ENVIRONMENT

DEPARTMENT FOR THE EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS

DG1

THEMATIC FACTSHEET

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ENVIRONMENT

Thematic factsheet

The full, effective and speedy implementation of the European Court of Human Rights judgments by the States parties to the Convention makes a major contribution to the achievement of common observance and enforcement of human rights in Europe.

The Convention does not contain an explicit right to a clean and quiet environment. However, the Court has developed its case-law and established that where an individual is directly and seriously affected by noise or other types of pollution, an issue may arise under the Convention. The Court has underlined that serious damage to the environment can affect the well-being of individuals. Moreover, States are not only obliged to refrain from arbitrary interference but also have the positive obligation to adopt reasonable and adequate measures to protect the rights of the individual.

Environmental issues have been examined by the Court in a large number of cases concerning various human rights such as the right to life, the right to a fair trial, freedom of expression, the right to respect for private and family life, and property rights.

The present factsheet sets out several examples of measures adopted and reported by States, in the context of the execution of the European Court's judgments, in order to safeguard and protect one's living environment.

1. ENDING AND PREVENTING ENVIRONMENTAL POLLUTION AND DISASTERS

Adoption of legislation introducing compulsory Environmental Impact Assessment (EIA)

Under the 2014 EU-Georgia Association Agreement, the authorities implemented a series of reforms, notably in the sphere of environmental protection and sustainable development. The Law on Environmental Protection, as amended in 2017, provides that the issuance of environmental authorisations of public and private activities should be subject to a prior compulsory EIA procedure in accordance with the Environmental Assessment Code, also adopted in 2017.

In contrast to the previous regulations, the new EIA system requires any private and public company to conduct an EIA for a planned activity. One of the main innovations of the current law concerns public involvement in the process of rendering decisions, access to relevant information and holding of public reviews at all stages.

In 2018, the authorities adopted the Technical Regulation on Ambient Air Quality Standards providing for air quality assessment and regulating emissions of harmful substances into the air. Moreover, a draft Law on Environmental Responsibility provides for ways to prevent and remedy significant environmental damages based on the "polluter pays" principle. Consequently, those who pollute will bear the costs not only through monetary compensation, but also by carrying out appropriate measures to restore the environment in its previous state (restitutio in integrum).

As to the applicants, they are no longer affected by the pollution, as the litigious power plant has not been operating since January 2001 and the clearing of the area is under way.

GEO / *Jugheli and Others*
(38342/05)

Judgment final on
13/10/2017

Action plan

Final Resolution
CM/ResDH(2020)255

Legislative and administrative reforms to ensure effective waste collection, treatment and disposal

In order to ensure the proper collection and treatment of waste in Campania, regional "Rules for the implementation of European and national legislation on waste" were adopted in 2016, in order to regulate the waste management cycle. Furthermore, several objectives must be achieved by 2020, notably increasing the percentage of sorted waste to 65% and the reducing the use of landfills. As a result, the waste collection increased from 29% to 53% between 2009 and 2017. Thanks to these measures, the applicants' living environment has improved.

As regards waste disposal, notably the elimination of the "historical waste" accumulated until December 2009, a special plan for the full removal of this type of waste was adopted. About 38% of the elimination of stored waste has been tendered or contracted to third parties, but only 1.9% of the stored waste had been removed by 15 February 2018. Further measures appear necessary to remove the accumulated "historical waste" and to clean-up the locations on which it is currently stocked.

In recent years, various monitoring mechanisms have been established to oversee the functioning of the waste management cycle and to prevent the illegal disposal of waste. However, further information and clarifications are necessary to assess the existing level of coordination between all the established mechanisms and their capacity to issue recommendations and ensure their follow-up.

ITA / *Di Sarno*
(30765/08)

Judgment final on
10/04/2012

Action plan

Status of execution: pending

Adoption of legislative and regulatory framework improving waste management

After the methane gas explosion at the origin of loss of lives and destruction of properties in this case, works to improve the Ümraniye waste disposal were completed between 1993-1996. Currently, the area, also hosting social facilities, is safe. A new Regulation on Storage of Waste, complying with the EU Landfill Directive, entered into force in 2010 while the Regulation on Environmental Impact Assessment entered into force in 2014. Moreover, the Regulation on Solid-Waste Control was repealed and replaced in 2015 by the Regulation on Waste Management. The new regulatory framework conditions the establishment of waste storage facilities to the delivery of permits and licences, which should be preceded by an Environmental Impact Assessment. The waste storage areas are subject to regular inspections and irregularities can be fined. Activities of waste storage facilities, posing risks or causing damage to the environment and human health can be suspended and are responsible for the damage caused.

TUR / *Oneryildiz* (48939/99)

Judgment final on 30/11/2004

Action report

Status of execution: pending

Improved regulation of water protection zones and flood hazard zones

Following the flood resulting from the large-scale evacuation of water from the Pionerskoye water reservoir which damaged the applicants' houses and put their lives in danger, the authorities cleared the riverbed, repaired the catch water system, and adopted annual anti-flooding and regular clearing measures. The Pionerskoye river valley was declared a flood hazard zone and any housing construction near the reservoir is prohibited. Measures to take in an emergency scenario were defined, a regional rescue team of 64 persons was set up, and an emergency warning system were established.

The 2006 Water Code of the Russian Federation introduced detailed regulations concerning the use of water facilities, the establishment of flood hazard zones and water protection zones where a special regime for carrying out business activities and constructions is applied, in line with the General Rules on Exploitation of Water Reservoirs which were adopted in 2010.

The regulations on the Unified State System of prevention and liquidation of emergency situations were amended in 2012 to provide for four functional regimes and four levels of reaction (local, regional, federal and special). The Russian Complex Awareness and Information System (RCAIS) is currently responsible for informing the population in case of emergency.

RUS / *Kolyadenko and Others* (17423/05)

Judgment final on 09/07/2012

Action plan

Status of execution: pending

Improved legislative framework regulating hazardous industrial activities

After the accident at a gold mining company, involving the breach of a dam and the release into the environment of vast quantities of water containing cyanide, the tanks used for the cyanide treatment were reinforced and were regularly subjected to safety inspections. The water discharged from the plant site and the groundwater are monitored as to their quantity and quality. The last check carried out in January 2016 did not find any irregularities.

The Court was not explicitly critical of the domestic legal framework, but by the time the judgment was delivered, the authorities had adopted, in 2005, two Emergency Ordinances on prevention and integrated control of pollution and on Environmental Protection. Subsequently new legislation regulating hazardous industrial activity comprising the Industrial Emissions Act (No. 278/2013) and the Act on the Control of major accident hazards involving hazardous substances (No. 59/2016) were adopted. According to these laws, new industrial activities are subject to either a simple (five years validity) or an integrated (ten years validity) mandatory environmental authorisation. If new issues with an impact on the environment arise, industrial authorisations can be revised. In case of breaches the authorisations may be suspended, and/ or penalties may be imposed.

ROM / *Tătar* (67021/01)

Judgment final on 06/07/2009

Action report

Final Resolution CM/ResDH(2016)349

2. ENVIRONMENTAL RISKS, ACCESS TO INFORMATION AND COMPENSATION

Providing procedures to access information about risks of military tests for health

To provide sufficient access to information regarding mustard and gas tests within the army, a helpline was set up in 1998, aimed at helping former volunteers or their representatives to gain easy access to information relating to their participation in these tests. Furthermore, legislative measures were adopted to simplify procedures whereby individuals may submit a request for information about their actual or possible exposure to health risks and to improve the public availability of information about military tests, by publishing a historical survey of the Service Volunteer Programme.

In 2007 the Pensions Appeal Tribunal found that the applicant's exposure applicant to mustard gas during tests had caused his health problems and that these were attributable to his service. In 2008 the Service Personnel and Veterans Agency assessed the level of disability of the applicant and increased the amount of his service pension.

UK / *Roche* (32555/96)

Judgment final on 19/10/2005

Final Resolution CM/ResDH(2009)20

Adoption of a legislative and administrative framework to protect from asbestos-related risks

Since the facts at issue (from 1950s to early 2000s) and before the delivery of this judgment a legislative and regulatory framework for the protection of lives from risks of asbestos was established. In 2002 legislation to prevent and reduce environmental pollution by asbestos was enacted. Furthermore, in 2003 and 2006, subsidiary legislation was enacted under the Occupational Health and Safety Authority Act which ensured the effective protection of employees from the risk of exposure to asbestos and other carcinogens.

As to the duty to provide access to essential information enabling individuals to assess risks to their health and lives, the Occupational Health and Safety Authority was created in 2000 its aim is to provide information and guidelines concerning the use of asbestos (and other health and safety issues) in order to prevent occupational injury, ill health or death related to asbestos. As to the remedies for persons who were exposed to asbestos prior to the introduction of the legislative and administrative framework a sufficient remedy existed. In similar cases, after the European Court's judgment, the Constitutional Court adopted the reasoning of the European Court and referred the cases back to the First Hall of the Civil Court in order to ensure that compensation was awarded to victims.

The European Court acknowledged in its judgment that the above-mentioned regulatory framework was sufficient as it had implemented the necessary measures to protect the applicants including the duty to provide them, as well as other persons in their situation, with information about the risks to health and safety that they were facing.

MLT / *Brincat and Others* (60908/11)

Final Judgment on 24/10/2014

Action report

Final Resolution CM/ResDH(2016)196

Compensation mechanism and extension of deadlines for lodging asbestos-related damage claims

To remedy the lack of compensation caused by the ten-year deadline for asbestos-related claims before courts, irrespective of whether the claimant was aware of the effect of the damage, a round table was held in 2015 with the participation of all the parties concerned. Following this round table, an Asbestos Victims Compensation Fund in the form of a foundation ("the EFA Foundation") was created and became operative in 2017. It offers victims of asbestos a rapid access to several types of benefits, in particular financial compensation. Furthermore, the Law Modifying the Limitation Period was adopted in 2018 and entered to force in 2020.

SUI / *Howald Moor and Others* (52067/10)

Judgment final on 11/06/2014

Action report

Final Resolution CM/ResDH(2019)232

According to this law, the general limitation period in cases related to death or bodily injuries (including for asbestos victims) was extended to 20 years.

The applicants made a claim before the EFA Foundation and a settlement was reached. Consequently, the revision request lodged after the Court's judgment became void. As to the compensation mechanism, until 2018 the EFA Foundation awarded a total of more than five million CHF in 56 cases.

Ensuring payment of compensation and monthly allowances to clean-up workers for health damage caused in emergency operations in Chernobyl

The authorities paid the arrears owed to the applicant and also executed over 5,000 other domestic judgments ordering the payment of compensation and allowances for Chernobyl clean-up workers. The government has also improved the budgetary process to ensure that the necessary budgetary means are allocated to social security bodies to allow them continuously to meet their financial obligations arising *inter alia* from similar judgments.

Specific measures were adopted which successfully resolved a great number of similar cases lodged with the European Court. As a result, the Court has struck out many of them under Article 37 of the Convention, having been satisfied with the government acknowledging the violations, paying the damages and costs to the victims and adopting general measures under the supervision of the Committee of Ministers.

Nonetheless, as he was continuing to experience difficulties in obtaining payment of compensations and allowances, the applicant brought a second application to the Court (*Burdov No. 2*). In response to this judgment, the Russian authorities adopted "the Compensation Act", which entered into force in May 2010. This Act introduced into Russian law a domestic remedy which entitles individuals to compensation for unreasonable delays in execution of domestic judicial decisions. Further budgetary arrangements have been made so that all the victims of the disaster are rapidly paid the social benefits they were entitled to.

RUS / *Burdov* (59498/00)

Judgment final on 04/09/2002

Final Resolution CM/ResDH(2004)85

RUS / *Burdov No. 2* (33509/04)

Judgment final on 04/05/2009

Interim Resolution CM/ResDH(2011)293

Final Resolution CM/ResDH(2016)268

3. PROTECTION FROM NOISE AND AIR POLLUTION

Introduction of compulsory Environmental Impact Assessment (EIA) to protect from noise nuisance

The 1991 Law "On the Protection of the Environment" was amended in order to enhance the regulation of issues concerning the environment, protection of life and public health from environmental pollution. In 1999 Ukraine ratified the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matter and adopted, in 2017, the Law on Environmental Impact Assessment which introduced a new form of EIA. A series of EIA trainings were held for representatives of Ecology Departments of the Regional State Administrations in order to enable them to apply the new environmental standards. The Supreme Court adapted its case-law accordingly when examining decisions of lower courts.

In order to protect the applicant notably from the noise and air pollution caused by a new motorway near her house, in 2010, the road cover was repaired, and the traffic thereon is now strictly limited to passenger cars. As of September 2012, the level of air pollution did not exceed safety standards of the applicable sanitary regulation. In addition to the just satisfaction awarded by the Court for non-pecuniary damage, in 2014 the applicant was awarded further compensation for non-pecuniary damage following the reopening of domestic proceedings before the court of appeal.

UKR / *Grimkovskaya* (38182/03)

Judgment final on 21/10/2011

Final Resolution CM/ResDH(2020)88

New legislation enhancing protection from noise caused by bars

In 2018 the Act on State Inspectorate was adopted and entered into force in 2019. Pursuant to its provisions eight ministries including the Ministry of Health delegated the power to carry out environmental and other inspections to the State Inspectorate. This ensured that inspections are now carried out by one, specialized and independent authority and are efficient. In addition, fines for failing to respect inspector's orders to reduce level of the noise were reinforced following the adoption of the above Act.

As to the shortcomings in the administrative proceedings at issue in these cases, the new Administrative Inspection Act entered into force in 2018, to ensure effective participation of the parties in the proceedings and protection of their rights and interests, notably, to ensure that administrative decisions are complied with.

As regards the applicant in *Oluić*, the last measurement taken showed that the noise level had not exceeded the standards.

As regards the applicant in *Udovičić*, the sources of the nuisance the applicant was exposed to were eliminated. Following the closure of the shop and the bar, the administrative proceedings concerning the noise levels, were also terminated.

CRO / *Oluić* (61260/08)

Judgment final on 20/08/2010

CRO / *Udovičić* (27310/09)

Judgment final on 24/07/2014

Final Resolution CM/ResDH(2020)158

4. ENVIRONMENT AND ACCESS TO COURT

Ensuring review by the Council of State of administrative decisions designating conservation areas

Following the European Court's judgment, the Ministry of the Environment has implemented a new practice whereby designation orders are systematically published when they do not comprise any specific provision leading to changes in the state or use of places in question, so that interested parties can lodge an appeal before the Council of State.

Decisions to designate sites as "places of interest" (*i.e.* conservation areas) are now systematically transmitted by the services of the Prime Minister, after their publication in the Official Journal, to the Directorate of Nature and Landscapes of the Ministry of the Environment. The said Ministry ensures that the decision is made public, by forwarding it to prefects who are responsible for sending them to the Mayor of the municipalities concerned and to the press, to ensure that the decision is posted in the town halls and published by the press.

FRA / *De Geouffre de la Pradelle* (12964/87)

Judgment final on 16/12/1992

Final Resolution DH(2000)(43)

Change of Supreme Administrative Court's case-law concerning judicial review of the decisions permitting road construction near houses

By the time the Court's judgment was delivered, the Supreme Administrative Court had adopted a judgment in 2011. According to this decision, the government's decision allowing the construction of a road was to be subjected to judicial review in order to assess the impact of the road construction on the applicants' civil rights or obligations within the meaning of Article 6§1 of the Convention. Accordingly, there is now a well-established right to judicial review of government decisions concerning road constructions affecting persons in a situation similar to that of the applicants.

A number of the applicants have received monetary compensation or reached friendly settlements with the Swedish National Road Administration. In addition, noise barriers have been built in relation to the properties of some of the applicants and noise-reducing windows have been provided for to one of the applicants.

SWE / *Karin Andersson and Others* (29878/09)

Judgment final on 25/12/2014

Action report

Final Resolution CM/ResDH(2016)239

Enforcement of Council of State decisions ordering removal of aerials close to a monastery to preserve environment

The issue of the administration's non-compliance with domestic judgments, has been dealt with in the context *Hornsby against Greece* and other cases (see Final Resolution ResDH(2004)81), in the context of which the authorities adopted a series of constitutional, statutory and other measures for the prevention of similar violations. However, additional issues in this field are highlighted in more recent judgments. Additional measures taken or envisaged by the Greek authorities are being supervised by the Committee of Ministers in the *Beka-Koulocheri* group.

In line with earlier decisions of the Ministry of Transport and Telecommunications and of the national Commission for Telecommunications and Postal Services (1999 and 2000), confirmed by three judgments of the Council of State (rendered in 2001 and 2003), the aerials placed near the applicant monastery on the island of Santorini were removed in 2005, i.e. before the European Court's judgment.

GRC / *Iera Moni Profitou Iliou Thiras* (32259/02)

Final judgment on 22/03/2006

Final Resolution CM/ResDH(2010)193

5. ENVIRONMENT AND FREEDOM OF EXPRESSION

Decriminalisation of defamation in the context of a public debate concerning quality of water

The Criminal Code of Montenegro was amended in June 2011 decriminalising defamation and criminal insult, in line with the Council of Europe Parliamentary Assembly's Resolution 1577(2007) *Towards decriminalisation of defamation*.

In June 2012, the impugned criminal proceedings against the applicant, former Director of the Water Supply Company, resulting in his conviction to a suspended prison term, for criticising the Chief State Water Inspector's actions, in a press conference on the quality of the drinking water - were reopened. In September 2012, the Court of First Instance of Podgorica acquitted the applicant on the ground that defamation did no longer constitute a criminal offence and quashed the impugned judgment of 2003. In May 2013, the High Court of Pogdorica, upheld this decision. The impugned conviction of 2003 could be deleted from criminal records upon the applicant's request.

MON - SER[1] **/ *Šabanović*** (5995/06)

Judgment final on 31/08/2011

Action Report

Final Resolution CM/ResDH(2016)44

Seal hunting - change of Supreme Court's case-law concerning freedom of expression

In response to this judgment, in which the applicants, a newspaper and its former editor, were held liable in criminal proceedings for defamation, in 1992, for having published statements contained in a report of a seal hunting inspector, the Supreme Court changed its case law. In a 2000 judgment the Supreme Court adapted its interpretation of the offence of defamation to the requirements of Article 10, as interpreted by the European Court in this case.

As to the applicants, the compensation paid by the applicants as a criminal penalty for defamation was reimbursed through the payment of the just satisfaction awarded by the Court. The domestic judgments had no effect on the applicants' criminal records. Furthermore, the applicants could request reopening of domestic proceedings following the Court's judgment.

NOR / *Bladet Tromso and Stensaas* (21980/93)

Judgment final on 20/05/1999

Final Resolution CM/ResDH(2002)70

[1] The European Court declared the complaint against Serbia inadmissible.

6. ENVIRONMENT AND PROPERTY RIGHTS

Change in the Council of State's case-law concerning reforestation

A change in the Council of State's case-law of in 2009 and 2012 confirmed the authorities' obligation for fresh assessment of the situation before taking a reforestation decision in cases where a long period of time has elapsed since the initial decision (in the present case the initial reforestation decision dated back to 1934). Furthermore, compensation may now cover any potential damages that individuals may have suffered during the period in which they have been unable to use their property due to pending proceedings concerning ownership, as recognised by the Supreme Court and the Council of State in a judgment of 2005. Furthermore, by virtue of a 2003 law, people possessing land in good faith for 30 years may be considered, under certain conditions, as owners in the dispute against the State (the required duration of the possession is limited to 10 years if the people concerned also provide a property title). Moreover, a process to establish a land register begun in 1995. Certain regions still have to be integrated into the land register which is planned to be finalised by mid-2021.

GRC / *Papastavrou and Others* (46372/99)

Judgment final on 10/07/2003

Action report

Final Resolution CM/ResDH(2019)178

Establishing State responsibility and ensuring compensation for damages caused by incorrect registration of land as part of coastline

In November 2009, the Court of Cassation has established new case-law, relying on the European Court's case-law, according to which the State has an objective responsibility for keeping the records in the land registries and the administration has to pay damages to those who sustain loss as a result of incorrect registration. The joint civil divisions of the Court of Cassation held that where a private individual's property title has been declared void because the land was part of the public forest estate or was situated on the coastline, the individual concerned was entitled to claim compensation under Article 1007 of the Civil Code.

In October 2011 the 20th Civil Division of the Court of Cassation ruled that anyone whose title to property had been annulled and transferred to the Treasury could bring a claim for compensation under Article 1007 of the Civil Code within ten years, in accordance with Article 125 of the Code on Obligations. It specified that the State incurred strict liability for any irregularities in the land register and that the amount of compensation should be assessed on the basis of the use, nature and value of the property in question.

TUR / *N.A. and Others* (37451/97)

Judgment final on 15/02/2006

Final Resolution CM/ResDH(2012)105

TUR / *Turgut and Others* (1411/03)

Judgment final on 26/01/2009

Action report

Final Resolution CM/ResDH(2012)106

Change of administrative courts' case-law ensuring compensation for land restrictions imposed for environmental reasons

Drawing on the European Court's case-law, the Council of State changed its own case-law in 2009 and 2013 thus considering that if a land situated outside an urban zone is concerned by restrictions to its constructability, the mere fact that it is situated outside the urban zone does not constitute a legitimate reason to exclude a land owner from compensation. First-instance and appeal courts changed their case law accordingly in 2009 and 2012. Thus, it results from actual case law, that when courts deal with a case relating to compensation for land whose constructability has been limited for reasons of environmental and cultural protection, they make an assessment on a case-by-case basis which takes into account the specificities of the land concerned, and grant compensation when the restrictions constituted a disproportionate burden for the owner. In addition, under the Council of State's case-law both the Constitution and statutory legislation provide a basis for compensation claims in this context.

GRC / *Anonymos Touristiki Etairia Xenodocheia Kritis* (35332/05)

Judgment final on 11/04/2011

Action report

Final Resolution CM/ResDH(2014)233

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