reference to other instruments relevant to the environment in decisions of the ECSR

| Case   | Reference to   | Quotation/Comment  | Paragraph | Date of decision |
|--|--|--|-----------|------------------|
| <i>Marangopoulos Foundation for Human Rights (MFHR) v. Greece (Decision on the Merits)</i> | <b>United Nations Framework Convention on Climate Change of 9 May 1992 (UNFCCC)</b>                    | “114. States are obliged to develop, periodically update, publish and make available to the Conference of Parties national inventories of anthropogenic emissions and sinks; to adopt and implement national and regional measures to mitigate climate change; and to promote the application of processes that control anthropogenic emissions, including technology transfers.”  | 113-114   | 06/12/2006       |
| <i>Marangopoulos Foundation for Human Rights (MFHR) v. Greece (Decision on the Merits)</i> | <b>Kyoto Protocol to the United Nations Framework Convention on Climate Change of 11 December 1997</b> | “117. Each developed country was required to have made demonstrable progress in implementing its emission reduction commitments by 2005. The Protocol includes a procedure for the communication and review of information. Developed countries are required to incorporate in their national communications the supplementary information necessary to demonstrate compliance with their commitments under the Protocol.” | 115-117   | 06/12/2006       |
| <i>Marangopoulos Foundation for Human Rights (MFHR) v. Greece (Decision on the Merits)</i> | <b>WHO guidelines on air quality</b>   | “[...] to provide states with some guidance and reduce the impact on health of air pollution. [...]”   | 118       | 06/12/2006       |

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| <i>Marangopoulos Foundation for Human Rights (MFHR) v. Greece (Decision on the Merits)</i> | <b>The Treaty establishing the European Community</b>  | Articles 2; 6; 174   | 119-121 | 06/12/2006 |
| <i>Marangopoulos Foundation for Human Rights (MFHR) v. Greece (Decision on the Merits)</i> | <b>EU Directives on prior assessment and integrated pollution prevention and control</b>             | Directive 85/337/EEC (as modified by Directive 97/11/CE) which set up a system of prior assessment of the impact of certain projects on the environment and public information; Directive 2001/42/EC, which extended the environmental assessment system at the planning stage; Directive 96/61/EC on integrated pollution prevention and control made it compulsory for member states to establish a procedure for applying for operating permits prior to the installation of highly polluting industrial activities | 122-129 | 06/12/2006 |
| <i>Marangopoulos Foundation for Human Rights (MFHR) v. Greece (Decision on the Merits)</i> | <b>Aarhus Convention and EU Decision and Directive on public access to environmental information</b> | “130. The Aarhus Convention (1998) on access to information, public participation in decision-making and access to justice in environmental matters was approved on behalf of the Community by Decision 2005/370/EC. The Convention has been implemented by Directive 2003/4/EC on public access to environmental information. [...]”  | 130-131 | 06/12/2006 |
| <i>Marangopoulos Foundation for Human Rights (MFHR) v. Greece (Decision on the Merits)</i> | <b>EU thematic Strategy on Air Pollution</b>   | “134. Taking the situation in 2000 as its departure point, the Strategy sets specific long-term objectives (for 2020): a 47% reduction in the loss of life expectancy as a result of exposure to particulate matter; a 10% reduction in cases of acute mortality caused by exposure to ozone; reduction in excess acid   | 132-136 | 06/12/2006 |

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|  |   | deposition of 74% and 39% in forest areas and surface freshwater areas respectively; a 43% reduction in areas or ecosystems exposed to eutrophication."  |         |            |
| <i>Marangopoulos Foundation for Human Rights (MFHR) v. Greece (Decision on the Merits)</i> | <b>EU legislation on air quality</b>  | Directive 96/62/EC on ambient air quality assessment and management establishes limit values and alert thresholds for a number of pollutants; Council Directive 1999/30/EC (of 22 April 1999) relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air; Directive 2001/81/EC of the European Parliament and of the Council (of 23 October 2001) on national emission ceilings for certain atmospheric pollutants; Directive 80/779/EEC on air quality limit values and guide values for sulphur dioxide and suspended particulates; Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants | 137-150 | 06/12/2006 |
| <i>Marangopoulos Foundation for Human Rights (MFHR) v. Greece (Decision on the Merits)</i> | <b>Measures taken by the European Union to comply with the Kyoto Protocol</b> | Decision 2002/358/EC concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the UNFCCC and the joint fulfilment of commitments thereunder; Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC  | 151-159 | 06/12/2006 |

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| <i>Marangopoulos Foundation for Human Rights (MFHR) v. Greece (Decision on the Merits)</i> | <b>Principles established in the case law of other human rights supervisory bodies</b>  | "The Committee would like to take the opportunity presented by this complaint to clarify its interpretation of the right to a healthy environment. In doing so, it takes account of the principles established in the case law of other human rights supervisory bodies, namely the European Court of Human Rights, the Inter-American Court of Human Rights and the African Commission on Human and Peoples' Rights at the regional level, and the UN Committee on Economic, Social and Cultural Rights at the global level. In view of the scale and level of detail of the European Union's body of law governing matters covered by the complaint, it has also taken account of several judgments of the Court of Justice of the European Communities." | 196   | 06/12/2006 |
| <i>Médecins du Monde - International v. France (Decision on the merits)</i>                | <b>Committee of Ministers Recommendations</b>   | Recommendation No. R(2000) 4 of the Committee of Ministers to member states on the education of Roma/Gypsy children in Europe, adopted on 3 February 2000; Recommendation Rec(2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe, adopted on 23 February 2005   | 20-21 | 11/09/2012 |
| <i>Médecins du Monde - International v. France (Decision on the merits)</i>                | <b>Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights</b> | commDH(2008)34, 20 November 2008  | 22    | 11/09/2012 |
| <i>Médecins du Monde - International v. France (Decision on the merits)</i>                | <b>Judgment of the European Court of Human Rights</b>                                   | <i>Oršuš and others v. Croatia</i> (judgment) (16 March 2010), application no. 15766/03   | 23    | 11/09/2012 |

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| <i>Médecins du Monde - International v. France (Decision on the merits)</i>                       | <b>European Commission against Racism and Intolerance (ECRI)</b>      | Report on France (fourth monitoring cycle), adopted on 29 April 2010, CRI(2010)16   | 24    | 11/09/2012 |
| <i>Médecins du Monde - International v. France (Decision on the merits)</i>                       | <b>The Strasbourg Declaration on Roma</b>                             | Adopted by the member states of the Council of Europe at a High Level Meeting on Roma, Strasbourg, 20 October 2010  | 25    | 11/09/2012 |
| <i>International Federation of Human Rights Leagues (FIDH) v. Greece (Decision on the Merits)</i> | <b>Aarhus Convention</b>  | (List of relevant law)  | 10-12 | 23/01/2013 |
| <i>International Federation of Human Rights Leagues (FIDH) v. Greece (Decision on the Merits)</i> | <b>International Covenant on Economic, Social and Cultural Rights</b> | (List of relevant law)  | 13-14 | 23/01/2013 |
| <i>International Federation of Human Rights Leagues (FIDH) v. Greece (Decision on the Merits)</i> | <b>The Treaty on european Union</b>                                   | Article 21 § 2  | 15    | 23/01/2013 |
| <i>International Federation of Human Rights Leagues (FIDH) v. Greece (Decision on the Merits)</i> | <b>EU Directives on environmental management</b>                      | Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage; Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (EIA Directive) | 16-17 | 23/01/2013 |

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| <p><i>International Federation of Human Rights Leagues (FIDH) v. Greece (Decision on the Merits)</i></p> | <p><b>EU Directives on application and control of environmental law</b></p> | <p>Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC; Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law</p>  | <p>18-19</p> | <p>23/01/2013</p> |
| <p><i>International Federation of Human Rights Leagues (FIDH) v. Greece (Decision on the Merits)</i></p> | <p><b>EU Directives on waste management</b></p>                             | <p>Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives; Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control</p>  | <p>20-21</p> | <p>23/01/2013</p> |
| <p><i>International Federation of Human Rights Leagues (FIDH) v. Greece (Decision on the Merits)</i></p> | <p><b>EU Directives on water management</b></p>                             | <p>Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy; Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration; Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption</p> | <p>22-24</p> | <p>23/01/2013</p> |
| <p><i>International Federation of Human Rights Leagues (FIDH) v. Greece (Decision on the Merits)</i></p> | <p><b>Judgments of the Court of Justice of the EU</b></p>                   | <p><i>European Commission v. Hellenic Republic</i> (Case C-297/11 / OJ C 238, 13.8.2011); <i>European Commission v. Hellenic Republic</i> (Case C-534/09 / OJ C 37, 13.2.2010); <i>Commission of the European Communities v. Hellenic Republic</i> (Case C-286/08 / OJ C 223, 30.08.2008)</p>   | <p>25-30</p> | <p>23/01/2013</p> |

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| <p><i>International Federation of Human Rights Leagues (FIDH) v. Greece (Decision on the Merits)</i></p> | <p><b>World Health Organization's Guidelines for drinking-water quality</b></p>   | <p>"The fourth edition of the WHO Guidelines on drinking water (2011) relates, <i>inter alia</i> to: drinking-water safety [...]; approaches used in deriving the Guidelines, [...]; microbial hazards; chemical contaminants in drinking-water; those key chemicals responsible for large-scale health effects through drinking water exposure [...]; the important roles of many different stakeholders in ensuring drinking-water safety. [...]"</p>  | <p>42</p> | <p>23/01/2013</p> |
| <p><i>International Federation of Human Rights Leagues (FIDH) v. Greece (Decision on the Merits)</i></p> | <p><b>International Agency for Research on Cancer (IARC)</b></p>  | <p>"The expert opinions expressed in the framework of IARC, which has classified Cr-6 in Group 1 (carcinogenic to humans). In the publication on Arsenic, metals, fibres, and dusts volume 100 C - A review of human carcinogens (2012 - Chapter on Chromium compounds, pp. 147-164) IARC confirms that the general population residing in the vicinity of anthropogenic sources of Cr-6 may be exposed through inhalation of ambient air or ingestion of contaminated drinking-water and there has been concern about possible hazards related to the ingestion of Cr-6 in drinking-water. In particular, it is indicated in the above-mentioned publication that there is a slightly elevated risk of stomach cancer in which drinking-water was heavily polluted by a ferrochromium plant."</p> | <p>43</p> | <p>23/01/2013</p> |
| <p><i>International Federation of Human Rights Leagues (FIDH) v. Greece (Decision on the Merits)</i></p> | <p><b>US Department of Health and Human Services - Public Health Service Agency for Toxic Substances and Disease Register</b></p> | <p>"The US Department of Health and Human Services - Public Health Service Agency for Toxic Substances and Disease Registry indicates that "Exposure to chromium occurs from ingesting contaminated food or drinking water or breathing contaminated workplace air.</p>  | <p>44</p> |                   |

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|   |   | Chromium (VI) at high levels can damage the nose and cause cancer. Ingesting high levels of chromium (VI) may result in anemia or damage to the stomach or intestines".   |     | 23/01/2013 |
| <i>International Federation of Human Rights Leagues (FIDH) v. Greece (Decision on the Merits)</i> | <b>Judgments of the Court of Justice and the Court of First Instance of the European Union regarding precautionary measures in view of health risks</b> | Case C-157/96 of 5 May 1998 - <i>The Queen v. Ministry of Agriculture, Fisheries and Food, Commissioners of Customs &amp; Excise, ex parte National Farmers' Union, David Burnett and Sons Ltd, R. S. and E. Wright Ltd, Anglo Beef Processors Ltd, United Kingdom Genetics, Wyjac Calves Ltd, International Traders Ferry Ltd, MFP International Ltd, Interstate Truck Rental Ltd and Vian Exports Ltd</i> ; Case T-13/99 of 11 September 2002 - <i>Pfizer Animal Health SA v. Council of the European Union</i> | 152 | 23/01/2013 |
| <i>European Roma and Travellers Forum (ERTF) v. Czech Republic (Decision on the merits)</i>       | <b>The European Convention on Human Rights</b>  | Articles 2; 8   | 15  | 17/05/2016 |
| <i>European Roma and Travellers Forum (ERTF) v. Czech Republic (Decision on the merits)</i>       | <b>Judgment of the European Court of Human Rights</b>   | <i>Winterstein and Others v. France</i> (judgment) (17 October 2013), Application No. 27013/07  | 16  | 17/05/2016 |
| <i>European Roma and Travellers Forum (ERTF) v. Czech Republic (Decision on the merits)</i>       | <b>Committee of Ministers Recommendations</b>   | Recommendation Rec(2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe; Recommendation CM/Rec(2008)5 of the Committee of Ministers to member states on policies for Roma and/or Travellers in Europe;  | 17  | 17/05/2016 |

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|   |   | Recommendation (2006)10 of the Committee of Ministers to member states on better access to healthcare for Roma and Travellers in Europe.   |       |            |
| <i>European Roma and Travellers Forum (ERTF) v. Czech Republic (Decision on the merits)</i>                                   | <b>International Covenant on Economic, Social and Cultural Rights</b>                           | (List of relevant law)   | 18    | 17/05/2016 |
| <i>European Roma and Travellers Forum (ERTF) v. Czech Republic (Decision on the merits)</i>                                   | <b>General Comments of the United Nations Committee on Economic, Social and Cultural Rights</b> | General Comment 4 (the right to adequate housing); General Comment 7 (the right to adequate housing: forced evictions); General Comment 14 (the right to the highest attainable standard of health)  | 19-20 | 17/05/2016 |
| <i>ATTAC ry, Globaali sosiaalityö ry and Maan ystävät ry v. Finland (Decision on admissibility and on immediate measures)</i> | <b>CETA (International trade agreement)</b>   | "Of course, the Committee recognises that an international trade agreement such as CETA may potentially have far-reaching consequences for the implementation of the social rights guaranteed by the Charter. However, the legal assessment of whether these consequences entail an infringement of obligations flowing from substantive Charter provisions can only be appropriately made by the Committee in the context of the national law and practice that may result from the operation and implementation of an international trade agreement such as CETA. It is not for the Committee to speculate on the conformity of law and practice which is "foreseen" or which may be "expected" under the terms of an agreement not yet entered into force." | 16    | 22/01/2019 |

## Appendix V

### Council of Europe conventions on environmental protection



251. The Council of Europe has elaborated a number of conventions on environmental protection, some of which acknowledge the interdependence of human beings and their natural environment. Below is set out in chronological order four of such conventions.

252. The aim of the **Convention on the Conservation of European Wildlife and Natural Habitats** (Bern Convention) of 19 September 1979<sup>723</sup> is “to conserve wild flora and fauna and their natural habitats”. The level of protection depends on the “ecological, scientific and cultural requirements” which must be weighed against “economic requirements”, for example. States undertake to adopt the requisite policies and standards to ensure this protection. Exceptions are permitted, including in the interests of public health. The Standing Committee to the Bern Convention ensures application of the convention.

253. The **Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment** (Lugano Convention) of 21 June 1993 (not yet in force)<sup>724</sup> states in its preamble that “one of the objectives of the Council of Europe is to contribute to the quality of life of human beings, in particular by promoting a natural, healthy and agreeable environment”. It covers all environmentally hazardous activities performed “professionally” by both public and private entities.<sup>725</sup> Article 4 stipulates that “[t]his Convention shall not apply to damage caused by a nuclear substance”. It recognises no-fault liability<sup>726</sup> and acknowledges the specific nature of “pure” ecological damage (“impairment of the environment”). Furthermore, it considerably broadens *locus standi* to include environmental associations and foundations (Article 18), even if they can only obtain compensation for personal injury. Article 14 provides for the right of access to “information relating to the environment held by public authorities”, but Article 16 also provides for conditions of access to information held by operators. The convention also applies the “polluter pays” principle, as pointed out in the preamble. This “polluter pays” principle is central to Directive 2004/35/EC of 21 April 2004 “on environmental liability with regard to the

<sup>723</sup> It has been ratified by all Council of Europe member states with the exception of San Marino and the Russian Federation. In addition, the European Union and five non-member states of the Council of Europe are also parties to it; As of November 2020, all States to the Council of Europe, with the exception of the Russian Federation and San Marino, have ratified the Bern Convention.

<sup>724</sup> The Convention requires three ratifications to enter into force; Council of Europe member States that have signed the Lugano Convention as of November 2020 are Cyprus, Finland, Greece, Iceland, Italy, Liechtenstein, Luxembourg, the Netherlands and Portugal. The Convention has not yet entered into force.

<sup>725</sup> Martin G. J. (1994), “La responsabilité civile pour les dommages à l’environnement et la Convention de Lugano”, *Revue juridique de l’environnement* Nos. 2-3, pp. 121-136.

<sup>726</sup> Thieffry P. (1994), “Environmental liability in Europe: The European Union’s projects and the Convention of the Council of Europe”, *The International Lawyer* Vol. 28, No. 4, pp. 1083-1085.

prevention and remedying of environmental damage”, which requires states to make provision for corporate liability.<sup>727</sup>

254. The **Convention on the Protection of the Environment through Criminal Law** (Strasbourg Convention) of 4 November 1998 (not yet in force)<sup>728</sup> states in its preamble that “the life and health of human beings, the environmental media and fauna and flora must be protected by all possible means” and works on the assumption that “whilst the prevention of the impairment of the environment must be achieved primarily through other measures, criminal law has an important part to play in protecting the environment”. Criminal offences cover harm to both human beings and the environment, whether living or not, and deliberate or not, and therefore the approach here is overarching, acknowledging the interaction between human beings and their natural environment. The principle of specific remediation by “reinstatement of the environment” is provided for in Article 8. Above all, Article 9 provides that states must make provision for criminal (or administrative) sanctions on legal entities (in addition to the liability of natural persons). Lastly, Article 11 allows each state party to “grant any group, foundation or association which, according to its statutes, aims at the protection of the environment, the right to participate in criminal proceedings concerning offences established in accordance with this Convention” and thus introduces *actio popularis*. Although not yet entered into force it has been taken into account by the European Union in Directive 2008/99/EC.<sup>729</sup>

255. The **European Landscape Convention** (Florence Convention) of 20 October 2000<sup>730</sup> is devoted solely to the protection, management and planning of landscape in Europe and to co-operation between states on landscape issues, with an extremely broad definition of the concept of landscape again emphasising the interaction between human beings and natural environments. Article 1(a) defines landscape as “an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors”. In the preamble to the Convention, landscape, whether everyday or outstanding, is acknowledged as “an important part of the quality of life for people everywhere” entailing “rights and responsibilities for everyone”. In conjunction with the 1998 Aarhus Convention, reference is made to information and public participation. In the Florence Convention, the Council of Europe acknowledges the social function of landscape<sup>731</sup> and natural environments. While the convention does not recognise a right “to landscape”, it actively paves the way for it. The term “landscape” also enables the concept of sustainable development to be approached through its four dimensions: natural, cultural, social and economic.<sup>732</sup> Implementation of the convention is monitored by a

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<sup>727</sup> Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage.

<sup>728</sup> The Convention required three ratifications to enter into force. As of November 2020 only Estonia has ratified the Strasbourg Convention. 13 member States have signed but not yet ratified it. It is open to ratification by non-European states as well. It has been adopted by the European Union through Directive 2008/99/EC.

<sup>729</sup> Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law, in force since 26 December 2010.

<sup>730</sup> The Convention was adopted on 19 July 2000 and in force since 1 March 2004; As of November 2020, the majority of the States to the Council of Europe, with the exception of Albania, Austria, Germany, Liechtenstein, Malta (signatory), Monaco and the Russian Federation, have ratified the Florence Convention.

<sup>731</sup> Priore R. (2000), “La Convention européenne du paysage ou de l'évolution de la conception juridique relative au paysage en droit comparé”, *Revue européenne du droit de l'environnement* Vol. 4, No. 3, pp. 281-299 (available only in French).

<sup>732</sup> Dejeant-Pons M. (2006), “The European Landscape Convention”, *Landscape Research* Vol. 31, No. 4, pp. 363-384.

committee of experts, namely the Steering Committee for Culture, Heritage and Landscape (CDCPP).

## Appendix VI

### Good Practices aimed at protecting the environment and respecting the obligations stemming from the European Convention on Human Rights and the European Social Charter



256. The following represents a selection of practical initiatives and legal frameworks aimed at protecting the environment and respecting the obligations stemming from the European Convention on Human Rights and the European Social Charter. The examples have been taken from the responses provided by a number of member states in 2010/11 and updated in 2020.<sup>733</sup> The examples do not represent an exhaustive list but rather serve to illustrate some typical actions of member States.

257. This summary of good practices has been broken down into seven categories:

1. Embedding environmental rights in the national policy and legal framework;
2. Establishing control over potentially harmful environmental activities;
3. Requiring environmental impact assessments (EIAs);
4. Ensuring public participation and access to information on environmental matters;
5. Making environmental rights judiciable and the environment a public concern;
6. Providing education on environmental sustainability;
7. Protecting environmental activists and whistle-blowers.

#### 1. Embedding environmental rights in the national policy and legal framework

##### A. Environment and national constitutions

258. In several countries the environment is protected through the constitution. For example, the **Bulgarian** Constitution provides for the right to a “healthy and favourable environment in accordance with the established standards and norms” (Article 55). The same article proclaims vice-versa an obligation for the citizens to protect the environment.

259. The Constitution of **Poland** also contains several environmental provisions. Article 74 requires public authorities to pursue policies which ensure the ecological security of current and future generations. Article 68, paragraph 4, places an explicit

<sup>733</sup> See compilations of contributions from member States – documents GT-DEV-ENV(2011)03, GT-DEV-ENV(2011)03\_Add1 and GT-DEV-ENV(2011)03\_Add2 and CDDH-ENV (2021)6.

duty on public authorities to prevent negative health consequences resulting from the degradation of the environment.

260. Article 44 of the Constitution of the **Slovak Republic** provides explicitly that “everyone shall have the right to a favourable environment”. It places a duty on everyone to protect and improve the environment. Likewise, Article 74 of the **Serbian** Constitution places an obligation to preserve and improve the environment for “everyone” in addition to prescribing the right to a healthy environment.

261. The Constitution of **Slovenia** also contains a “right to a healthy living environment” (Article 72). Moreover, in 2016 also the right to drinking water was enshrined in the Constitution (Article 70 a) stipulating that everyone is entitled to this right. At the same time water resources are considered a public good and they should be primarily used for sustainable water supply for the population.

262. The **Albanian** Constitution stipulates that the state shall aim at ensuring “a healthy and ecologically sustainable environment for current and future generations” as well “as rational exploitation of forests, water, pastures, and other natural resources on the basis of a sustainable development principle” (Article 59).

263. The Constitution of **Azerbaijan** defines the “Right to live in a healthy environment” (Article 39) as one of the basic human and civil rights and freedoms. One of the main responsibilities of citizens is to “protect the environment” (Article 78). At the same time, it is noted that natural resources belong to the Republic of Azerbaijan without prejudice to the rights and interests of any natural or legal persons (Article 14).

264. The Constitution of **Portugal** establishes in its Article 9 that it is a fundamental task of the State to protect and enhance the cultural heritage of the Portuguese people, defend nature and the environment, preserve natural resources and ensure the correct planning of the territory. More specifically, its article 66 stipulates that “Everyone has the right to a healthy and ecologically balanced human living environment and the duty to defend it”.

265. In **Austria**, the Federal Constitutional Act on sustainability, animal protection, comprehensive environmental protection, on water and food security as well as research, Federal Law Gazette I no. 111/2013, stipulates (1) The Republic of Austria (federal government, federal provinces and municipalities) is committed to comprehensive environmental protection, i.e., to protecting the natural environment as the basis of mankind's life against detrimental effects. (2) Comprehensive environmental protection means the prevention of harmful effects on the natural environment as the basic resource of the human being. Comprehensive environmental protection consists particularly in measures to ensure the cleanliness of air, water and soil as well as to prevent noise disturbance.” Due to that constitutional commitment, the legislative and administrative organs are required to improve environmental protection. In its case law, the Austrian Constitutional Court has given a broad meaning to the notion of “environmental protection” as employed in the Act.

266. While the **Czech** Constitution provides only a general provision on environmental protection (Article 7), the Czech Charter of Fundamental Rights and Freedoms, which is part of the constitutional legislation, grants the “right to a favourable living environment” as well as “the right to timely and complete information

about the state of the living environment and natural resources” (Article 35). In exercising his/her rights nobody may endanger or cause damage to the living environment, natural resources, the wealth of natural species, and cultural monuments beyond limits set by law.

267. According to the **Georgian** Constitution every person has the right to live in a safe and healthy environment, to receive comprehensive information on the state of the environment and to protect the environment. Public participation in environmental decision-making is guaranteed by Georgian law. The law also guarantees environmental protection and rational use of natural resources in the interests of present and future generations (Article 29).

268. Mindful of its responsibility toward future generations, the Basic Law for the **Federal Republic of Germany** imposes an obligation on the state to protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order (Article 20a). The German Constitutional Court has affirmed in April 2021 that Article 20a also obliges the state to protect the climate and to transition to climate neutrality for the sake of future generations.

269. In **Luxembourg**, the 2007 revision introduced Article 11*bis* into the Constitution. It stipulates that the State shall guarantee the protection of the human and natural environment by working to establish a sustainable balance between the conservation of nature, in particular its capacity for renewal, and the satisfaction of the needs of present and future generations. It shall promote the protection and welfare of animals.

270. The **Spanish** Constitution sets out that everyone has the right to enjoy an environment suitable for the development of the person, as well as the duty to preserve it (Article 45). The public authorities shall safeguard rational use of all natural resources with a view to protecting and improving the quality of life and preserving and restoring the environment, by relying on essential collective solidarity.

271. The **Swedish** Constitution guarantees that the public institutions shall promote sustainable development leading to a good environment for present and future generations (Chapter 1, Article 2).

272. The **Turkish** Constitution stipulates that “Everyone has the right to live in a healthy and balanced environment. It is the duty of the State and citizens to improve the natural environment, to protect the environmental health and to prevent environmental pollution” (Article 56).

273. **Switzerland's** Constitution has several provisions relating to environmental protection. In accordance with the objectives set out in Article 2, the Swiss Confederation shall promote sustainable development (para. 2) and is committed to the long-term preservation of natural resources (para. 4). While Article 73 of the Swiss Constitution enshrines the principle of sustainable development, Article 74 deals more specifically with environmental protection. Articles 76 to 79 treat the handling of water, forests, the protection of natural and cultural heritage and fishing and hunting.

274. However, the fact that the constitution of a country does not contain any specific article on the environment does not mean that the protection cannot be claimed through other constitutional provisions. For instance, in **Cyprus** claims for the protection of the environment have been made through the constitutional provisions on human rights (right to life and corporal integrity, prohibition of inhuman and degrading treatment, rights to respect for private and family life, right to property).

275. Article 23 of the **Belgian** Constitution guarantees the right to lead a life in keeping with human dignity. To this end, the laws, federate laws and rules referred to in Article 134 guarantee economic, social and cultural rights, including the right to the protection of a healthy environment, taking into account corresponding obligations, and determine the conditions for exercising them. Furthermore, the Constitution also protects the freedom of association (Art. 27) and the access to administrative documents (Art. 32).

276. The **Finnish** Constitution includes a provision on responsibility for the environment. While everyone is responsible for the nature and its biodiversity, the environment and the national heritage (Section 20), public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment. The latter is primarily meant to be implemented through legislation and not to confer directly applicable rights to individuals. However, constitutional provisions do provide for access to justice in environmental matters when a person's rights or duties are at stake. Correspondingly, in accordance with Section 14, paragraph 4, the public authorities are tasked with promoting the opportunities of the individual to participate in societal activity and to influence the decisions that concern him or her. Other provisions of the Finnish Constitution that concern basic rights also affect cultural environment issues. These provisions include, in particular, the right to privacy provided in Section 10, the protection of property provided in Section 15, and the right to one's own language and culture provided in Section 17.

277. The **French** Constitution includes a Charter of the Environment which enshrines the right to live in a balanced environment that respects health, the principle of prevention of environmental damage, the principle of reparation, the precautionary principle and the principle of public participation in the preparation of decisions having an impact on the environment. The Constitutional Council has enshrined an objective of constitutional value of "protection of the environment, the common heritage of human beings" (decision no. 2019-823 QPC of 31 January 2020).

278. The **Croatian** Constitution stipulates that "everyone has the right to a healthy life" (Art 69, par 1). It also stipulates that "the state ensures conditions for a healthy environment" (Art 69, par 2) and that "everyone is obliged, within their powers and activities, to pay special attention to the protection of human health, nature and the human environment" (Art 69, par 3). Likewise, Article 3 of the Constitution "respect for human rights" and "preservation of nature and the human environment" are established as the highest values of the constitutional order. The Art 52 stipulates that "the sea, seashores, islands, waters, airspace, mineral resources and other natural resources, as well as land, forests, flora and fauna, other parts of nature, real estate and goods of special cultural, historic, economic or ecological significance, which are specified by law to be of interest to the Republic of Croatia shall enjoy its special protection", and that "the way in which goods of interest to the Republic of

Croatia may be used and exploited by bearers of rights to them and by their owners, and compensation for the restrictions imposed on them, shall be regulated by law”.

279. In **Greece**, the principles of environmental protection are embedded in Article 24 of the Constitution. The legal scheme for the protection of the environment from pollution and degradation of any kind extends to public or private, personal or corporate activity.

## ***B. Environment and national legislation***

280. Most countries have developed either framework legislation often defining basic principles of environmental protection and/or they have enacted a number of specific legislations in the main environmental sectors.

### **Examples of countries with framework legislation on the environment**

281. **Albania** passed the Law on Environmental Protection in 2002. In addition there are other specialised legislation which regulate, for instance, the treatment of dangerous wastes, ionising radiation, gathering of statistical data on the environment, strategic environmental assessments, air and water quality, waste management, environmental impact assessments, chemicals and hazardous waste, biodiversity, fauna protection, including Integrated Pollution Prevention and Control, Large Combustion Plant, Seveso II, Pollution Release and Transfer Register and the Liability Directive.

282. In **Bulgaria** the horizontal legislation in the field of environment conservation includes the Environmental Protection Act, Liability for Prevention and Remedying of Environmental Damage Act, and the Access to Public Information Act. In addition, separate legal acts have been passed in main sectors such as on air quality, waste management, water quality, nature conservation, chemicals and mine waste.

283. The **Czech Republic** has enacted the Law on the Environment. The horizontal legislation sets rules in particular for access to environmental information, environmental impact assessment, urban planning, integrated pollution prevention and control, environmental damage, prevention and remedies and environmental criminal offences. The sectoral environmental legislation covers a wide range of environmental issues, specifically water, soil, air and ozone protection, nature protection, waste management, forest management, use of mineral resources, chemicals management, prevention of industrial accidents, the use of genetically modified organisms, climate change, and the use of nuclear energy, radiation protection and protection against noise.

284. In **Georgia**, the Law on Environmental Protection (1996) guarantees citizen's environmental rights. In particular, a citizen has the right to live in a safe and healthy environment, as well as to receive complete, objective and timely information on the state of his work and living environment (Article 6).

285. Since 1987, **Portugal** has a basic environmental law which has been updated and which is revoked by the current Framework Environment Law, Law 19/2014, of April 14<sup>th</sup>. The horizontal framework legislation also sets rules for access to environmental information, environmental impact assessment, environmental liability, urban planning, integrated pollution prevention and control.

286. **Hungary** established the Act on the General Rules of Environmental Protection.

287. **Norway** has adopted the Nature Diversity Act.

288. **Poland** has enacted the Nature Protection Act and the Environmental Protection Law. In addition, there are also specialised environmental legislations which regulate, among other things, the issue of waste, genetically modified organisms, the use of atomic energy, the emission of greenhouse gases and other substances, water protection, carrying out geological work and extracting mineral deposits, and forest protection.

289. **Slovenia** regulates environmental legislation with the Environment Protection Act which addresses air and water quality, waste management, environmental assessment, integrated pollution prevention and control, environmental damage, soil protection and noise protection etc. Specific legal acts regulate nature protection, water management and genetically modified organisms. On the basis of this Act, the National Assembly of the Republic of Slovenia at the proposal of the Government, adopts a National Environmental Protection Programme which contains long-term goals, guidelines and tasks in the field of environmental protection. In 2002 Water Act was adopted which regulates continental and underground waters as well as sea management. It has been amended on several occasions; latest change was done in May 2020.

290. **Sweden** adopted the Environmental Code in 1999. Based on this Code a vast number of regulations relating to, among other things, nature protection, environmental impact assessment, waste management and chemicals management have been enacted. At the same time a system of environmental courts was introduced. The court system presently consists of five regional environmental courts and one Environmental Court of Appeal. In 2017 Sweden adopted a climate act which implements the Paris Agreement in Sweden.

291. In **Belgium**, the Walloon Region adopted the first two books of its Environmental Code (Book I General and Book II Water) in 2004. The other areas are still dealt with in a sectoral manner. In Flanders, the Decree of 5 April 1995 containing general provisions on environmental policy establishes some general principles of environmental policy (which are very familiar to the principles in the Environmental Policy Title of the EU-treaty). This decree also contains chapters on some either horizontal and cross cutting issues like institutional organization, general rules for harmful activities, Impact Assessment, environmental damage, and enforcement of environmental law.

292. In **Luxembourg**, Act of 25 June 2004 on the coordination of national sustainable development policy establishes a well-defined institutional structure, designates a series of instruments and appoints their respective officials. It provides for a national sustainable development report, indicators and a sustainable development plan. Furthermore, with the Law of 18 July 2018, Luxembourg adopted a new framework law on the protection of nature and natural resources. The objectives of this law are: to safeguard the character, diversity and integrity of the natural environment; to protect and restore landscapes and natural areas, biotopes, species and their habitats, as well as ecosystems; to maintain and improve biological balances and diversity; to protect natural resources against all forms of degradation; to maintain and restore ecosystem services and to improve the structures of the natural environment (Article 1). In addition to these general measures of landscape conservation and protection of species and biotopes, a network of protected areas is established. A distinction is made between protected areas of Community interest, known as Natura 2000 areas, and protected areas of national interest. Moreover, the Environmental Code compiles laws and regulations on planning, atmosphere, noise, climate change, hunting, waste, water, energy, classified establishments, forests, parks, fishing and nature protection.

293. In **Finland**, key environmental legislation includes the Environmental Protection Act adopted in 2000 and renewed in 2014. It governs prevention and control of pollution and prevention of generation of waste by certain activities. It also governs soil and groundwater conservation and remediation. The Nature Protection Act, which governs nature and landscape conservation, is currently in the process of being renewed. The public's views on the renewal of the Nature Conservation Act was sought through a broad public consultation. A web-based questionnaire open to everyone was launched in January 2020 and open for one month. The questionnaire was available in the national languages Finnish and Swedish as well as in the three Sámi languages and English. It welcomed views on both the current legislation as well as proposals related to preparation of the new legislation. Answers were received from 2126 persons, including a broad range of views on the need for conservation of biodiversity. In addition to the questionnaire, discussions were held with 23 stakeholders.

294. **Greece** has been one of the first countries worldwide to endorse a framework law on the protection of the environment in 1986 (Law 1650/1986). A new Law on the modernization of the environmental legislation was adopted in 2020 (Law 4685/2020), allowing for the practical implementation of green growth objectives and aiming at simplifying environmental licensing procedures, ensuring enhanced natural protection, incorporating EU standards for Natura areas, promoting environmentally friendly waste management, protecting Greek forests etc.

295. **Spain** has adopted a Climate Change and Energy Transition Law which establishes the regulatory framework for Spain to move towards the goal of climate neutrality by mid-century. This law includes the necessary institutional cooperation instruments; assessment and learning tools; and a framework facilitating energy transition with channels for integrating the different sectors and incorporates all economic sectors into climate action, from energy generation and finance to primary sectors, including transport, industry and public administrations. The text sets the following targets, which can only be revised upwards, i) it determines by law, for the first time, that Spain should achieve climate neutrality no later than 2050, ii) by mid-century, Spain's electricity system must be 100% renewable, iii) by 2030 emissions from the Spanish economy as a whole must be reduced by 23% compared with 1990., iv) by the end of the next decade, at least 35% of final energy consumption

should be from renewable sources, v) in the case of the electricity system, at least 70% must be renewable by 2030 and vi) energy efficiency measures will have to reduce primary energy consumption by at least 35%.

### Examples of countries with a number of specific legislations on the environment

296. In **Austria** provisions on the protection of the environment are found for example in the Trade Code, the Water Act, the Waste Management Act, the Air Pollution Law for Boiler Facilities, the Forestry Act and the Air Pollution Impact Act. In 2005 **Estonia** passed the Environmental Assessment and the Environmental Management System Act. In addition to its Environmental Protection Act, **Croatia** enacted in July 2019 a new water legislation package which consists of the Water Act, Amendments of Water Management Financing Act and the Act on Water Services.

297. In **Azerbaijan**, the main environmental legislative acts include laws on “Environmental protection”; “Environmental safety”; “Atmospheric air protection”; “Environmental Impact Assessment”; “Industrial and household waste”; “Protection of greeneries”; “Hunting”; “Wildlife”; “Fisheries”; “Water supply and wastewater”; “Specially protected nature areas and objects”; “Environmentally sound agriculture”; “Radiation safety of the population”; etc., as well as Forest, Water and Land codes.

298. The following basic laws apply to environmental issues in **Georgia**: Environmental Assessment Code (2017), the Forest Code of Georgia (2020), Waste Management Code (2014), Law of Georgia on Environmental Liability (2021), Law of Georgia on Wildlife (1996), Law of Georgia on Red List and Red Book (2003), Law of Georgia on Ambient Air Protection (1999), Law of Georgia on Water (1997), Law of Georgia on Licenses and Permits (2005), the Law of Georgia on Nuclear and Radiation Safety (2012), the Law of Georgia on Radioactive Waste (2015), the Law of Georgia on Living Genetically Modified Organisms (2014), the Law of Georgia on Aquaculture (2020).

299. **Cyprus** has been enforcing legislation regarding the environmental impact assessment of project, plans and programs and monitoring and evaluating the parameters that make up the upgrading of environmental quality. Cyprus also has a legislative framework regarding the protection of nature and biodiversity as a main natural capital, pollution control (air, water, soil) and waste management in the context of their use as resource of circular economy, as well as the reduction of greenhouse gas emissions and adaption to the effort against capital climate change.

300. **Serbia** has enacted specific legislation to regulate planning and construction, mining, geological research, waters, land, forest plants and animals, national parks, fisheries, hunting, waste management, protection against ionic radiation and nuclear safety. In 2004, Serbia enacted the Law on Environmental Protection, Law on Strategic Environmental Assessment, Law on Environmental Impact Assessment and Law on Integrated Pollution Prevention and Control to harmonise its framework with EU regulations. The Criminal Code includes a special chapter on offences against the environment. The initiative to amend the Criminal Code in order to fully comply with Directive 2008/99/EC (crime in the area of environment) was initiated by the Ministry of Environment, Mining and Spatial Planning and approved by the Ministry of Justice. In the course of 2009 and 2010 a new set of laws and implementing legislation in the area of environmental protection

was adopted, notably on chemicals, noise protection, prohibition of development, production, storage and usage of chemical weapons, waste, package and packaging waste and biocide products, air protection, nature protection, protection against non-ionising radiation, protection against ionising radiation and sustainable use of fish stock.

301. The **Slovak Republic** has enacted multitudinous and multifarious environmental legislation in the areas of public administration, environmental funding, examination of influence over the environment, prevention of serious industrial accidents, environmental designation of products, environmental management and auditing, integrated prevention and control of environmental pollution, protection of land and nature, genetically modified organisms, water economy, protection of the quality and quantity of water, protection of ambient air and ozone layer, waste economy, geological works and environmental damages. Offences committed against the environment are defined in the Criminal Code.

302. On the basis of the Environment Protection Act, **Slovenia** has adopted very diversified environmental legislation including nature conservation, environment protection (waste management, air quality, industrial pollution, climate change, soil protection, electromagnetic, noise pollution etc.), impact assessment, water management, biotechnology, ecological redevelopment, spatial planning, infrastructure and construction. There has also been a considerable improvement in the inclusion of environmental provisions into legislative mechanisms and policies of all relevant sectors such as agriculture, forestry, energy, tourism, education, health etc.

303. The environmental legislation in **Portugal** covers a wide range of specific areas, such as: climate change, air quality, water, wastewater management, dangerous substances, environmental impact and strategic assessment, the use of genetically modified organisms, chemicals, industrial pollution, noise, radiation protection, nature conservation and biodiversity, forest protection and environmental tax.

304. In **Spain**, the national Parliament has enacted a specific legislation on natural heritage and biodiversity, assessment of the effects of certain plans and programmes, coastal areas, continental water, the national parks network, environmental liability, integrated pollution prevention and control, the quality and protection of the air, waste and waste packaging, environmental noise, geological sequestration of CO<sub>2</sub>, access to information and public participation on environmental matters; protection of aquatic ecosystems, the creation of natural river reserves and the allocation of water resources to different uses; drought plans, which distinguish between situations of scarcity and prolonged drought in order not to cause deterioration of water bodies. The regions may establish a higher level of protection to the basic legislation, but not a lower one.

305. **Switzerland** has enacted a number of relevant environmental laws, including the Environmental Protection Act, which deals with, *inter alia*, pollution control (air pollution, noise, vibrations and radiation), environmental impact assessment, environmentally hazardous substances, the handling of organisms, waste and the remediation of polluted sites. Other crucial laws are the Federal Act on the Protection of Nature and Cultural Heritage, the Water Protection Act, the

Forest Act, the Federal Law on Spatial Planning, as well as the Chemicals Act, and newly the Federal Act on the Reduction of CO<sub>2</sub> Emissions.

306. The institutional framework of the water policy in **Belgium** (Flanders) is described in the decree on Integrated Water Policy. The Decree constitutes the general framework for the overall water policy in Flanders. Sectoral dedicated legislation is also in place on all other important environmental components like nature, soil sanitation, waste and use of materials. This is also the case in the Brussels-Capital Region, where the major environmental issues are regulated by sectoral legislative texts, framework legislation or codes, which provide a framework containing the main provisions, which may then be set out in implementing decrees. This is the case for water, waste, nature conservation, noise, inspection, soil, environmental permits and air/climate/energy. Other texts of a transversal nature are applicable to all themes, such as legislation on access to information or environmental assessment.

307. In **Finland**, the most important legislation for the cultural environment includes the Land Use and Building Act (132/1999), the Act on the Protection of the Built Heritage (498/2010), the Antiquities Act (295/1963) and the Nature Conservation Act (1096/1996). According to the national Land Use Guidelines, land use must take into account the obligations of international agreements on the cultural and natural heritage and government decisions. The cultural environment is also affected, directly or indirectly, when several other laws are applied. For example, the application of regulations regarding energy economy, environmental protection, nature conservation, soil extraction, water areas, mining, transport, agriculture and the development of rural areas can affect the cultural environment. Several international UNESCO and Council of Europe conventions concern the cultural environment, of which Finland is a party.

308. In **Greece**, key environmental legislation adopted over the last decade includes, inter alia, Law 3937/2011 on biodiversity protection, Law 4014/2011 on environmental permitting, Law 4042/2012 on environmental protection through criminal law and Law 4269/2014 (amended in 2016) on regional and urban planning.

### C. Environment and national policy frameworks including plans of actions and institutional arrangements

309. **Cyprus** has established a legislative framework for ecolabel products using the EU Ecolabel which is a label of environmental excellence that is awarded to products and services meeting high environmental standards throughout their life-cycle: from raw material extraction to production distribution and disposal. In addition, the EMAS Regulation is also implemented based on the EU Eco-Management and Audit Schemes (EMAS) which is a premium management instrument for companies and other organizations to evaluate, report and improve their environmental performance. Last but not least, the Green Public Procurement instrument is used for environmentally friendly goods, services and works, which make an important contribution to sustainable consumption and production. The Ministry of Agriculture, Natural Resources and Environment, namely, its Environmental Service, is vested with the overall responsibility and the implementation of environmental legislation and programmes. However, other ministries also share responsibility in this area, such as the Ministry of Interior, the Ministry of Labour and Social Insurance, the Ministry of Health and the Ministry of Energy, Commerce and Industry.

310. **Georgia** has developed National Environmental Action Programmes. The current one covers the period 2017-2021. Furthermore, there are other main strategies and action plans: National Waste Management Strategy (2016-2030) and National Action Plan (2016-2020); Georgia's Agriculture and Rural Development Strategy 2021-2027, and the Action Plan for 2021-2023 of Georgia's Agriculture and Rural Development Strategy 2021-2027 which includes forest issues; National Biodiversity Strategy and Action Plan of Georgia 2014 – 2020; Environmental Strategy of Tbilisi 2015-2020; Action Plan of the National Strategy for Reduction of Chemical, Biological, Radiation and Nuclear Threats for 2015-2019; the State Programme on Enabling Activities to Abate Ambient Air Pollution in Tbilisi 2017-2020. In addition, the Strategic Environmental Assessment (SEA) procedure is effective from July 1, 2018.

311. **Hungary** has established a "Green-Point Service" as part of the Public Relations Office, which works within the framework of the Ministry for Environment and Water. The service provides, *inter alia*, access to environmental information and operates a nationwide information network of environment, nature and water protection.

312. In December 2017, **Portugal** published the Action Plan for the Circular Economy. The circular economy is a strategic concept based on the prevention, reduction, reuse, recovery and recycling of materials and energy. Replacing the end-of-life concept of the linear economy with new circular flows of reuse, restoration and renewal, in an integrated process, the circular economy is seen as a key element in promoting the decoupling of economic growth and growth consumption of resources, a relationship traditionally seen as inexorable.

313. In **Slovenia**, the new Resolution on the National Environmental Protection Programme 2020 - 2030 has established long-term orientations, goals, tasks and measures of environmental protection. The Resolution also contains the National Program for Nature Protection, National Water Management Program and measures to achieve the goals of the 2030 National Development Strategy. The document defines guidelines for planning and implementing policies of other sectors that affect

the environment and includes measures for fulfilling the Agenda 2030 Sustainable Development Goals.

314. In 2004, **Serbia** established the Environmental Protection Agency within the Ministry of Environmental Protection and Spatial Planning, with the task of developing, harmonising and managing the National Environmental Information System, gathering, consolidating and processing environmental data, as well as drafting reports on the environmental status and implementation of the environmental protection policy. In 2008, Serbia adopted a National Sustainable Development Strategy which is structured around three pillars: knowledge-based sustainability, socio-economic conditions and environment and natural resources. To complement this general strategy several specific action programmes have been adopted. In addition, planning and management of environment protection is secured and provided by implementation of the National Environment Protection Programme, which contains short-term (2010-2014) and long-term objectives (2015-2019), National Waste Management Strategy (2010) and National Strategy for Biodiversity (2011).

315. The strategic goals of **Albania** in the field of the environment are defined in the Environmental Cross-cutting Strategy. Many of the policies and measures of this strategy are supported by programmes and actions set out in inter-ministerial strategies. The effective implementation of the strategy lies with a number of institutions, but often inter-institutional bodies have been created to ensure co-ordination.

316. In 2008, the **Austrian** Government adopted comprehensive standards for public participation and recommended their application throughout the federal administration. Although the standards are not yet at present applied comprehensively, NGOs claim their application in the preparation of plans, programmes or policies in the environmental field.

317. In the **Czech Republic**, the Strategic Framework for Sustainable Development for 2010-2030 identifies key issues devoted to sustainable development and presents measures to address them. Apart from this overarching strategy there are other strategies and plans of action on particular issues in place, e.g. on abating climate change impacts, biodiversity protection, main catchment areas and waste management. The central role in environmental governance at national level is performed by the Ministry of the Environment and its special environmental bodies such as the Czech Environmental Inspectorate. Other ministries and/or national bodies are also involved in environmental protection.

318. The National Action Programme on Increasing the Efficiency of the Protection of Human Rights and Freedoms in **Azerbaijan** envisages the implementation of measures to improve the environmental situation in order to ensure the right to live in a healthy environment and prevent environmental pollution (Chapter II; Article 2.21). The main goal of the National Strategy on the Conservation and Sustainable Use of Biological Diversity for 2017-2020 is the efficient use of genetic resources, protection of biodiversity for future generations, poverty eradication, regulation of ecological balance, transition to green economy, stimulation of environmental education, recovery of endemic flora and local fauna species, improvement of specially protected natural areas network, implementation of measures to reduce the pressure on biodiversity. Section 11 of "Azerbaijan 2020: Look into the Future Concept of Development" identifies issues of environmental

protection and ecology. Action Plan for 2019-2020 on reduction of negative impact of plastic packaging wastes to the environment is planned to increase efficiency in this area, expand the use of alternative packaging, as well as strengthen the recycling market.

319. In **Poland**, a National Environmental Policy has been adopted in accordance with the Environmental Protection Law. It defines in particular the environmental objectives and priorities, the levels of long-term goals, the type and timing of environmental actions as well as measures necessary to achieve the objectives, including legal and economic mechanisms and financial resources.

320. In 2007, **Spain** adopted a Sustainable Development Strategy which includes “a long-term perspective to aim towards a more coherent society in terms of the rational use of its resources, and more equitable and cohesive approach and more balanced in terms of land use”. The state legislation usually includes co-ordination mechanisms and planning directives. At the institutional level, an inter-territorial conference on environment regularly gathers the state and regional authorities competent for the environment and the Advisory Committee on Environment in which NGOs and other civil society organisations participate, to provide advice to the Ministry of Environment.

321. In **Switzerland**, plans of action are elaborated in the national legislation processes as well as in specific strategies. Important instruments on environmental issues include the National Biodiversity Strategy or the Sustainable Development Strategy.

322. In **Belgium**, the various regions are adopting environmental action plans. In the Brussels-Capital Region, for example, the Good Food Strategy aims to carry out actions to transition the food system towards greater sustainability. The Brussels Region also has a regional Circular Economy Programme (Be Circular).

323. In **Finland**, according to the Government Resolution in 2014 concerning the Cultural Environment Strategy 2014–2020, cultural environment refers to a whole formed by human activity, an interaction between humans and the natural environment that includes different kinds of elements of different ages, the everyday human environment. Ratification of the Faro Convention was included in the national Cultural Environment strategy 2014–2020 as one of the measures to promote joint responsibility for heritage and good governance.

324. In **France**, the Environmental Code codified a 1976 Law on classified installations for environmental protection (ICPE) which makes the most dangerous activities subject to an authorisation, registration and declaration regime according to thresholds and criteria. This code also codified a 2006 Law on water and aquatic environments. Installations, works and developments (IOTA) are subject to an authorisation and declaration regime according to thresholds and criteria. The Environment Code also includes a protective regime for protected species, parks and nature reserves, Natura 2000 areas, as well as legislation regulating air monitoring and quality, hunting and fishing activities, the use of waste and chemicals, the latter regime being the result of the transposition of European directives, nuclear safety and the use of advertising and signs. The Environmental Code also transposes the European directives on the environmental assessment of plans and programmes with a significant impact on the environment. France also adopted in 2020 a Law on the fight against waste and the circular economy, in 2019 a Law on energy and

climate, in 2019 a Law creating the French Office for Biodiversity and strengthening the environmental police, the latter having been harmonised and modernised by an ordinance in 2012. In 2016, an ordinance strengthened and modernised upstream public participation in the preparation of development or equipment projects with a significant impact on the environment or regional planning. A 2012 Law and a 2013 ordinance implemented the principle of public participation stemming from the Charter of the Environment.

325. **Sweden** has established several objectives for the quality of the environment. First, there is a generational goal intended to guide environmental action at every level of society. It indicates the sorts of changes in society that need to occur within one generation to bring about a clean, healthy environment. Second, the environmental quality objectives cover different areas from unpolluted air and lakes free from eutrophication and acidification, to functioning forest and farmland ecosystems. In addition to this, in 2018 Sweden adopted a national strategy which outlines the mechanisms for coordination, monitoring, evaluation and review of adaptation to climate change.

326. In **Croatia**, the Climate Change Adaptation Strategy for the period up to 2040 with a view to 2070, is the basis for a 5-year action plan period. The national energy and climate plan for the period from 2021 to 2030 was adopted in with of the importance of energy for achieving climate goals.

327. The **Luxembourg** Law of 18 July 2018 provides in its Chapter 9 (Article 47 and following) for the elaboration of a national plan concerning nature protection. In collaboration with other national administrations, the municipalities, the unions of municipalities and the concerned circles, the Minister draws up a national plan and then decides every five years whether the plan should be subject to a general revision. The national plan is approved by the Government in Council. Its implementation is of public interest. It guides the political orientation in the field of nature protection and includes the following elements the state of conservation of habitats and species and the evolution of biological diversity; priority measures concerning the protection of the natural environment; the listing of habitats and species subject to an action plan; the areas targeted by conservation and restoration measures under action plans for threatened habitats and species; priority sites to be declared protected areas of national interest; public awareness; the contribution and participation of municipalities and associations of municipalities in the concrete implementation of the national plan; the estimation of the costs related to the implementation of the plan; the summary distribution of the missions of the different actors. It also provides for the reintroduction of protected species in particular, as well as the limitation applicable to non-indigenous species, the compensation of certain damages caused to owners by certain protected animal species.

The Law of June 25, 2004 provides in its Article 10 the elaboration of a plan of sustainable development, renewable every four years. In its 3rd national plan of December 2019, the government has retained ten priority fields of action, namely Ensuring social inclusion and education for all, ensuring conditions for a healthy population, promoting sustainable consumption and production, diversifying and ensuring an inclusive and forward-looking economy, planning and coordinating land use, ensuring sustainable mobility, halting the degradation of our environment and respecting the capacity of natural resources, protecting the climate, adapting to climate change and ensuring sustainable energy, contributing globally to poverty eradication and policy coherence for sustainable development, and ensuring

sustainable finances. This plan reflects the 17 Sustainable Development Goals set by the UN in Agenda 2030 as of 25 September 2015.

In May 2020, an Integrated National Energy and Climate Plan was adopted. It forms the basis for Luxembourg's climate and energy policy. It describes the policies and measures to achieve the national targets for greenhouse gas emissions reduction, renewable energy and energy efficiency by 2030.

## 2. Establishing control over potentially harmful environmental activities

328. In **Belgium**, the authorisation of specific activities comes primarily within the remit of the regions, which regulate them through licensing procedures. Nevertheless, the federal authority remains responsible for authorising the operation of nuclear activities as well as activities in maritime areas under Belgian jurisdiction (North Sea). The environmental permit contains conditions that frame the activity and make it possible to limit or prevent harm to the environment or public safety. These conditions are either specific to the classified installation or more general, related to the activity. The various regional regulations also contain an elaborate regime of sanctions for violators of regional environmental legislation or permits. In Flanders, for example, the Integrated environmental registration and permitting scheme addresses the environmental global performance of the listed facilities and activities (*inter alia* their emissions to air, water and land, waste management, energy efficiency, noise, prevention of accidents and restoration of the site upon closure). In Flanders, for example, the Integrated environmental registration and permitting scheme addresses the environmental global performance of the listed facilities and activities (*inter alia* their emissions to air, water and land, waste management, energy efficiency, noise, prevention of accidents and restoration of the site upon closure). 'General' and 'sectoral' rules dedicated to the different listed facilities and activities (in Dutch: "Vlarem") are to be complied with and constitute one of the important points to be assessed in the permitting procedure. The permitting authority can impose in the permit so called "special" environmental conditions depending on the local circumstances. The category with merely low impact requires a notification with the competent authority, and the fore mentioned applicable general or sectoral rules will apply. In the Walloon Region, any activity with a town planning and environmental impact is subject to an integrated procedure leading to the granting of a single permit.

329. In the **Slovak Republic**, the Constitution provides explicitly that the state shall care for economical exploitation of natural resources, ecological balance and effective environmental policy. It shall secure protection of determined sorts of wild plants and wild animals (Article 44).

330. In **Turkey**, certain environmentally relevant activities may be commenced only after authorisation by the public authorities. Authorisation procedures, licensing standards and conditions and licence annulment are determined in the regulation on authorisation and licencing.

331. In **Serbia**, the Law on Environmental Protection establishes manifold instruments to exercise various degrees of control over public and private activities which have an impact on the environment. It contains regulatory and other instruments such as permit regime, user and pollution fees and economic incentives. The law also contains an elaborated sanctioning regime for violators of

environmental legislation, even criminal penalties are possible. This law implements the Seveso II Directive, which refers to harmful activities. In addition, three by-laws were passed based on the directive. Competence for law enforcement in the field of environmental protection is divided between: republic environmental protection inspections, provincial environmental protection, local environmental protection inspections.

332. In **Slovenia**, the Environment Protection Act sets general rules for control over potentially harmful environmental activities mainly through administrative permitting decisions issued by Slovenian Environment Agency. Implementation and control is guaranteed by inspection authority mainly on national level. Permitting system is a tool for control over industrial water and air emissions, industrial waste, dangerous substances and trade in emissions rights etc. Environmental protection consent can be as an administrative decision issued in environmental impact assessment procedure. In order to reduce adverse environmental impact, an environmental tax based on the “polluter pays” principle has been introduced.

333. In **Azerbaijan**, control over natural and legal person that have a negative impact on the environment is carried out by the Ministry of Ecology and Natural Resource and its relevant structures. This control is carried out in accordance with environmental legislation acts, as well as Chapter 25 of the Code of Administrative Offenses (administrative offenses against the rules of environmental protection, nature management and environmental safety) and Chapter 28 of the Criminal Code (Environmental Crimes). The Law on Environmental Protection defines licenses and permits in the field of nature use, limits and quotas, payments for environmental pollution and use of natural resources, and economic incentives for environmental protection.

334. In **Portugal**, environmental liability is established under Decree-Law no. 147/2008, of 29 July, with posterior amendments, that stipulates the legal regime for liability for environmental damage and transposes Directive 2004/35 / EC of the European Parliament and of the Council, April 21. The environmental liability regime applies to environmental damage and imminent threats of damage caused as a result of the exercise of any activity developed within the scope of an economic activity, regardless of its public or private character, profitable or not, for short called occupational activity. This regime aims to ensure, before the whole community, the repair of environmental damage caused in the exercise of an occupational activity, based on the principles of responsibility and prevention, and operationalizing the polluter-pays principle, enshrined respectively in paragraphs f), c) and d) of article 3 of Law no. 19/2014, of 14 April, which defines the basis of environmental policy.

335. In **Austria**, besides bans of massive damage to the environment and codes of conduct, permits issued by public authorities are prevailing, which means that activities (mostly economic) are subject to control exerted or permits granted by administrative authorities. Moreover, the Environmental Control Act provides that the Federal Minister responsible for the environment shall submit a written report on the state of implementation of environmental control to the Parliament every three years.

336. The **Bulgarian** Constitution states that underground resources, national roads, beaches, over waters, forests and parks of national importance etc. constitute exclusive state property and that the state exercises the sovereign rights in prospecting, developing, utilizing, protecting and managing the continental shelf and the exclusive offshore economic zone, and the biological, mineral and energy

resources therein (Article 18). The land as a basic national resource shall receive special protection by the state and the society (Article 21). The Environmental Protection Act ensures that anyone who culpably inflicts pollution or environmental damage on another shall be liable to indemnify the aggrieved party (Article 170).

337. In the **Czech Republic**, control over potentially harmful environmental activities is implemented through granting permissions and supervision of how these are implemented. A system of response measures provides for fines (penalties) and environmental liability. Institutionally the major burden is imposed on the Czech Environmental Inspectorate and other national and local authorities. Administrative and criminal courts are also considered part of this protection system as their role is not limited only to determining sanctions.

338. Similarly, in **Cyprus** environmental permits are issued to industrial and other plants by the Ministry of Labour to regulate air emissions, and by the Ministry of Agriculture regulating industrial waste, dangerous substances, water and soil pollution. The control of industrial pollution is achieved by the licensing of industrial installations and the systematic monitoring of their operation with on-site inspections so that the licensing standards and conditions are met and complied with. If need be, court orders may be obtained. Breach of environmental laws and violations of the conditions of a licence or permit give rise to criminal liability or civil liability for nuisance as well as for negligence for any damage sustained to person or property.

339. In **Germany**, various environmental laws provide that certain environmentally relevant activities may be commenced only after authorisation by the public authorities. Authorisation conditions aimed at protecting the environment are determined by statute, which are then reviewed by the public authorities in an authorisation procedure. To ensure compliance with obligations, sanctions are imposed for violations.

340. The Environmental Protection Law of **Poland** provides for a number of legal instruments aimed at establishing control over activities potentially harmful to the environment. For example, a permit issued by the competent authority is required for the operation of systems releasing gases or dust into the air, discharging sewage to water or soil and generating waste (Article 180). Another solution is the establishment of the National Pollutant Release and Transfer Register used to collect data on exceeding the applicable threshold values for releases and transfers of pollutants, and transfers of waste (Article 236a). Furthermore, the release of gases or dust into the air and waste storage are subject to a charge for using the environment (Article 273). The Act also governs the issue of responsibility in environmental protection. An important role is also played by the Act on Preventing and Remedying Environmental Damage establishing a mechanism of accountability of entities using the environment for the imminent threat of damage to the environment and environmental damage. The Act on Inspection for Environmental Protection governs the performance of inspection by the Inspection of Environmental Protection, establishes the National Environmental Monitoring including information on the environment and its protection, and also refers to the execution of tasks in the event of environmental damage and major accidents.

341. Certain natural resources in **Spain** are considered public domain (territorial sea, beaches, rivers or certain forest). Its public use and the temporary exclusive use by concession are controlled in order to ensure its integrity and its preservation. In general, the establishment of environmental permits are used which allows the public

administration to supervise that the private activity is developed in accordance with the requirements of the relevant environmental legislation (wastes, waste and chemicals, emissions of pollutants, etc.). In other cases, a prior communication or a responsible declaration must be presented to the public administration before the beginning of the activity, subjected to *ex post* supervision by the public authorities. Other preventive techniques are the certification or the regulation of the market of pollutions fees (CO<sub>2</sub>). The Spanish law also establishes a system of sanctions, including criminal and administrative, and civil liability for causing environmental damage. For the enforcement of this legislation specialised units exist in the law enforcement agencies and in the Public Prosecutor Office.

342. In **Sweden**, environmental inspection and enforcement, referred to as “supervision” in the Environmental Code, are carried out by authorities at regional and local level and sometimes at national level. They are integrated in a single carefully balanced inspection and enforcement plan of each responsible authority in order to enable priority planning. To improve inspection efficiency the immediate enforcement authorities should regularly follow up and evaluate their planning and implementation. The Swedish Environmental Protection Agency has issued general guidelines for inspection planning. The Environmental Code also contains provisions on supervision and sanctions. The main enforcement instrument is administrative orders which can be combined with an administrative fine. The Code also includes environmental sanction charges and criminal penalties.

343. In **Switzerland** control over potentially harmful environmental activities is provided by the competent authorities either at the federal or at the cantonal level. Every four years, an environmental report is drawn up to assess the state of the environment and provide information on the environment and its development.

344. In **Finland**, according to the Environmental Protection Act, permits are needed for activities that pose a risk of environmental pollution. The Act contains a general prohibition against soil contamination. One important condition for permits is that emissions are limited to the levels obtainable by using Best Available Techniques (BAT). Applications must be made to the relevant authority. The authority will then make the application public as appropriate, giving the relevant authorities and anyone affected by the plans time to comment and make proposals concerning the requirements for the permit. Complaints against permit decisions may be made to the Administrative Court of Vaasa, then to the Supreme Administrative Court. Other sector specific permit requirements include water permits, which are needed for other activities affecting constructions in waters or the water supply. Exceptional planning permission may also be required for certain types of building and changes in land use. Permits are also compulsory for waste transportation. The principle of PIC (Prior Informed Consent) requires exporters trading in a list of hazardous substances to obtain the prior informed consent of the authorities in the importing countries before proceeding with the export. Exporters must also make a notification to the authorities of the importing country about the first export during each calendar year of each listed chemical. The Finnish Nature Conservation Act includes numerous prohibitions related to the conservation of nature reserves and species, the purpose of which is to preserve natural biodiversity. In some cases, the appropriate authorities may grant derogations from these prohibitions.

345. In **France**, installations and activities likely to present a danger to the environment are subject to a system of authorisation and declaration under the control of the State representative in the departments. Inspections are carried

out by authorised agents commissioned for this purpose. In the event of failure to comply with the regulations, the code provides for administrative sanctions (compliance work, fines) and criminal sanctions.

346. The **Luxembourg** environmental administration, the nature and forestry administration and the Information Exchange Forum carry out targeted controls and take the necessary measures in the areas of their competence. Certain activities that have an impact on the environment can only be carried out after obtaining a permit from the competent authorities under the various laws concerning nature protection. The conditions of development and operation set for the human and natural environment can be modified or completed, if necessary.

### 3. Requiring environmental impact assessments (EIAs)

347. By **Belgian** law, EIA is mainly the responsibility of the regions, which require an EIA to be carried out for installations likely to have a significant effect on the environment. Projects with a substantial potential impact are automatically subject to an EIA (e.g., large combustion plants), whereas for other projects, the permit-issuing authority may decide to impose an EIA on a case-by-case basis, in view of significant environmental effects. At the federal level, the state is also required to carry out substantial EIAs to guarantee its effective control over potentially harmful activities. For example, Article 28 of the Law of 20 January 1999 states that “any activity in marine areas that is subject to a permit or authorisation, is subject to an environmental impact assessment by the competent authority appointed to this task by the Minister, both before and after granting the permit or authorisation. The EIA is designed to assess the effects of the activities on the marine environment.”

348. In **Portugal**, the Decree-Law no. 152-B/2017, of 11 December, is the most current version of the legal regime for Environmental Impact Assessment (EIA) of public and private projects that are likely to have significant effects on the environment, constituting a fundamental preventive instrument of sustainable development policy.

349. The Nature Diversity Act of **Norway** also contains the requirement to undertake EIA to strike a fair balance between the various conflicting interests. Another very detailed example describing the requirements of an EIA is the **Hungarian** Act LIII of 1995.

350. According to the **Estonian** Act on Environmental Impact Assessment and Environmental Management System, the explicit goal of the EIA is to prevent and reduce potential environmental damage (Paragraph 2). The Act makes EIAs mandatory in cases where potentially a significant environmental impact could occur or where designated environmental protection sites (Natura 2000 sites) are impacted (paragraph 3). The Act defines environmental impact rather broadly as any direct or indirect effects of activities on human health and well-being, the environment, cultural heritage or property (paragraph 4). Moreover, it has defined that any irreversible change to the environment is considered “significant” (paragraph 5). In addition, the Act contains an extensive list of activities from mining to waste management or public infrastructure project which always require an EIA (paragraph 6). The Estonian Act also contains a section on “transboundary EIAs” (paragraph 30).

351. In **Austria**, EIAs are *inter alia* governed by the Impact Assessment Act. An EIA is mandatory for projects of the type included in Annex 1 of the Act and which meets certain threshold values or certain criteria specified for each type of project (e.g. production capacity, area of land used). The EIA as now practiced in Austria is a clear quality improvement over previous project licensing instruments and is thus an important step towards precautionary and integrative environmental protection. It also serves as a planning instrument and a basis for decision-making. Moreover, it gives environmental concerns the same degree of attention as any other and makes the project approval procedure more transparent and explicit by involving the public.

352. Also, in **Poland**, the EIA is one of the basic legal instruments of environmental protection, considered the best expression of the principles of prevention and precaution in the investment process. The “Act on Access to Information about the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments” makes EIA a mandatory part of the decision-making process aiming at issuing a permit for the implementation of the proposed project, also serving as an auxiliary instrument for ensuring equal treatment of environmental aspects with social and economic issues. Additionally, the Act implements relevant EU and international legislation including the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). In Poland an important role is also played by the EU’s instrument for organisations (enterprises and various institutions) - Eco-Management and Audit Scheme - which on a voluntary basis assesses the impact on the environment, in particular of small and medium enterprises and institutions whose individual effects may be relatively small - and therefore not subject to regular supervision by the environmental inspection services - but the sum of their impacts can be a significant burden to the environment.

353. The **Albanian** Law “On environmental protection” requires that activities with environmental impacts undergo an EIA process before implementation. Detailed EIA procedures are set forth in the Law “On the evaluation of environmental impact” (Chapter III). The activities are classified into two groups: Annex 1 applies to activities that require an in-depth EIA process, while Annex 2 lists the activities that need a summarised process of EIA. With a view to assessing possible adverse impacts on the environment, the law also foresees a review of applications for development. The Law “On the protection of the environment from transboundary effects” describes the procedure to follow for EIAs in a transboundary context.

354. The **Bulgarian** legislation regulates the issue of EIA in the Environmental Protection Act where it is stated that “An environmental assessment and an environmental impact assessment shall be performed in respect of plans, programmes and investment proposals for construction, activities and technologies, as well as amendments or extensions thereof, the implementation whereof entails the risk of significant impact on the environment...” (Article 81(1)).

355. In the **Czech Republic**, certain activities and projects specified in the Act on Environmental Impact Assessment, which could have impact on public health and the environment, are subject to EIA. Impact assessment is required also for certain plans and programmes which may have effects on the environment. The Act implements relevant EU legislation and takes into account also international commitments of the Czech Republic under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention).

356. In **Cyprus**, the Law on the Environmental Impact Assessment of Certain Projects entered into force on 31 July 2018 and harmonizes Directive 2014/52/EU and replaced the previous legislation. This Law ensures that public and private projects that may have a significant impact on the environment due, inter alia, to their nature, size or location, are subject to an obligation to assess their impact, prior to the granting of a permit or approval or authorisation. It is important to state that in this legislation new criteria were added for determining whether an environmental impact assessment is needed, ensuring that only projects with significant environmental impacts will be subject to an EIA. Also, it strengthened provisions to ensure better decision-making and avoid damage to the environment through the

introduction of expert Committee for project evaluation and monitoring provisions were introduced for effective protection of the environment from the construction and operation of projects.

357. In **Georgia**, the Environmental Assessment Code defines the list of activities subject to EIA, taking into consideration the risks and degree of impact on the environment, which is presented in two annexes to the Code.

358. In **Serbia**, according to the Law on Environmental Impact Assessment construction projects may not commence without the prior completion of the impact assessment procedure. The EIA Study must be approved by the competent authority. This Law regulates the impact assessment procedure for projects that may have significant effects on the environment, the contents of the EIA Study, the participation of authorities and organisations concerned as well as the public, the transboundary exchange of information for projects that may have significant impact on the environment of another state, the supervision and other issues of relevance to the impact assessment. The participation of the public in all phases of an environment impact assessment is guaranteed through national legislation.

359. According to the **Slovenian** Environment Protection Act three types of environmental assessments are introduced: environmental impact assessment, comprehensive environmental impact assessment and cross-border environmental impact assessment. Environmental impact assessment is carried out for interventions that may have a significant impact on the environment before obtaining a building permit. On the basis of the performed environmental impact assessment, the competent authority (Slovenian Environment Agency) issues or refuses to issue an environmental consent. For certain types of environmental interventions, the assessment is mandatory, while for others its necessity is determined in the preliminary procedure. A comprehensive environmental impact assessment is carried out for plans and programmes whose activities may have a detrimental effect on the environment. Where the area of influence extends beyond country borders a cross-border environmental impact assessment procedure is taken.

360. Under the **Spanish** Environmental Projects Assessments Law, EIA is a prerequisite before issuing a permit in the case of potentially harmful activities and infrastructure works. Besides, other legislation also provides EIAs of a preventive character for certain activities that could produce an important alteration of the public maritime and terrestrial domain (Coastal Area Law) or into the continental waters (Water Law).

361. According to the **Swedish** Environmental Code an EIA has to be carried out for activities that require an environmental permit. The EIA is a process which includes the completion of an environmental impact statement and consultations with the public and with the authorities and individuals concerned regarding i.a. the location and scope of the project. and regarding the direct and indirect effects that can be expected. The purpose of the EIA is to describe the direct and indirect environmental effects of the planned activity and to integrate environmental considerations into the decision-making of projects.

362. Also, **Switzerland** has enacted the obligation of performing an EIA for installations which are likely to cause extensive environmental contaminations (Article 10 of the Environment Protection Act).

363. In **Finland**, the Act on Environmental Impact Assessment Procedure, revised in 2017, applies to all projects that may be expected to have considerable negative environmental impacts. The Act lists the types of projects that must always be subjected to EIAs, such as motorways, airports, large harbours, and major poultry- and pig-farming facilities. EIA procedure may also be required for individual projects where harmful environmental impacts are likely, on the basis of decisions made by the regional Centre for Economic Development, Transport and the Environment. Strategic environmental assessment (SEA) is carried out for certain plans and programmes that are likely to have significant environmental effects in accordance with the SEA Act and the SEA Decree. The purpose of SEA is to ensure that environmental considerations are integrated into plan and programme in support of environmentally sound and sustainable development.

364. In **Azerbaijan**, the Law on Environmental Impact Assessment regulates the process of assessing the impact on the environment and human health of the implementation of economic and other activities, strategic documents and spatial planning documents. This law defines the objectives, scope and characteristics of the EIA and SEA, as well as management, international cooperation and control in this area. The Ministry of Ecology and Natural Resource conducts state environmental expertise of the EIA documents and issues an opinion. Additionally, public opinion is taken into account to carry out of the EIA, and public control is exercised in this field. During the EIA and SEA, public hearings must be held with individuals living in the area where the intended activity is carried out and legal entities operating in the area, as well as with real estate owners.

365. Under the **French** Environmental Code, projects, plans and programmes that meet certain thresholds and criteria are subject to an EIA. The Code also determines the procedural conditions of this assessment conducted by the "environmental authority." This regime was enriched by a 2016 codified ordinance.

366. In **Luxembourg**, the law of May 15, 2018 on environmental impact assessment stipulated that the granting of an authorization for a project likely to have significant impacts on the environment, in particular because of its nature, size and location, requires an assessment concerning the impacts on the environment. This assessment covers: population and human health; biodiversity; land, soil, water, air and climate; material assets, cultural heritage and landscape; and the interaction between the four preceding factors.

367. In **Greece**, the 2011 Law on Environmental Permitting and its implementing regulations joined the Environmental Impact Assessment (EIA) and permitting processes and completed cross media integration of environmental permits. Low-impact activities, which account for about 70% of operators, became subject to standard environmental obligations (attached to an operating licence), in line with good international practice. Strategic environmental assessment (SEA), introduced in 2006, is conducted according to EU requirements, inter alia, for large-scale environment-related plans and programmes, sectoral strategies, all spatial plans, and all programmes financed by EU structural and investment funds.

## 4. Ensuring public participation and access to information on environmental matters

368. In **Belgium** access to information and public participation in the environmental decision-making process is guaranteed by both the regions and the federal government, through their respective transpositions of Directives 2003/4/EC and 2003/35/EC, and in compliance with the Aarhus Convention. Thus, the “Law on public access to environmental information” and the “Law on the assessment of the effects of certain plans and programmes on the environment and public participation in the elaboration of the plans and programmes relating to the environment” implement the procedural rights guaranteed by the Aarhus Convention and the European directives. At the regional level, these obligations are generally incorporated into regional environmental codes. For example, in Flanders, public authorities have an active duty to disseminate some environmental information and the environmental information which environmental authorities have at their disposal must, as much as possible, be categorised, accurate, comparable and updated. Assistance must be provided to anyone who is looking for this information (e.g. information on the existence of a particular administrative document, or on where it can be found). Government documents are actively disclosed further to the (in-principle) access approval, with the exception of the individual decisions which regulate a concrete individual legal status and which apply for one or a few specific cases.

In the Brussels-Capital Region, new legislation on the disclosure of information by the administration recently adopted (16/05/2019) provides in particular for the setting up of a “transparency” section on the website of the administration in charge of the environment, bringing together all the information and useful links for the public, so that they can quickly have access, in electronic form, to as much information as possible that is as up to date as possible, or so that they can easily find the useful contacts.

Article 32 of the Belgian Constitution guarantees everyone the right to consult administrative documents, except in the cases and conditions laid down by the Law. The law of 5 August 2006 created a Federal Appeal Committee for access to environmental information. Comparable procedures have also been set up at regional level, for example with the Commission of Appeal for Access to Environmental Information (CRAIE) in the Walloon Region. In Flanders, such a right is also recognised, with few grounds for refusal, which are listed in the legislation. The specific grounds for refusal of environmental information and emissions, which differ to some extent to the refusal grounds for other documents, are applied only if proportionate. Applications must be replied to at the latest within twenty calendar days. In the Brussels-Capital Region, the latest available figures show 0.05% refusals of access requests for written applications (no refusals for oral applications). These refusals are essentially motivated by reasons linked to the proper functioning of justice (ongoing proceedings). None of these refusals were appealed to the Commission for Access to Administrative Documents of the Brussels-Capital Region. Public participation in environmental permitting is also guaranteed in Flanders, where the disclosure of information to the public concerned with a view to participation in decisions on specific activities is foreseen in the public consultation procedures as laid down in the regulations regarding environmental permitting. The public consultation takes at least 30 days, during which the provided information will be available for examination by the public which may give objections or remarks. Since it takes place at an early stage, it is useful and can be fully taken into account. Pursuant to legislation, the permitting decision must contain where appropriate, a

reference to the nature of the views, comments and objections that were submitted during the public consultation into the construction in question, and the way it was handled. In the Brussels-Capital Region, the public can also consult the documents submitted to the public enquiry in the context of a permit application, for the duration of this enquiry, at the municipality where the project requiring a permit is located. This is also the case in the Walloon Region.

Public participation in a wide range of regional plans and environmental programmes is ensured in Flanders, whereby the legal acts provide for detailed provisions. This is also the case for decisions on spatial planning instruments, which can be taken on the level of the Region, Province and Municipality. Separately from these instruments, for the development of the most of policy related regional plans and programmes (on emission reduction, decontamination, etc.) the government seeks for the involvement of the target groups and other relevant actors. In the Brussels-Capital Region, public participation in relation to plans and programmes is carried out during a public consultation or enquiry. This is organised by rules laid down in the legislation. Such procedures are provided for in the context of the preparation or modification of plans for air pollution control, noise control, waste prevention and management, management of the *Soignes* forest, allocation of CO<sub>2</sub> quotas, etc.

369. The Environmental Information Act of **Norway** builds upon the obligations under the Aarhus Convention. It aims at facilitating public access to environmental information, in particular to the conclusions of environmental studies. According to the Act, administrative agencies are under duty to hold general environmental information relevant to their areas of responsibility and functions available and to make this information accessible to the public. Likewise, "private undertakings", including commercial enterprises and other organised activities, are under a similar obligation to collect and provide information about factors relating to their activities which may have an appreciable effect on the environment. Any person is entitled to request such information.

370. **Bulgaria** has enshrined the right of access to environmental information in its Environmental Protection Act and Access to Public Information Act. Article 17 of EPA explicitly mentions that it is not necessary for the information requesting party to prove a concrete interest, i.e. personal interest, to receive information.

371. In **Azerbaijan**, the Law on Public Participation dated 22 November 2013, regulates the relations arising in connection with the involvement of citizens in the implementation of public administration. Public proposals on the solution of issues of public importance are collected, summarized, joint hearings, seminars, round tables are organized to discuss environmental issues and surveys are conducted to study public opinion. Cooperation with civil society institutions has been expanded and a Public Council consisting of 15 non-governmental organizations has been established under the Ministry of Ecology and Natural Resources. Diversified information on the environment is available on the website of the Ministry of Ecology and Natural Resources ([www.eco.gov.az](http://www.eco.gov.az)), disseminated in the media, distributed in the form of separate booklets and brochures, social media pages and other means to various segments of society.

372. The Environment Impact Assessment and Environmental Management System Act of **Estonia** also contains provisions on public information. For example, it requires public authorities to publish any conclusions of EIA (paragraph 16).

373. **Turkey** ensures the public access to ambient air quality information by the “Regulation on Air Quality Assessment and Management” and also constituted Continuous Monitoring Center which gathers, manages and represents environmental monitoring data, of which air quality data and reports can be publicly accessible through the website and mobile applications

374. The right of access to information is in general guaranteed in the **Polish** Constitution (Article 74, paragraph 3). Poland has moreover implemented the Aarhus Convention and EU law through its Act on access to information about the environment and its protection and public participation in environment protection and on the assessment of impact on the environment. The Act prescribes, *inter alia*, that individuals do not have to demonstrate a legal or factual interest. The Act also provides for public participation in projects with environmental impacts. Emphasis has also been placed on making environmental information easily accessible by using online registers. Additionally, the Act provides for public participation in the development of plans, programs and projects with environmental impacts, also in cases of potential environmental impacts across national borders by the Espoo Convention.

375. In the **Slovak Republic**, the Constitution guarantees the right of everyone to have full and timely information about the state of the environment and the causes and consequences of its condition (Article 45).

376. The same is the case for the **Serbian** Constitution (Article 74). The access to information of public importance is regulated mainly by the Law on Environmental Protection (Articles 78–82) and the Law on Free Access to Information of Public Importance. Procedures for public participation have been developed by a series of recent laws: the Law on Environmental Protection, the Law on EIA, Law on Strategic Environmental Assessments (SEA) and the Law on the International Plant Protection Convention (IPPC).

377. In **Slovenia** public participation and access to information is regulated by the Environment Protection Act. Individuals with a legal interest and environmental NGOs which have the authority to act in the public interest may participate in administrative licensing procedures. Individuals, companies, NGOs and other legal persons have right to give comments on draft legislation, plans and other documents with environmental impact. The Environment Protection Act gives direct legal basis for ensuring high-quality environmental data for all target groups (general public and professionals) by Slovenian Environment Agency.

378. In **Albania**, the Framework Law “On Environmental Protection” sets out detailed rules on public participation in decision-making on environmental protection. It also guarantees the rights of individuals and environmental and professional NGOs to be informed and have access to environmental data. Additionally, as a Party to the Espoo Convention, Albania has adopted legislation which foresees the right of the public from neighbouring countries to participate in activities with a transborder impact.

379. In **Austria**, the term “environmental information” used in the Environmental Information Act is broadly phrased so that any kind of information on the state of the environment, factors, measures or activities (possibly) having an impact on the environment or conducive to the protection of the environment can be collected. The claim to environmental information is deemed an *actio popularis*. As it is not always easy for citizens to identify the body obliged to provide information, the Act provides for a respective duty to forward/refer the request for environmental information to the competent authorities.

380. Before granting permits or licences under certain laws, public authorities in **Cyprus** are required to obtain the views of any persons interested or who may be affected by the proposed plan or development and of local government boards and municipalities and to give such views due consideration.

381. In the **Czech Republic**, the Act on Administrative Procedure sets general principles for decision-making procedures within the public administration, including general rules for participation in the procedures. The person considered participant in the procedure is the one whose rights or obligations could be affected directly by the decision as well as everyone indicated as a participant under a special law (paragraph 27). In this context public participation in the decision-making process related to environmental issues is provided for by various special environmental acts (Act on Environmental Impact Assessment, Act on Nature and Landscape Protection, Water Act). The right to information is guaranteed by two legislative acts, the Act on Free Access to Information guarantees access to information from public bodies in general in any area and the Act on the Right to Information on the Environment is a special Act that further guarantees public access information on environment.

382. In **Spain**, the Act 27/2006 guarantees access to environmental information and the diffusion and availability of environmental information to the public. This right is guaranteed without any obligation to declare a certain interest. The right to public participation on environmental matters can be exercised through certain administrative organs (the Advisory Council on Environment, the National Council for Climate Change, the Council for the Natural Heritage and Biodiversity, the National Council of Water, etc.). In addition, direct participation (in person or by representative associations) is possible in most administrative procedures and in the elaboration of procedure, plans or programmes on environmental matters.

383. **Sweden** has a long tradition of public participation in environmental decision-making, as well as of openness and transparency, or insight, in the activities of public authorities. For almost 40 years there has been an environmental permit procedure for industrial activities and other major installations with an environmental impact. Under the rules in the Environmental Code, anyone who intends to conduct an activity that requires a permit or a decision on permissibility has to consult with the country administrative board, the supervisory authority, and individuals who are likely to be particularly affected. The corresponding process is also guaranteed in transboundary contexts. The principle of public access to information is guaranteed under the Swedish Constitution (Chapter 2 of the Freedom of the Press Act). Under this principle, everyone is entitled to examine the content the documents held by public authorities. A request to access official documents can be denied only if the content is classified as secret.

384. **Switzerland** grants general access to information for public documents under its Transparency Act, as well as a right to public participation in the adoption of legal texts on the basis of the Consultation Act. Other specific laws, such as the Spatial Planning Act, also provide for public participation in the adoption of plans or programmes. In addition, Switzerland has been a party to the Aarhus Convention since 2014. As part of the implementation of this Convention, the Federal Act on the Protection of the Environment has been supplemented in the sense that everyone has the right to access documents containing environmental information. This law also regulates the public participation procedure in so-called environmental impact assessments.

385. **Georgian** legislation ensures public participation in environmental decision-making and access to information in environmental matters. Public participation in decision-making regarding certain activities through public hearings or consultations, analysis and consideration of submitted comments (both written and oral) is ensured by the Environmental Assessment Code. The public hearing is open and everyone has the right to participate. In order to inform the public, once every 4 years, the Minister of Environment Protection and Agriculture approves the State of the Environment Reports. Since 2017, the order of the Minister of Environment and Natural Resources on the Rule of Proactive Disclosure of Public Information by the Ministry and the Standard of Requesting Public Information in Electronic Form and the Rule of Access to Environmental Information has been in force. In terms of effective public participation and dissemination of information, the legal Entity of Public Law - Environmental Information and Education Centre is established under the Ministry of Environment Protection and Agriculture. Environmental information is actively posted and disseminated electronically through the official websites of the Ministry of Environment and Agriculture and its subordinate agencies.

386. In **Portugal**, the public's right of access to environmental information is enshrined in legal system at different levels, namely: Constitution of the Portuguese Republic (CRP), the right of access to information in environment results from the combined application of Article 66.º, which attributes the right to a human, healthy and ecologically balanced living environment, with the constitutional rules regarding access to information and the right to participate, namely the rules of article 268.º concerning the rights and guarantees of administered, and Article 48.º on the right to participate in public life. The Basic Law of the Environment (LBA), Law No. 11/87 of 7 April, updated and revoked by the current Framework Environment Law, Law n. 19/2014, of April 14<sup>th</sup>, defines the basis of the environmental policy and enshrines the principle of participation, as well as the Basic Law of Spatial Planning and Urbanism, Law No. 74/2017, of 16 August. Both laws introduce measures aimed at promoting the participation of citizens in the formulation and implementation of environmental policy, territory and urbanism.

The Law no. 26/2016, of 22 August regulates citizens' access to environmental information and transposes into Portuguese law Directive No. 2003/4 / EC, of the European Parliament and of the Council. The Aarhus Convention, was approved by the Assembly of the Portuguese Republic under the terms of Resolution n. 11/2003, ratified by Decree n. 9/2003 of the President of the Republic, on February 25th. Since 2015, <https://participa.pt/> is the digital platform that constitutes the official place for all public consultation processes with the purpose to:

- Facilitate the access of citizens and stakeholders to the consultation processes – they are directly informed via e-mail when a public participation process is opened, and can choose the type of process they wish to be informed about, and/or the area they are interested in
- Encourage informed participation – through the availability of dematerialized processes that are often accompanied by very lengthy documents
- Improve process management efficiency – the participation is made easier for stakeholders and for the management of contributions.

387. **Finland's** environment administration portal and the portal of the Ministry of the Environment provide comprehensive environmental information. Public participation is generally governed by the Finnish Administrative Procedure Act, which contains provisions on good administration and on the procedure applicable in administrative matters. Moreover, the Environmental Protection Act and the Environmental Protection Decree and other sector-specific environmental laws ensure that parties involved and 'other persons' can submit their statement with the application documents during the permit and decision-making procedure. There is also a well-established practice in public participation in legislative drafting. The guidelines on consultation when drafting legislation in Finland have been identified as good practice. Finland has an action plan on open government, which is encouraging public participation across the board. The plan includes commitments and measures to promote openness and public participation.

The Finnish Ministry of the Environment has used a number of methods and innovations to engage on reforms to the Climate Act (609/2015), utilising a human-rights based, inclusive approach to consultation and working with a range of external partners. Methods include: an online survey in six languages (English, Swedish, Finnish and three Sámi languages); consultations in different cities with the public; consultations with stakeholders (e.g. municipalities, legal experts); consultations with youth during school time; dialogues with journalists; meetings with climate activists in small groups; hearings; and workshops with Sámi youth in Finnish and Sámi. The current Climate Act includes also right to participate and access to information.

Moreover, in Finland, equality assessment has been conducted in relation to mid-term climate plan.

In addition, there is a Roundtable on Climate Change, that has been set for 4 years' time period for the first time and is led by Prime Minister. The Roundtable consists 4 vice chairs, 20 members and 3 representatives of Expert Bodies. All members represent different actors or sectors of the society, including the youth. The purpose of the Roundtable is to create a common understanding and view of how Finland can make a just transition to a carbon neutral society by 2035. The aim is to increase the acceptability of climate policy and provide different stakeholders and experts a channel to participate in the national preparation of climate actions. The Roundtable supports the preparation and implementation of climate policy at the national level.

388. In **France**, the Charter of the Environment, which is part of the Constitution, guarantees the principle of public information and participation. This right is implemented by specific provisions in the Environmental Code which also transpose the European Directive on access to environmental information.

389. In **Croatia**, the Law on climate change and ozone layer protection gives rights to public participation by ensuring the availability to the public of information on greenhouse gas emissions and consumption of ozone-depleting substances and on fluorinated greenhouse gases. Environmental Protection Act regulates public participation in environmental issues. Many web sites are established to provide specific information to interested group like green public procurement and adaptation to climate change.

390. In **Greece**, the ratification of the Aarhus Convention in 2005 (law 3422/2005) facilitated access of citizens to environmental information and disclosure of environmental information to interested parties upon request and a 2006 Joint Ministerial Decree provided access to environmental information for all. Public consultation on draft legislation is compulsory by Law 4622/2019 (consolidating the relevant provisions of Law 4048/2012 on Better Regulation) and is taking place, among other ways and means, through the open government portal (<http://opengov.gr>). Also, according to the Standing Orders of the Parliament, all draft laws must be accompanied by a report on public consultation. Stakeholder and public participation in the decision making is also ensured by national legislation for EIAs and environmental permitting, SEAs, as well as other planning, such as the River Basin Management Plans and Waste Management Plans.

391. In **Cyprus**, the provision of the Aarhus Convention for access to environmental information and public participation have been transposed into national legislation with specific competent authorities and provisions so as to reassure its implementation. In addition, in the legislation regarding environmental impact assessment for certain projects, specific provisions have been added so as to provide all environmental information for projects online, through a user-friendly platform, and anyone can send electronic comments and suggestions. In addition, through the legislation, all projects that undergo an EIA assessment need to go through a public presentation of the project and the results are incorporated into the final EIA and project.

392. By a Law of July 31, 2005, **Luxembourg** approved the Aarhus Convention. The Act of 25 November 2005 regulates the matter and aims on the one hand to guarantee the right of access to environmental information held by or on behalf of public authorities and to set the basic conditions and practical arrangements for its exercise, and on the other hand to ensure that environmental information is automatically made available and disseminated to the public, in order to achieve the widest possible systematic provision and dissemination. For example, the Law of 15 May 2018 on environmental impact assessment specifically states that to ensure public participation in the assessment processes, the competent authority shall inform the public by means of a notice in at least four daily newspapers about the fact that a project is subject to an environmental impact assessment procedure, the date and duration of the publication of the impact report and the time limits for complaints; the website or the place or places where the data can be consulted. (Article 8) Individual citizens and groups of citizens exercise their right to complain fairly regularly. If a project is likely to have significant effects on the environment of another State or if another member State is likely to be affected by the project, the

competent authority shall transmit the necessary information to it as soon as possible, and at the latest at the same time as the information to the national public. (Article 9). This law establishes both an active transparency (spontaneous provision of information by the authorities) and a passive transparency (request). Any person or group, without having to indicate an interest in acting, can request information. Given the generality of the definition of environmental information in the text of the law, citizens can request a wide variety of information. Their request must nevertheless be precise. The cases of refusal to provide all or part of the environmental information are to be interpreted strictly. Refusals must be notified in writing and entitle the applicant to an appeal.

## 5. Making environmental rights judiciable and the environment a public concern

393. The 1976 **Portuguese** Constitution has dedicated a specific rule to the environment, which raises it to the level of legal asset and the protection of which is primarily delivered to public entities but for which the whole community is responsible - Article 66, paragraph 2 of the Constitution. The protection of the environment is simultaneously a public and collective task, with relevance on the State's fundamental task, Article 9 (e) of the Constitution. The Constitution provides a specific defence mechanism, available to natural and legal persons, translated into "popular action" or popular legitimacy for the defence of varied interests. The Law 83/95 of 31 August - Law on procedural participation and public action (LAP) – develops these principles.

394. In **Belgium**, since 1993 there is a possibility for injunctive relieves to secure a general interest such as a manifest violation of legislative or regulatory provision on environmental protection or the serious risk of such a violation. The procedure is open to national environmental non-lucrative organisations that have existed for at least three years. Moreover, NGOs and the public can turn to the Council of State to voice their complaints. Various administrative appeal possibilities also exist: complaint to an Ombuds service; appeal with the authority responsible for the decision; hierarchical appeal with the higher authority; organised appeal provided by Federal or Regional Act; and appeal with the supervisory authority. An example of an "organised" appeal provided by Flemish Parliament Act is the administrative appeal, free of charge, against any decision made by a public authority with regard to access to environmental information, either after the expiry of the term within which the decision had to be taken, or in the event of the decision being carried out reluctantly. This appeal must be lodged with an administrative appeal body composed of officials appointed by the Flemish Government (for the Walloon Region, see the "CRAIE" mentioned above). In Flanders, there exist on each local level administrative appeal procedures against an environmental permit prior to judicial appeal procedures (except for permits issued by the Flemish government). An appeal can be lodged by an individual, by the lead official of the public authorities which provided advice, by the Board of Mayor and Aldermen, and by the public concerned. The appeal body must re-examine all aspects of the licence application. Any decision or administrative act of individual significance and intended to have legal consequences for citizens or another public authority, must also mention of the possibilities and modalities of the right to appeal. In the absence of this mention, the term for the submission of an appeal shall start only four months after notification of the decision, whereas the regular period for lodging an appeal is thirty calendar days. The same obligation applies to the administrative decisions in the Brussels-Capital

Region. In the Brussels-Capital Region, in terms of access to information, it is possible to lodge an (administrative) appeal with the Regional Commission for Access to Administrative Documents. With regard to administrative decisions on environmental matters (permits, sanctions, approval, decisions on soil pollution, etc.), there is a two-tier administrative appeal system. Appeals may be lodged with the Environmental Board (administrative appeal body), which may take a new decision. This new decision may also be appealed to the Government of the Brussels-Capital Region and then to the Council of State. These appeals are open to the permit applicant, any member of the public concerned, including NGOs, and other public authorities such as the municipalities.

In Belgium, it is possible for a natural or legal person (including NGOs) who has an interest to submit to the senior official of Brussels Environment (the administration in charge of the environment in the Brussels-Capital Region) any observation concerning the occurrence or risk of occurrence of environmental damage of which he or she is aware and has the right to request that the competent authority take action. An appeal is available against this decision to act or not.

395. NGOs in **Switzerland** that are dedicated to environmental issues for at least ten years are entitled to access justice claiming a violation of the environmental legislation. The two most important conditions for the right of appeal of organisations under the Environmental Protection Act (EPA), the Nature Conservation Act (NCA) and the Gene Technology Act (GTA) are: 1) the organisation is non-profit (according to its articles of association and in practice) and 2) the organisation is active throughout Switzerland (according to its articles of association and in practice).

396. The **Hungarian** Act on the General Rules of Environmental Protection provides that natural and legal persons and unincorporated entities are entitled to participate in non-regulatory procedures concerning the environment. In particular, everyone has the right to call the attention of the user of the environment and the authorities to the fact that the environment is being endangered, damaged or polluted. It also allows environmental NGOs to be a party in proceedings concerning environmental protection. The Act, in addition, contains the idea of *actio popularis* stating that “in the event the environment is being endangered, damaged or polluted, organisations are entitled to intervene in the interest of protecting the environment” which includes filing a lawsuit against the user of the environment (Section 99). Additionally, Hungary has established the Office of the Environment Ombudsman to facilitate public complaints in environmental matters.

397. Similarly, in **Slovenia** the possibility exists of an *actio popularis* to protect the environment. According to Article 14 of the Environment Protection Act, in order to exercise their right to a healthy living environment, citizens may, as individuals or through societies, file a request with the judiciary. Ultimately, by such a request citizens can oblige a person responsible for an activity affecting the environment, to cease such an activity if it causes or would cause an excessive environmental burden or presents a direct threat to human life or health. Moreover, this can lead to the prohibition of starting an activity which affects the environment if there is a strong probability that the activity will present such a threat. In addition, the Supreme Court has recognised the right to a healthy living environment as one of the personal rights for whose violation compensation and just satisfaction can be claimed.

398. **Poland's** "Act on the access to information about the environment and its protection and public participation in environment protection and on the assessment of impact on the environment" also ensures public access for individuals or NGOs to justice on environment related matters. This involves the right to appeal against a decision issued by an administrative authority. Any individual or organisation who fulfil the legal requirements have possibility to take part in proceedings with the right of being a party and to appeal against a decision and file a complaint with the administrative court. Environmental organisation may lodge an appeal, whether or not they participated in the proceedings to issue a decision on environmental conditions.

399. The **Albanian** Law on Environmental Protection ensures that any individual or organisation may start legal proceedings in a court regarding environment related matters (Article 81). More specifically, in case of a threat to, or damage or pollution of the environment, individuals, the general public and non-profit organisations are entitled to the right to make an administrative complaint, and to start legal proceedings in a court of law. However, according to the Code of Administrative Procedures, the complainant needs to have exhausted all the administrative procedures before going to court (Article 137.3). This means that the complainant should first seek an administrative review from the relevant public authority and then appeal that decision at a higher body, before going to court. Environment related reviews or appeals may also be lodged with the Ombudsman.

400. The **Austrian** legal system provides several possibilities for enforcing environmental matters. In general, according to the Civil Code, anybody who is or fears of being endangered by pollution is entitled to file a lawsuit against the polluter and to seek an injunction. This right to preventive action against pollution detrimental to health has been expressly acknowledged by courts as an integral, innate right of every natural person (Section 16), neither requiring participation in administrative proceedings nor ownership of private property in the proximity of the polluter. In addition, private entities in violation of environmental laws may be sued by competitors and special interest groups, since producing goods in violation of such laws is regarded by courts to be unfair competition. Furthermore, neighbours hold the individual right to prohibit emissions exceeding a certain level (Section 364 et seq). In this context, direct or indirect emissions having an effect from one property to another (e.g. waste water, smell, noise, light and radiation) are deemed as impairments. In addition, special laws provide for claims for damages related to the environment. Most of Austrian provisions on the protection of the environment are, however, of an administrative nature. The application and administration of such laws is subject to an effective appeal mechanism and can finally be challenged at the Administrative Court and/or the Constitutional Court. In addition, at regional level Environmental Advocacy Offices i.e., Ombudsmen for the environment have been set up who, in the position as parties, are authorised to lodge complaints with the Administrative Court with regard to compliance with legal provisions which are relevant for the environment. Furthermore, the Federal Environmental Liability Act provides for an environmental complaint, if the public authority fails to take action in the event of environmental damage (in particular to water and soil, provided that human health is affected).

401. In **Cyprus**, natural or legal persons have a right under Article 146 of the Constitution to file a recourse to the Supreme Court against “any decision, act or omission of any organ, authority or person exercising any executive or administrative authority” if certain conditions are met. The complainant must have an “existing legitimate interest” which is adversely and directly affected. Class actions are not therefore available, as the interest required must be personal to the complainant. Nonetheless the Supreme Court’s jurisprudence has extended the definition of “existing legitimate interest” to include local government boards and municipalities, but only in cases where the local natural environment is of a direct interest to or is the responsibility of the complainant community as a whole.

402. In the **Czech Republic**, the right to appeal against a decision issued by an administrative authority is guaranteed. The appeal procedure is governed by the Act on Administrative Procedure and special environmental laws (in particular the Act on Environmental Impact Assessment). Access to judicial protection in case of public environmental concern is regulated only through general provisions of the Act on Judicial Administrative Procedure. In this context a special legal status in order to protect public interests is given by the law to the Attorney General and also to a person to whom a special law, or an international treaty which is a part of the Czech legal order, explicitly commits this authorisation (§ 66).

403. In **Georgia**, the General Administrative Code, the Administrative Procedure Code, the Civil Procedure Code and the Criminal Procedure Code regulate access to justice in environmental matters. According to the Georgian legislation, any person has the right to apply to a higher administrative body or court, if they feel that their rights have been violated or by the decision or action of the administrative body, they have suffered some damage or their rights have been restricted.

404. In **Azerbaijan**, the Law on right to obtain environmental information regulates the relations that arise in connection with obtaining complete, accurate and timely information about the state of the environment and the use of natural resources. This law defines the right to obtain information on the environment and its implementation, preparation of reports on the environmental situation, informing the mass media, and international activities in this field.

The Law on Environmental Protection defines the rights and responsibilities of citizens and public associations in this area (Article 6.7). Citizens have the rights to obtain information on the environment, to claim for violations of the law, to get compensation for damage to health and property, to make proposals on public environmental expertise etc. Public unions have the right to exercise public control, to protect the rights of citizens in this area, to involve them in activities and to cooperate with government agencies and international organizations. The Law on Environmental Protection defines the requirements for public environmental expertise, the rights and responsibilities of the organizers (Article 58).

In 2003, the Public Information Centre for the Environment (Aarhus Public Ecological Information Centre) was established to implement the Aarhus Convention. All stakeholders: NGOs, Government agencies, international organizations and anyone concerned with environmental issues, have equal access to the activities of the Centre.

405. **Luxembourg** has approved the Aarhus Convention and transposed it into national law. Article 6 of the law of 25 November 2005 regulates access to justice. The right to environmental information has already given rise to a number of judicial decisions before the ordinary and administrative courts.

406. In **Spain**, citizens, NGOs or any other entity who exercise the right of access to information may challenge before the administrative authorities any decision refusing the information requested and, if the denial decision is ratified, before the judicial authorities. The Act 27/2006 allows a request of the access to information from natural or legal persons acting on behalf or by delegation of any public authority. The decision adopted by the Public Administration is mandatory to the private person and is enforceable by coercive fines. In addition, on environmental matters, NGOs and other non-profit entities (under certain conditions) may exercise before the courts an *actio popularis* against any administrative decision, or the failure to adopt it, violating the environmental rules.

407. In **Sweden**, the right to appeal a decision concerning the release of an official document is set out mainly in the Freedom of the Press Act (Chapter 2, Article 19) and the Public Access to Information and Secrecy Act (Chapter 6, Section 7). The right to a determination by a court of law of the substantive and formal validity of decisions, etc., is provided for in different parts of Swedish legislation. This is particularly the case for permit decisions taken under the rules of the Environmental Code as well as permit decisions taken by the government in accordance with the Act on Judicial Review of Certain Government Decisions. Under the latter Act, environmental NGOs also have an explicit right to apply for judicial review of permit decisions by the government that are covered by article 9, paragraph 2, of the Aarhus Convention. Environmental NGOs also have the right to appeal environmental decisions issued under the Planning and Building Act. In accordance with the Environmental Code as well as a number of other specialised acts, decisions may be appealed by a person who is affected by the decision if it has gone against him or her, by non-profit organisations or another legal person whose primary purpose is to safeguard nature conservation or environmental protection interests, that is not run for profit, that has conducted activities in Sweden for at least three years and that has at least 100 members or by some other means shows that its activities are supported by the public. To ensure that authorities handle their business correctly, the actions and omissions of the public authorities in Sweden are examined by the Parliamentary Ombudsmen and the Chancellor of Justice. The public, including environmental NGOs, are always able to report infringements of various environmental regulations to supervisory authorities, and the public can also take direct contact with the Parliamentary Ombudsmen, who examine complaints concerning deficiencies and omissions in the exercise of public authority.

408. In **Serbia**, the Law on Environmental Protection, on EIA, on Strategic Environmental Assessment (SEA) and on the International Plant Protection Convention (IPPC) enable individuals and organisations (including non-governmental organisations) to file administrative complaints and access courts in environmental matters. This environmental legislation envisages that individuals or organisations concerned with environmental development can initiate a decision review procedure before the responsibility authorities or a court. Those who do not have legal personality (e.g. state bodies, community organisations) can participate in the review process if they have a legal interest in the proceedings or hold specific rights and obligations (Article 40 paragraph 1 and 2 of the Law on General Administrative Procedure). The plaintiff in administrative disputes may be a natural,

legal or other person, if considers to be deprived of certain right or interest provided by law by administrative act (Article 11 of the Law on Administrative Disputes). In addition, each natural or legal person, - domestic or foreign - who believes that his/her rights were breached by the action or a failure to act by a public authority is entitled to lodge a complaint with the Ombudsman. The Ombudsman will refer the applicant to the relevant authorities to initiate legal proceedings, if all legal remedies have been exhausted (Article 25 of the Law on the Ombudsman). Anybody can demand from another person to remove sources of hazard of serious damage to him/her personally or to the general public (indefinite number of people). He can also demand the cessation of activity inducing harassment or damage hazard if the harassment or damage cannot be prevented by appropriate measures (Article 156 paragraph 1 of the Law on Obligatory Relations). Article 54 of the Criminal Procedure Code prescribes that the proposal for criminal prosecution should be lodged to the competent public prosecutor, and the proposal for private prosecution to the competent court.

409. Section 20 of the **Finnish** Constitution establishes that nature and its biodiversity, the environment and the national heritage are the responsibility of everyone. The public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment. Section 21 concerns protection under the law and is linked to Article 6 of the European Convention on Human Rights: Everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice. Furthermore, Section 22 obliges public authorities to guarantee the observance of basic rights and liberties and human rights. The above-mentioned constitutional provisions provide for access to justice in environmental matters when a person's rights or duties are at stake. Additional provisions on access to information, public participation, and access to justice in environmental matters, can be found in environmental legislation, in line with the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. In addition to access to justice, there is the possibility to make a complaint to the Office of the Chancellor of Justice or to the Parliamentary Ombudsman regarding the failure of public authorities to guarantee the constitutional rights.

410. In **France**, the Constitutional Council bases the right to an effective remedy on Article 16 of the Declaration of the Rights of Man and of the Citizen of 1789. The priority question of constitutionality (*question prioritaire de constitutionnalité* - QPC) procedure created in 2008 allows any person who is a party to a trial or proceeding to argue that a legislative provision violates the rights and freedoms guaranteed by the Constitution. If the conditions for admissibility of the question are met, it is up to the Constitutional Council, seized on referral by the Council of State or the Court of Cassation, to give a ruling and, if necessary, to repeal the legislative provision that has already come into force. The provisions relating to access to justice are scattered throughout several codes, mainly the Code of Civil Procedure, the Code of Criminal Procedure and the Code of Administrative Justice. The Constitutional Council has ruled that certain provisions of the Environmental Charter, including the principles of prevention, precaution and participation, may be invoked in support of a QPC. The Environmental Code provides that any association whose purpose is the protection of nature and the environment may bring proceedings before the administrative courts in respect of any grievance relating to the latter. Any approved environmental

protection association benefits from a presumption of an interest to act against any administrative decision having a direct relationship with their object and their statutory activities and producing harmful effects for the environment on all or part of the territory for which they benefit from the approval as soon as this decision intervened after the date of their approval. Approved associations may exercise the rights granted to civil parties with regard to acts directly or indirectly prejudicial to the collective interests that they aim to defend and constituting an infringement of the legislative provisions relating to the protection of nature and the environment. Approved associations can also exercise a collective action for compensation of damages suffered by natural persons. The administrative case law appreciates in an extensive way the condition of interest to act of the applicants who challenge to the censure of the administrative judge an administrative decision of the State or the territorial communities. The right to appeal is a general principle of law according to the case law of the Council of State, the highest administrative court. The Code of Administrative Justice provides that the court may, in addition to annulling the contested decision, issue injunctions against the administration, if necessary under penalty. The Environmental Code also provides (Article L. 173-12) for the possibility of concluding a penal transaction which specifies the transactional fine that the offender will have to pay as well as, where applicable, the obligations that will be imposed on him/her, aimed at stopping the offence, avoiding its repetition, repairing the damage or bringing the premises back into conformity. The 2016 Biodiversity Act introduced a procedure in the Civil Code for compensation for ecological damage. The Human Rights Defender, an institution enshrined in the Constitution since 2008, succeeded the Mediator of the Republic, the Children's Defender, the High Authority against Discrimination and for Equality (HALDE) and the National Commission on Security Ethics (CNDS). The Defender of Rights is notably responsible for defending rights and freedoms in relations with State administrations, local authorities, public establishments and bodies entrusted with a public service mission.

## 6. Providing education on environmental sustainability

411. Environmental education, as a part of education promoting sustainable development (ESD), is vital in imparting an inherent respect for nature amongst society, in enhancing public environmental awareness and in building their capacity to respond to environmental challenges. The term often implies education within the school system, from primary to post-secondary. However, it sometimes includes all efforts to educate the public and other audiences, including print materials, websites, media campaigns, etc.

412. Article 66 (g) of the **Portuguese** Constitution establishes that, “to ensure the right to the environment, within the framework of sustainable development, it is the responsibility of the State, through its own bodies and with the involvement and participation of citizens, to promote environmental education and respect for the values of the environment.” Environmental education activities have been promoted in Portugal for about 50 years, whether in a formal, school or non-formal environment. Over time, under the impulse of central government bodies with responsibilities in the area of the environment, the Ministry of Education has been integrating environmental education content into school curricula across the board, with a substantial contribution from civil society organizations, especially environmental NGOs. Environmental education is, therefore, a determining process for the transversal integration of environmental objectives in the different sectors of development. Culminating a participatory process of almost a year, Portugal, on June 8, 2017, adopted a National Environmental Education Strategy (ENEA 2020). The implementation of ENEA provides for the implementation of several measures framed by three strategic objectives: more transversal, more open, more participatory environmental education. These objectives are developed around three thematic axes: decarbonizing society, making the economy circular, valuing the territory. By 2020, more than 18 million euros will finance environmental education initiatives and projects affirming ENEA, both as an essential tool in promoting the environment and education policy and other national policies, and as an opportunity to enhance the already recognized work developed by the different environmental education actors.

413. In **Belgium**, initiatives exist at the regional level to raise citizens' awareness of the environment. The Walloon Region finances workshops in schools on public cleanliness and waste sorting, for example, or environmental education networks (CRIE for the Walloon Region, which carry out numerous actions), or one-off awareness-raising campaigns by the public authorities. Moreover, the Federal Public Service (FPS) Health, Food Chain Safety and Environment has set up initiatives aimed at young people which include:

- a. An information platform "L'école du climat / Klimaat op school" has been launched.
- b. In order to assist teachers and students of the 3rd level of secondary school, climate coaches have been selected and trained.
- c. The FPS and its partners are also offering Mini-climate conferences to 3rd level secondary school pupils.

In Dutch-speaking schools, since 2001, the programme 'MOS, sustainable schools, smart schools' supports schools (teachers and school leaders) to create a sustainable learning and living environment in and around the school. MOS became part of the international Eco-Schools programme in 2004. Outstanding MOS-schools

earn the Eco-School label, receive “The Green Flag” and become ambassadors within the ESD network.

In the Brussels-Capital Region, numerous tools for raising awareness of the environment have been set up for the general public such as a monthly newspaper, the website <https://environnement.brussels>, electronic newsletters, publications on all environmental topics, and a yearly environment festival bringing together associations, institutional partners and administrations. Many tools are also available to raise awareness in schools (training, support for educational teams, networks, website, newspaper, teaching tools, entertainment). For example, an interactive adventure trail "BELEXPO" is available to the public, particularly schoolchildren (<https://www.belexpo.brussels/fr>).

A cooperation agreement on environmental education and sustainable development has been in force since 2011 between the French Community and the Walloon and Brussels Regions. It provides the framework for policy dialogue to support environmental education within the school system.

414. **Finland** has national strategies and programmes in place for promoting environmental education and awareness. Functional co-operation structures at the national as well as at the regional level have been set up for the implementation and monitoring thereof. Environmental education as a part of education promoting sustainable development is included in the fundamental guidance documents of education and research as well as at the core of curricula. Consolidating environmental education at all school levels is a target typically included in Government Programmes, including in the current one. Cultural heritage and cultural environment education is promoted according to guidance documents of education and research as well as at the core of curricula.

415. The National Action Plan on ESD was adopted in 2017 by **Germany's** National Platform, a steering body responsible for implementation of the Global Action Programme and now of the UNESCO Framework “Education for Sustainable Development: Towards achieving the SDGs (ESD for 2030)” and endorsed by the federal government. The main goal is to provide ESD across the education system. The Federal Ministry of Education and Research (*Bundesministerium für Bildung und Forschung*, BMBF) launched a comprehensive participatory process involving several federal ministries, the federal states (Länder) and local authorities, and stakeholders from the education community, academia, the private sector and civil society. The National Action Plan was prepared by representatives of more than 300 organisations working in six expert forums: early childhood education, schools, higher education, vocational education and training, non-formal and informal learning, and local communities.

The plan defines 130 goals and 349 measures, which are being monitored and evaluated. It targets curricula, as well as pre- and in-service educator training in formal, non-formal and informal education. The Standing Conference of the Ministers of Education and Cultural Affairs of the Länder launched a comprehensive curricular framework on ESD to support curricular development, make concrete recommendations and provide teaching and learning material. Seen as an education concept and not just as a list of topics, ESD has been or will be integrated into all Länder curricula. It is also part of initial teacher training and continuing professional development.

416. In **Poland**, the role of environmental education in raising the ecological awareness is emphasized in the Environmental Protection Law by the obligation to take into account the inclusion of environmental and sustainable development issues in the general education curriculum for all types of schools (Article 77 para. 1). This Law also indicates that one of the tasks of education system is to familiarize children and young people with the principles of sustainable development and foster attitudes conducive to its implementation on a local, national and global scale (Article 1 paragraph 15). Moreover, the Law imposes an obligation to include environmental education as well on organizers of the courses leading to professional qualifications (Article 77 para. 2). It also defines, i.a., nature of non-formal activities on education, information and promotion, carried out by the mass media, pointing to the obligation to shape a positive attitude of society towards environmental protection and popularizing the principle of this protection in publications and broadcasts (Article 78). Article 80 indicates that advertising or any other type of promotion of a good or service should not imply a content that promotes a consumption pattern that is contrary to the principles of environment protection and sustainable development, and in particular use the image of wildlife to promote products and services that have a negative impact on the natural environment. Also, due to the multidimensional nature of the issue of environmental education and the need for commitment of many entities and stakeholders in educational activities, in the strategy *National Environmental Policy 2030*, the described area was defined in the form of the horizontal goal: "Environment and education. Developing competences (knowledge, skills and attitudes) of ecological society". The activities in the field of environmental education worth to mentioning are Geology in the camera lens 2019, Product in circulation, EKOBAJA, Green cities - towards the future, "Making thermal waters accessible in Poland, which all are intended to initiate pro-environmental activities, shaping pro-ecological attitudes both at the local level and nationwide. At the same time, they lead to increasing the environmental awareness of the society.

417. In **Sweden**, the government has instructed the Swedish Environmental Protection Agency to investigate and account for the implementation in Sweden of Article 12 of the Paris Agreement regarding public engagement, training and education as well as access to information on climate. The Swedish Agency shall submit its report no later than 31 October 2020.

418. In accordance with the **Georgian** Law on Environmental Protection, the citizen has the right to receive environmental protection and ecological education and raise their environmental awareness (Article 6). In order to raise the level of environmental awareness and train specialists, a unified system of environmental education has been established, which includes a network of educational institutions, staff trainings and professional development institutions (Article 8).

419. In **Bulgaria**, sustainable development (incl. environmental protection) is embedded in the school curricula and study content, for the different classes of the compulsory primary and secondary schooling. An integrated approach has been employed, without the need to establish a separate school subject under the title "sustainable development"; once the topics are discussed given their particular specificity, and then within the context of the relevant school subject and broader cultural-educational field. The environment awareness and responsible behavior concerning the preservation of the environment are taught from an early pre-school age. Within the educational policy, in accordance with the Pre-school and School Education Act (Art. 77), an additional competence was introduced – sustainable development and healthy lifestyle. The state educational standard, as a set of

mandatory requirements for the results in the pre-school and school education system, cover also the environmental education. Framework requirements for learning outcomes on environmental education in this standard include the areas of competence: "Energy and climate", "Society and Environment", "Biodiversity", "Water, Soil, Air", "Consumption and Waste". Vocational education and training encompass and promote also knowledge and skills concerning the preservation of the environment. It also provides certain possibilities for teachers to consider and reflect in class on topics and issues related, for example, to the harmful impact that the different stages of the technological process might have on air, water, soils, as well as on health and life as a whole, of people (vibrations, noise, radiation, etc.). Every year national campaigns are organised to raise public awareness and culture on the occasion of dates of the international ecological calendar—and an annual contest "For a Cleaner Environment" with the motto "I love the nature – I also take part" is held with the participation of municipalities, schools, kindergartens and children's centers. The Ministry of Education and Science also conduct extracurricular activities for students, including national contests for students (for paintings, photos, essays, etc. on environmental topics), for example - "Water - Source of Life", "Keep Water – Keep Nature", "Nature - Our Home" and "Green Planet".

420. In **Switzerland**, the National Agency for Education 21 was established in 2013 as a competence centre for schools and teacher training to promote education for sustainable development (ESD) in the Swiss school system as an integrated approach that takes into account the economic, social and ecological dimensions. The Confederation supports the national competence centre Education 21, which promotes ESD as a holistic systemic approach and addresses various themes (including environmental education). Education21 supports the implementation and embedding of ESD at the level of compulsory and upper secondary schools. Teachers, school management and other stakeholders can obtain pedagogically recommended teaching materials, support and advice from education21, as well as financial support for class and school projects. In the area of initial and higher vocational training, the bodies responsible for the development of professions ensure that the qualifications of professionals take into account aspects of sustainable development. To this end, the State Secretariat for Education, Research and Innovation has provided them with a specific tool, the Guide to Sustainable Development in Vocational Education and Training, available since January 2021. ESD is also included in the objectives of the vocational baccalaureate: holders of the federal vocational baccalaureate are able to "think about their professional activities and experiences in terms of their relationship with nature and society" and "to exercise responsibility towards themselves, others, society, the economy, culture, technology and nature" (as defined in Art. 3, para. 3, of the Ordinance on the Vocational Baccalaureate, OMPPr). Furthermore, sustainable development is also a key issue for Swiss universities. A selection of examples of teaching activities undertaken by universities can be found on the website of the Rectors' Conference of the Swiss Universities ([swissuniversities](http://swissuniversities)).

421. In the **Czech Republic**, Article 13 of the Act on the Right to Information on the Environment sets out that specified public authorities (mainly ministries and regional authorities) are responsible for the inclusion of the environmental education into their strategic and policy documents that guide public education. These authorities should also support environmental education more broadly and should provide sufficient training in the matters of environmental education to teachers and other relevant staff.

422. In **Luxembourg**, education for environmental sustainability has been an important task of schools and extracurricular structures for a long time. For decades, the Ministry of the Environment, Climate and Development has been trying to integrate an education and awareness-raising component for the environment and sustainable development into most of its protection projects. To link actors at national level, it runs a platform for education for sustainable development (*La plateforme pour l'éducation à l'environnement et au développement durable* - EEDD platform), which grew out of a mesological group founded in the 1980s and links actors (now 416) through regular messages and working groups. The aim is to make young people and adults aware of the challenges facing our society and to act as responsible citizens.

Following the UN Decade of Education for Sustainable Development (2005-2014), whose objective was to integrate sustainable development into all education systems, Luxembourg set up an interministerial committee for education for sustainable development in February 2008. This committee drew up and finalised in December 2011 a national strategy for education for sustainable development defining the priority orientations. Subsequently, education for sustainable development has also become a cross-cutting theme of the Ministry of National Education and Youth. Among the concrete measures that have been taken in this context in Luxembourg are: the charter for education for a sustainable environment, a compendium of actors in education for sustainable development, education and in-service training for teachers, a specific website [www.bne.lu](http://www.bne.lu) linked to the platform for education for sustainable development.

Governmental and non-governmental organisations that are active, for example, in the field of environmental and development education, offer activities that address these themes and illustrate both the global challenges and the alternatives that have been implemented. These activities can be found on the website: "lifelong-learning" platform offers training in environment and development (*Plateforme pour l'EEDD « Éducation au Développement Durable »* – [bne.lu](http://bne.lu)). In 2019, the website [www.agenda2030.lu](http://www.agenda2030.lu) was set up by the Ministry of the Environment and Sustainable Development to provide access to all information in the field of sustainable development and to create the necessary links. Also in 2019, the EEDD platform organised, with the support of the two ministries, the first very successful fair for education for sustainable development in Luxembourg (BNE fair).

## 7. Protecting environmental activists and whistle-blowers

423. Environmental activists (e.g., NGOs, civic movements, journalists and individuals) are human right defenders (HRDs). They benefit from the same protection mechanisms as other HRDs. As all individuals should feel safe to freely raise public interest concerns, environmental HRDs should, similarly, be able to rely on an enabling environment to pursue their work on environmental issues.

424. In **Georgia**, environmental rights of each person, including whistle-blowers and civil society, are protected by the national legislation, in particular, by the Constitution of Georgia, the Law of Georgia on Environmental Protection, and the General Administrative Code of Georgia. According to the Article 31 of the Constitution of Georgia, everyone has the right to apply to a court for protection of their rights (including environmental rights).

425. Likewise in **Bulgaria**, the laws do not contain any explicit rules regarding the protection of the environmentalists/whistle-blowers and members of the civil society. However, the rights for protection of all citizens, irrespective of their occupation, are guaranteed by the Constitution.

426. In **Switzerland**, the Federal Council has proposed to regulate the conditions for whistleblowing in the Code of Obligations (rules on the employment contract). It also proposed to increase the compensation for unfair or unjustified dismissal, in particular to better protect whistleblowers. Both of these proposals failed. However, they have helped to make considerable progress on the issue in public opinion, in the public debate and with companies. Recent studies show that many companies, both large and small, are setting up internal whistleblowing systems. The protection of whistleblowers is regulated, even without express legal rules. Federal case law has indeed developed in recent years on the subject, with the Federal Court adopting several rulings on the issue. The trend is of course supported by developments in the case law of the European Court of Human Rights. The weighing of the employer's interests against the public interest in disclosure is thus fully integrated into Switzerland's legal approach, as the public interest in disclosure may take precedence over the employer's interest in secrecy. The principle that whistleblowing is a "cascade" process involving the employer, the authority and other recipients has also been integrated into the case law. The system is not compartmentalised and direct alerts to the authorities are possible, as well as disclosure to the media, depending on the circumstances, if this proves to be the only remedy available. According to these rules, an employee may report violations of environmental protection law by his or her employer, internally, but also, depending on the circumstances and the conditions laid down in the case law, directly to the authorities and, as a last resort, to the media

427. Since 2016, **French** law provides specific protection for whistleblowers, defined as a natural person who discloses or reports, disinterestedly and in good faith, a crime or misdemeanour, a serious and manifest violation of an international commitment duly ratified or approved by France, of a unilateral act of an international organisation taken on the basis of such a commitment, of the law or of the regulations, or of a serious threat or prejudice to the general interest, of which he or she has had personal knowledge.

428. **Portugal**, as an EU Member State, actively participated in the work leading to the adoption of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of people who denounce violations of Union law. Environmental protection is one of the areas of application. Notwithstanding, the Constitution and the ensuing legislative collection relating to individual rights, including the environment, provide citizens with protection in the event of denunciation of practical cases of violation of environmental and other rights.

429. Several member States have recently adopted special legislation or other measures on the protection of whistle-blowers. For example, **Finland** and **Belgium** are currently working on the transposition, by 17 December 2021, of the EU Directive on Whistleblower Protection (*Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the Protection of Persons Who Report Breaches of Union Law*). The material scope of the Directive includes environmental protection.

430. In **Finland**, based on the provisions in a Decree, the Government appoints the Advisory Board on Civil Society Policy (KANE), for a term of four years. The Advisory Board, which operates in affiliation with the Ministry of Justice, consists of 19 members representing different organisations, research, business life, civil society as well as ministries and public agencies. The tasks of the Advisory Board include, for example, promotion of interaction between public authorities and civil society and improvement of civil society's operating conditions. Based on the UN Declaration on Human Rights Defenders Finland adopted in 2014, Guidelines for the implementation of EU's policy on defending the defenders (available at [https://um.fi/documents/35732/48132/protecting\\_and\\_supporting\\_human\\_rights\\_defenders\\_public\\_guidelines\\_of](https://um.fi/documents/35732/48132/protecting_and_supporting_human_rights_defenders_public_guidelines_of)). Finnish Embassies across the world are using the national Guidelines actively and meeting HRDs.

431. In **Poland**, according to Article 5b of the Act on Public Benefit Activities and Volunteer Work a government administration body will adopt, by way of an ordinance, an annual or multi-annual (for a period of up to 5 years) cooperation programme with non-governmental organisations and other entities conducting public benefit activities (Art. 3 para. 3). In the cooperation programme is determined, i.a., the main goal and as well the specific goals of the programme; material scope; period and manner of implementation of the programme, and amount of funds planned for its implementation. The programme project is subject to public consultations with non-governmental organisations and other entities conducting public benefit activities (Art. 3 para. 3). The Government administration bodies are also required to publish an annual report on the implementation of the cooperation programme in the Public Information Bulletin by 31 May each year (Article 5b para. 3).

On 26 June 2019 the Minister of the Environment adopted *Long-term cooperation programme of the Minister of the Environment with non-governmental organizations and entities mentioned in Article 3 paragraph 3 of the Act on Public Benefit Activities and Volunteer Work for the years 2020-2024*, which, i.a., provides for the establishment of a partnership between a government administration and the above-mentioned organisations in the implementation of preservation and management activities on environment. The cooperation is based on the principles referred to in Article 5 paragraph 3 of the Act, i.e. subsidiarity, sovereignty of the parties, partnership, efficiency, fair competition and transparency. The expected forms of cooperation are: public consultations of documents prepared by the Ministry

(including legal acts, strategic and program documents), exchange of information about the directions of activities by means of public communication channels (incl. websites, social media and newsletters), granting honorary patronage of the Minister of Climate for projects of particular importance from the point of view of environmental policy, mutual participation in the events organised by the parties to the cooperation programme, organisation of periodic meetings of the Minister with non-governmental organizations in order to, i.a., exchange of experiences and information intended for further cooperation. In connection with the establishment of the Ministry of Climate in November 2020 the elaboration of new division of competences is currently in progress with a view to updating the above-mentioned multi-annual cooperation programme.



## Appendix VII

### Useful Websites



#### Council of Europe

**Council of Europe's website on protecting the environment using human rights law**

<https://www.coe.int/en/web/portal/human-rights-environment>

**European Court of Human Rights [www.echr.coe.int/](http://www.echr.coe.int/)**

**HUDOC – the online database of the Court's case law <http://hudoc.echr.coe.int/>**

**European Court of Human Rights Case Fact Sheets – continually updated case summaries on various environmental issues**

[www.echr.coe.int/echr/en/header/press/information+sheets/factsheets](http://www.echr.coe.int/echr/en/header/press/information+sheets/factsheets)

**European Social Charter [www.coe.int/T/E/Human\\_Rights/Esc/](http://www.coe.int/T/E/Human_Rights/Esc/)**

See also: European Social Charter – Collected Texts, 6<sup>th</sup> edition (30 June 2008):

[www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ESCCollectedTexts\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ESCCollectedTexts_en.pdf)

**Parliamentary Assembly Committee on the Environment, Agriculture and Local and Regional Affairs**

[http://assembly.coe.int/Main.asp?link=/committee/CULT/index\\_E.htm](http://assembly.coe.int/Main.asp?link=/committee/CULT/index_E.htm)

#### European Union

**European Union's portal to EU law**

<http://eur-lex.europa.eu/en/index.htm>

**European Commission environment portal**

[http://ec.europa.eu/environment/index\\_en.htm](http://ec.europa.eu/environment/index_en.htm)

**European Environment Agency (EEA) [www.eea.europa.eu/](http://www.eea.europa.eu/)**

The EEA's task is to provide sound, independent information on the environment for those involved in developing, adopting, implementing and evaluating environmental policy, but also for the general public. Currently, the EEA has 32 member countries.

**EU Network for the Implementation and Enforcement of Environmental Law**

<http://impel.eu>

IMPEL is a network of environmental authorities in Europe. The network is committed to contributing to a more effective application of EU Environmental law.

## United Nations

### **UN Economic Commission for Europe: activities related to the environment**

[www.unece.org/env/welcome.html](http://www.unece.org/env/welcome.html)

### **Aarhus Convention's official website** [www.unece.org/env/pp/welcome.html](http://www.unece.org/env/pp/welcome.html)

This website provides the text of the Convention, status of ratification and publications, as well as number of other documents, guides and information tools.

### **Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)**

[www.unece.org/env/eia/welcome.html](http://www.unece.org/env/eia/welcome.html)

### **United Nations Environment Programme (UNEP)**

[www.unep.org/](http://www.unep.org/)

[www.unep.org/resources/gov/keydocuments.asp](http://www.unep.org/resources/gov/keydocuments.asp)

### **High Level Expert Meeting on the New Future of Human Rights and Environment: Moving the Global Agenda Forward and related materials**

[www.unep.org/environmentalgovernance/Events/HumanRightsandEnvironment/tabid/2046/language/en-US/Default.aspx](http://www.unep.org/environmentalgovernance/Events/HumanRightsandEnvironment/tabid/2046/language/en-US/Default.aspx)

### **United Nations Office of the High Commissioner for Human Rights**

OHCHR and Climate Change:

<https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRClimateChangeIndex.aspx> OHCHR, Frequently Asked Questions on Human Rights and Climate Change

(2021): [https://www.ohchr.org/Documents/Publications/FSheet38\\_FAQ\\_HR\\_CC\\_EN.pdf](https://www.ohchr.org/Documents/Publications/FSheet38_FAQ_HR_CC_EN.pdf)

### **UN Special Rapporteur on human rights and the environment**

<https://www.ohchr.org/en/Issues/Environment/SREnvironment/>

## World Trade Organisation

### **World Trade Organisation Portal on Trade and Environment**

[www.wto.org/english/tratop\\_e/envir\\_e/envir\\_e.htm](http://www.wto.org/english/tratop_e/envir_e/envir_e.htm)

The portal also contains explanations of the WTO legal framework for the protection of the environment including which restrictions are permissible.

## Other informative websites

### **ECOLEX** [www.ecolex.org](http://www.ecolex.org)

ECOLEX is a comprehensive database, operated jointly by the IUCN (the World Conservation Union), UNEP 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.

### **European Environmental Law (EEL)** [www.eel.nl/](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.

### **Ecological Law and Governance Association (ELGA)** <https://elgaworld.org/>

Launch in 2017 ELGA provides a forum and a platform for diverse groups to work together and amplify their voices to transform our current human-centered, growth-focused legal

paradigm, to an Earth-centered, "ecological law and governance paradigm to better protect the foundations of life.

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

[www.rec.org/](http://www.rec.org/)

Established in 1990, the REC provides assistance to resolve environmental problems in central and eastern Europe. The REC's website 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 the Aarhus Convention, public access to information, public participation and access to justice.

**IEEP (Institute for European Environmental Policy) [www.ieep.eu/](http://www.ieep.eu/)**

The IEEP website is a comprehensive list of links connected to environmental law and policy regarding the European Union from an independent, non-profit organisation.

**Global Network for the Study of Human Rights and the Environment**

<http://gnhre.uwe.ac.uk/RenderPages/RenderHomePage.aspx>



## Appendix VIII

### Further Reading



The literature listed in this appendix provides some additional information on the current state and interpretation of contemporary international environmental law, the European Convention on Human Rights and the European Social Charter with reference to the environment. The list is thought to complement the objective summary of the case law of the Court and the Committee through academic analysis.

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3. Anton, Donald K. and Shelton Dinah L.: The Environment and Human Rights, Cambridge University Press (2011)
4. Birnie Patricia/ Boyle, Alan and Redgwell, Catherine: International Law and the Environment, Oxford University Press, 3<sup>rd</sup> edition (2009)
5. Boyle, Alan: Human Rights and the Environment: A Reassessment, UNEP Paper 2010, available at: [www.unep.org/environmentalgovernance/LinkClick.aspx?fileticket=GccCLN-brmg%3D&tabid=2046&language=en-US](http://www.unep.org/environmentalgovernance/LinkClick.aspx?fileticket=GccCLN-brmg%3D&tabid=2046&language=en-US)
6. Bodansky, Daniel/ Brunnee, Jutta/ Hey, Ellen: The Oxford Handbook of International Environmental Law, Oxford University Press (2008)
7. Boyd, David, "The Environmental Rights Revolution", UBC Press 2011
8. Cambj, Mira: Certain legal aspects of efficient use of water resources in the practice of the European Court of Human Rights: East European human rights review, vol. 25, no. 2, p. 227-248 (2019)
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The profound connections between human rights and the environment have become increasingly apparent and explicit in recent years.

This updated Manual seeks to contribute to a better understanding of this relationship, as expressed through the European Convention on Human Rights and the European Social Charter by examining how these instruments contribute to the strengthening of environmental protection at national level.

Neither the Convention nor the Charter are designed to provide a general protection of the environment as such and do not expressly guarantee a right to a safe, clean, healthy and sustainable environment. Both instruments nevertheless offer important protections with regard to environmental matters, as demonstrated by the evolving case law of the Court and the conclusions and decisions of the Committee on Social Rights.

Examples of good national practices amongst member States have been compiled and included in an appendix to the manual.

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

