UDK 342.721:502.14(4-67EU)
Original scientific paper

THE RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE AS A MEANS OF ENVIRONMENTAL PROTECTION

Ana Radina, PhD, Assistant Professor
Faculty of Law, University of Split
Domovinskog rata 8, Split, Croatia
aradina@pravst.hr

ABSTRACT

Environmental degradation has a significant impact on a number of fundamental human rights; it alters the way individuals lead their lives, threatens their well-being and can prevent them, among other things, from peacefully enjoying their private and family life. Just like the environmental protection is crucial for the enjoyment of human rights, the effective exercise of human rights is essential for safeguarding the environment. Although this reciprocal relationship has long been widely acknowledged, the human right to a clean and healthy environment still awaits international and European human rights law recognition in the form of a binding document.

Since the right to respect for private and family life is one of the fundamental human rights most affected by harmful effects of environmental pollution, it is often used as a means of addressing environmental issues. Besides reflecting on the European Union's approach to environmental protection, this paper will focus on the examining of the specifics and the extent of the protection afforded to the environment through the right to private and family life as guaranteed by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and how this process in turn contributes to the development of the 'green' dimension of the right to private and family life. Naturally, the aim of the paper is also to consider the existing possibilities for advancing the protection of the human right to a healthy environment by means of the right to private and family life and vice versa.

Keywords*: European Court of Human Rights, European Union, environmental protection, right to respect for private and family life, right to a safe and healthy environment*

1. INTRODUCTION

Notwithstanding the fact the notion of "environmental rights" has been used in the international environmental and human rights context since 1972, when the Stockholm Declaration[1] recognised the link between human rights and the environment, and despite the proliferation of policies, programmes and non-binding instruments reiterating the awareness of that interrelatedness, such as the recent United Nations' Resolution recognizing the right the right to a clean, healthy and sustainable environment as a human right,[2] the most important action has not been taken so far – legal recognition of the right to a safe and healthy environment in a binding document. As growing environmental destruction is seriously threatening basically all fundamental human rights, the past few decades have seen an increase in pressure, or at least incentive, on the human rights protection systems,[3] especially the European Court of Human Rights (hereinafter: Court).

Over the last 50 years, the development of European integration was paralleled by the 'greening' of the European Union (hereinafter: EU) law[4], the result of which is an elaborate environmental policy[5] and an ample body of legislation covering different areas (air, water, soil, biodiversity, plastics, forests etc.[6]). The EU aspires to establish itself as a reliable partner on the international stage by implementing legislative framework which incorporates a comprehensive, human rights-based approach to climate and environmental action.[7] Yet, while observing "the emergence of a new human right – the right to a healthy, safe and sustainable environ-

---

1 Declaration of the United Nations Conference on the Human Environment, A/CONF.48/14/Rev.1, 16 June 1972.

2 United Nations General Assembly, Resolution: The human right to a clean, healthy and sustainable environment, A/RES/76/300, 28 July 2022.

3 For a discussion on *pro et contra* of utilization of human rights approach to environmental issues see: Atapattu, S; Schapper, A., *Human Rights and the Environment: Key Issues*, Routledge, London and New York, 2019, especially pp. 63-84.

4 Lombardo, M., *The Charter of Fundamental Rights and the Environmental Policy Integration Principle*, in: Di Federico, G. (ed.), The EU Charter of Fundamental Rights: From Declaration to Binding Instrument, Springer Dordrecht, 2011, p. 218.

5 Generally about the development of the EU environmental policy, its main features and perspectives see, e.g., Jordan, A.; Gravey, V. (eds.), *Environmental Policy in the EU: Actors, Institutions and Processes*, Routledge, London and New York, 2021.

6 European Commission, *Environment*, [https://environment.ec.europa.eu/index_en], Accessed 15 April 2023.

7 Yildirim, O., *Environmental protection as a prerequisite for respect for fundamental rights (information report - SDO)*, 2021, paras. 1.7, 2.8.2, [https://www.eesc.europa.eu/en/our-work/opinions-information-reports/information-reports/environmental-protection-prerequisite-respect-fundamental-rights-information-report-sdo], Accessed 15 April 2023.

ment" and "a new right to a safe climate"[8], the EU law lacks explicit recognition of both rights.

Adopting and coming into force of the Charter of Fundamental Rights of the European Union[9] (hereinafter: Charter) raised some hopes with regard to filling the gap due to a lack of explicit guarantee of the right to safe environment in international law. When compared to the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR)[10], the Charter may have seemed like the more appropriate instrument for addressing environmental rights issues[11] as it includes explicit reference to environmental protection. Moreover, the Convention on access to information, public participation in decision-making and access to justice in environmental matters[12] (hereinafter: Aarhus Convention) binds both the EU and its Member States[13] which is especially important in the context of public participation and access to justice in environmental matters. However, the fundamental rights culture within the EU institutions is still developing,[14] so it is not surprising that the individuals affected by environmental pollution or related risks have been increasingly turning to the Court in search of protection.

Regardless of the fact that the ECHR does not even mention the environment, by employing the "living instrument doctrine"[15] and the doctrine of positive obligations the Court has been playing the role of surrogate protector of the environment by proxy of civil and political rights, the scope of which is continuously

---

8 *Ibid.*, paras. 1.3-1.4, 2.4, 3.2.1.

9 Charter of Fundamental Rights of the European Union [2012] OJ C326/391 (Charter).

10 Convention for the Protection of Human Rights and Fundamental Freedoms (Konvencija za zaštitu ljudskih prava i temeljnih sloboda), Official Gazette, International Agreements No. 18/1997, 6/1999, 8/1999, 14/2002, 13/2003, 9/2005, 1/2006, 2/2010, 13/2017 (ECHR).

11 Antonopoulos, I., *The day after: Protecting the human rights affected by environmental challenges after the EU accession to the European Convention on Human Rights*, Environmental Law Review, Vol. 20, No. 4, 2014, p. 218.

12 Convention on access to information, public participation in decision-making and access to justice in environmental matters (Konvencija o pristupu informacijama, sudjelovanju javnosti u odlučivanju i pristupu pravosuđu u pitanjima okoliša), Official Gazette, International Agreements No. 1/2007, 7/2008. (Aarhus Convention).

13 Council Decision of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters [2005] OJ L124/1.

14 Woerdman, E.; Roggenkamp, M.; Holwerda, M. (eds.), *Essential EU Climate Law*, Edward Elgar Publishing, Cheltenham, 2021, p. 291.

15 See *Tyrer v. the United Kingdom*, no. 5856/72, 25 April 1978, para. 31, where the Court stated that "the Convention is a living instrument which, … must be interpreted in the light of present-day conditions".

evolving.[16] So far the Court has produced an extensive body of jurisprudence that "all but in name provides for a right to a healthy environment"[17], most notably by virtue of Article 8 of the ECHR which protects the right to respect for private and family life.[18] By doing so, the Court simultaneously extends the protection of the 'green' side of the right to private and family life. In general, the Court has defined the scope of Article 8 broadly, even when a specific right is not set out in the Article,[19] and it has been following this same path in environmental case-law.

After briefly reflecting on the environmental protection in the EU's human rights protection system, this paper will focus on the protection provided to environment by means of Article 8 of the ECHR in the Court's jurisprudence. The aim is to determine what requirements have to be met in order for a certain form of environmental harm to raise an issue under the right to respect for private and family life in the sense of Article 8, what constitutes a disproportionate interference with the individual's peaceful enjoyment of this right, and what steps are the national authorities expected to take in order to fulfil their obligations in this area. Naturally, this research also aims to examine the existing possibilities for advancing the protection of the human right to a healthy environment through the right to respect for private and family life, which, in turn, would also promote the further 'greening' of the right to respect for private and family life.

2. ENVIRONMENTAL PROTECTION IN THE EU'S HUMAN RIGHTS PROTECTION SYSTEM

The human rights protection system of the EU is based on its treaties and the Charter, and it includes the right of access of the EU citizens to the Court of Justice of

---

16 Kobylarz, N., *The European Court of Human Rights: An underrated forum for environmental litigation*, in: Tegner Anker, H.; Egelund Olsen, B. (eds.), Sustainable Management of Natural Resources – Legal Instruments and Approaches, Intersentia, Cambridge-Antwerp-Portland, 2018, pp. 99, 101.

17 Pedersen, O. W., *The European Court of Human Rights and International Environmental Law*, in: Knox, J.; Pejan, R. (eds.), The Human Right to a Healthy Environment, Cambridge University Press, New York, 2018, p. 87.

18 ECHR, *op. cit.* note 10. Article 8 provides: 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.

19 Private life is a broad concept incapable of exhaustive definition. Similarly, family life is considered as an autonomous concept. For an overview of the interpretation and application of rights covered by Article 8 in the Court's jurisprudence in: European Court of Human Rights, *Guide on Article 8 of the European Convention on Human Rights - Right to respect for private and family life*, 31 August 2020, [https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf], Accessed 15 April 2023.

the European Union (hereinafter: CJEU) as an independent judicial authority.[20] In a way, the Charter is a revolutionary text in the sense that there is no equivalent document in Europe. Besides civil and political rights as well as economic and social rights, it covers also rights of a third generation which include environmental protection.[21] Its Article 37 provides that a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union.[22] Evidently, Article 37[23] omits the word "right", therefore it does not guarantee a human right to protection of its environment.

Generally, the inclusion of environmental protection in the Charter as a catalogue of fundamental rights should have had important legal effects in the sense of reinforcing procedural rights in the environmental context, one of them being access to justice, as well as preventing the adoption of EU acts and national implementation measures without having regard to their environmental impact.[24] In this connection, it is worth noting that since 2000 the EU institutions have been implementing a so-called Better Regulation Agenda which requires that a comprehensive Impact Assessment be carried out before proposing new policy initiatives that might have significant economic, environmental or social impacts. However, the scholars' analyses show that so far these procedures have not fulfilled their purpose.[25]

While Article 37 does not establish individually justiciable right to safe and healthy environment,[26] by means of Article 42 and Article 47 the Charter does provide for the right of access to documents, and the right to an effective remedy and to a fair trial. At this point Article 52(3) of the Charter[27] should also come into play as it is intended to ensure equivalent protection of rights under the ECHR and EU

---

20 Romaniszyn, A., *Human rights climate litigation against governments: a comparative overview of current cases and the potential for regional approaches*, McGill Journal of Sustainable Development Law, Vol. 16, No. 2, 2020, p. 263.

21 Groussot, X.; Gill-Pedro, E., *Old and new human rights in Europe – The scope of EU rights versus that of ECHR rights*, in: Brems, E.; Gerards, J. (eds.), Shaping Rights in the ECHR - The Role of the European Court of Human Rights in Determining the Scope of Human Rights, Cambridge University Press, 2014, p. 234.

22 Charter, *op. cit.*, note 9.

23 For a detailed analysis of Article 37 of the Charter see: Morgera, E.; Marin-Duran, G., *Commentary to Article 37: Environmental Protection*, in: Peers, S.; Hervey, T.; Kenner, J.; Ward, A. (eds.), The EU Charter of Fundamental Rights: A Commentary, Hart Publishing, 2021, pp. 1041-1064.

24 Lombardo, *op. cit.* note 4, p. 224.

25 More details in: Woerdman; Roggenkamp; Holwerda, *op. cit.* note 14, pp. 274-281.

26 Morgera; Marin-Duran, *op. cit.* note 23, pp. 1042, 1053.

27 Charter, *op. cit.*, note 9. Article 52(3) states: In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention.

system.[28] Consequentially, Article 47 should be interpreted in the same meaning and scope as Articles 6(1)[29] and 13[30] of the ECHR. This point of view is supported by the Aarhus Convention.[31] Regardless of misconceptions, the Aarhus Convention did not introduce an *actio popularis* in environmental matters; instead, it has strengthened the position of environmental NGO's by attributing the status of "concerned public" to them, thus aiming for a compromise solution and mitigating the strictness of approach which limits the access to justice to those directly concerned.[32] The CJEU's jurisprudence, however, does not seem to adhere to the same approach.

On the one hand, the CJEU has held that domestic courts need to interpret national law in a manner which as far as possible ensures effective judicial protection in the field of EU environmental law, which includes standards set in the Aarhus Convention. On the other hand, both the EU rules on *locus standi*[33] and their application in the CJEU's jurisprudence have been criticised as overly restrictive. Namely, the application of the "*Plaumann* test"[34] results in excluding any direct access of NGO's or individuals to the CJEU[35] for the purposes of challenging the legality of EU legislative acts.[36]

Non-regression clause found in Article 53 of the Charter[37] is intended to maintain the current level of protection afforded by EU law, national constitutions and

---

28 Groussot, X.; Gill-Pedro, E., *op. cit.*, note 21, p. 246.

29 ECHR, *op. cit*. note 10. Article 6(1) provides, *inter alia*, that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

30 *Ibid*. Article 13 states: 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.

31 Morgera; Marin-Duran, *op. cit*. note 23, p. 1058.

32 Pánovics, A., *The missing link: Access to justice in environmental matters*, EU 2020 – lessons from the past and solutions for the future, in: Duić, D.; Petrašević, T. (eds.), EU and comparative law issues and challenges series (ECLIC 4), Josip Juraj Strossmayer University of Osijek, Faculty of Law Osijek, 2020, p. 114.

33 See Article 11 of the Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies [2006] OJ L264/13.

34 Case 25/62 *Plaumann & Co. v. Commission of the European Economic Community*, 15 July 1963.

35 More on the origin of this strict approach in: Peiffert, O., *European Union Court System and the Protection of the Environment*, in: Sobenes, E.; Mead, S.; Samson, B. (eds.), The Environment Through the Lens of International Courts and Tribunals, T.M.C. Asser Press, The Hague, 2022, pp. 228-231.

36 Garben, S., *Article 191 TFEU*, in: Kellerbauer; M.; Klamert, M.; Tomkin, J. (eds.), The EU Treaties and the Charter of Fundamental Rights: A Commentary, Oxford University Press, New York, 2019, pp. 1524-1525.

37 Charter, *op. cit*. note 9. Article 53 reads: Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of

international law, particularly the ECHR.[38] In connection to this, one peculiarity catches the eye - the environmental rights have not been the subject of otherwise long-standing dynamic judicial exchange between the CJEU and the Court.[39] Their significantly divergent approaches to environmental protection[40] inevitably reduce the possibility of finding common points of view in this area and seem to leave little room for achieving equivalent protection of human rights, including the right to private and family life.

The EU had been repeatedly criticised because the insistence on highly restrictive interpretation of the *locus standi* conditions does not comply with the requirements of the Aarhus Convention.[41] In 2021 the EU adopted legislative amendments[42] by means of which, besides the NGO's, other members of the public are also entitled to request reviews of the EU's environmental acts without having to demonstrate that they are directly and individually concerned, as required by the CJEU. They do, however, have to demonstrate that they are directly affected in comparison with the public at large. Furthermore, other members of the public may challenge EU's acts by demonstrating sufficient public interest, on condition that they collectively demonstrate both the existence of a public interest in preserving the quality of the environment, protecting human health, or in combating climate change, and that their request for review is supported by a sufficient number of natural or legal persons across the Union.[43] The CJEU had been following its 'orthodox approach' to the conditions for admissibility consistently since before

application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

38 Groussot, X.; Gill-Pedro, E., *op. cit.* note 21, p. 246.

39 Cenevska, I., *A Thundering Silence: Environmental Rights in the Dialogue between the EU Court of Justice and the European Court of Human Rights*, Journal of Environmental Law, Vol. 28, No. 2, 2016, pp. 303-307, 322-324.

40 As the case law of the CJEU does not offer protection for the right to private and family life in the context of environmental issues it would not be convenient to analyse it in details. Interested readers are suggested to see e.g., Cenevska, I., *ibid.*, pp. 316-322; Peiffert, O., *op. cit.* note 35, pp. 219-248; Woerdman, E.; Roggenkamp, M.; Holwerda, M., *op. cit.* note 14, pp. 282-285.

41 See more in: Marshall, F., *Participatory rights under the Aarhus Convention – more important than ever*, in: Council of Europe, Human Rights for the Planet, Proceedings of the High-level International Conference on Human Rights and Environmental Protection, Strasbourg, 5 October 2020, 2021, pp. 47-48.

42 Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 amending Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies [2021] OJ L356/1.

43 *Ibid.*, Recitals 19, 20, Article 3.

the ratification of the Aarhus Convention,[44] so now it remains to be seen to what extent it will change its position.

3. PROTECTION OF THE ENVIRONMENT BY MEANS OF THE RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE UNDER ARTICLE 8 OF THE ECHR

3.1. A few introductory remarks

Although the Court has dealt with applications concerning harmful effects of environmental pollution since the 1960s,[45] it was not until 1991 that it expressly recognised that in today's society the protection of the environment is an increasingly important consideration.[46] Three years later, in the landmark judgment *López Ostra v Spain*,[47] the Court held that "[N]aturally, severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health".[48] This case was examined under Article 8 like most of the Court's environmental case-law, and has set the general principle which the Court has been consistently reiterating ever since, namely, that even though there is no explicit right to a safe and healthy environment in the ECHR, an issue may arise under Article 8 where an individual is directly and seriously affected by some sort of environmental nuisance or pollution.

The following examination of the Court's environmental case-law within the framework of Article 8 will be based primarily, although not exclusively, on cases in which the Court ruled on the merits, finding (no) violation of the right to private and family life. Inevitably, the right to respect for home, also covered by Article 8, has to be included in our analysis because home is usually a place where private and family life goes on. The right to respect for home in the sense of Article 8 of the ECHR is more than just the right to the actual physical area; it is also the right to the quiet enjoyment of that area. Infringements of this right include those that are not concrete or physical, such as noise, emissions, smells or other forms of interference.[49] Taking into consideration that private life covers generally the

---

44 Peiffert, *op. cit.* note 35, pp. 233-234.

45 *Schmidt v. Federal Republic of Germany (dec.)*, no. 715/60, 5 August 1960.

46 *Fredin v. Sweden (no. 1)*, no. 12033/86, 18 February 1991, para. 48. The applicant complained of the revocation of a permit granted to exploit gravel, but the Court found no violation of his rights.

47 *López Ostra v Spain*, no. 16798/90, 9 December 1994.

48 *Ibid.*, para. 51.

49 E.g., *Kapa and Others v Poland*, nos. 75031/13, 75282/13, 75286/13, and 75292/13, 14 October 2021, para. 148.

physical and psychological integrity of a person, and that the essential ingredient of family life is the right to live together so that family relationships may develop normally and members of the family may enjoy each other's company,[50] it is clear how and why those three rights are interconnected and often overlap, as well as how and why they can all at the same time be adversely affected by the environmental degradation.

3.2. Applicability of Article 8 in environmental cases

Even though, as stated earlier, the Court acknowledges the protection of the environment is an increasingly important consideration, it does not accept that Article 8 is engaged in case of any environmental nuisance. Wider environmental context is considered relevant, but the general deterioration of the environment will not be sufficient.[51] For Article 8[52] to be applicable it has to be demonstrated that the environmental situation complained of represents an actual interference with the applicant's rights embedded in that Article and that the interference attained a minimum level of severity. In other words, environmental pollution must have had a direct and immediate effect on the right to respect for the applicant's home, private life and family life.[53]

The applicant's allegations in case *López Ostra v Spain*[54] pertained to pollution (smells, noise, fumes) caused by a privately-owned waste treatment facility built on municipal land, without a license required by law, and only 12 metres away from her house. After groundbreakingly establishing that severe environmental pollution may constitute direct and immediate effect on the right to respect for home, private and family life even without the actual damage to one's health, thus triggering the applicability of Article 8, the Court observed the authorities' contribution to prolonging the situation, and the fact that after more than three years the applicant and her family moved house because it became apparent that the situation could continue indefinitely and the applicant's daughter's paediatrician

50 European Court of Human Rights, *op. cit.* note 19, pp. 25, 77.

51 E.g., *Dzemyuk v Ukraine*, no. 42488/02, 4 September 2014, para. 78; *Kyrtatos v Greece,* no. 41666/98, 22 May 2003, paras. 52-53.

52 It is not uncommon in environmental cases that the applicant relies on other ECHR provisions besides Article 8, e.g., Articles 2, 3, 6 or 13. The same applies to some of the cases analysed in this paper, however, due to thematic and spatial limitations, we will deal only with the applicants' complaints based on Article 8.

53 For example, *Hardy and Maile v the United Kingdom*, no. 31965/07, 14 February 2012, paras. 187-188; *Yevgeniy Dmitriyev v. Russia*, no. 17840/06, 1 December 2020, para. 32; *Tolić and Others v Croatia (dec.)*, no. 13482/15, 4 June 2019, para. 91.

54 *López Ostra v Spain*, *op. cit*. note 47.

recommended that they do so. In the end, the Court found that the applicant's right to respect for her home and her private and family life was violated.[55]

Another fine example of a set of circumstances which represents a direct effect of environmental nuisance may be found in *Guerra and Others v. Italy*,[56] case involving the applicants complaining that the authorities failed to provide them with relevant information about risk factors and how to proceed in the event of an accident at the chemical factory sited about a kilometre away from their homes. The Court found that experts confirmed, and the Government did not dispute, that the factory released large quantities of inflammable gas and toxic substances in the air, and serious accidents have already occurred in the past. This was sufficient for establishing the existence of the direct effect of the toxic emissions on the applicants' right to respect for their private and family life, i.e. the applicability of Article 8.[57]

It follows from the aforementioned that the adverse environmental effects have to be both direct and severe enough in order for Article 8 to be applicable. Regrettably, this means that lesser violations of human rights arising from environmental pollution will remain outside the Court's review. An important safeguard in this context is the fact that, when assessing the minimum threshold,[58] the Court takes into account all the circumstances of the case,[59] including the intensity and duration of the nuisance, its physical or mental effects.[60] Obviously, establishing that the severity threshold has been reached is simpler if the pollution had already affected human health. Over time, however, the Court has gradually been broadening the interpretation of this "minimum" by establishing applicability of Article 8 in cases were a person's health was not manifestly affected or threatened,[61] as well as in cases where the dangerous effects of an activity to which the individuals

---

55 *Ibid*., paras. 51, 53, 56-58.

56 *Guerra and Others v Italy*, no. 14967/89, 19 February 1998.

57 *Ibid*., paras. 56-58. See, by contrast, Çiçek and Others v Turkey (dec.), no. 44837/07, 4 February 2020, paras. 30-32.

58 Kobylarz, *op. cit.* note 16, pp. 112-113.

59 See, e.g., *Zammit Maempel v Malta*, no. 24202/10, 22 November 2011, paras. 37-38, where the Court found that the severity threshold was reached even though the noise from fireworks complained of was only occasional.

60 *Inter alia*, *Cordella and Others v Italy*, nos. 54414/13 and 54264/15, 24 January 2019, paras. 157, 172; *Fadeyeva v Russia*, no. 55723/00, 9 June 2005, para 69. See also para. 138 of the latter judgment where the Court, calculating the amount of the non-pecuniary damage, took into account "various relevant factors, such as the age and state of health of the applicant and the duration of the situation complained of", and accepted "that the applicant's prolonged exposure to industrial pollution caused her much inconvenience, mental distress and even a degree of physical suffering".

61 E.g., *Solyanik v Russia*, no. 47987/15, 10 May 2022, para. 41; *Yevgeniy Dmitriyev v Russia*, *op. cit*., note 53, paras 32-33.

concerned are likely to be exposed have been determined under an environmental impact study, even where the hazardous activity is still in the planning stages.[62] Still, the applicants will not succeed with their claims if the detriment complained of is negligible in comparison to the environmental pollution inherent in life in every modern city.[63]

3.3. Respondent State's obligations in the context of protecting the environment by virtue of the right to private and family life

So far the Court's scrutiny in environmental cases has determined both negative and positive obligations of the respondent States. The Court applies broadly similar principles no matter whether a case is analysed in terms of a positive duty of the State to take appropriate measures to secure the applicants' rights provided in paragraph 1, or in terms of interference by a public authority which has to be justified in accordance with paragraph 2 or Article 8. The essential question is the same - whether the respondent State has struck a fair balance between the interests of persons affected by pollution and the competing interests of society as a whole.[64] Even if a case is examined from the point of view of the positive obligations, in the context of the balancing exercise, which the national authorities are required to take, the legitimate aims as stated in paragraph 2 of Article 8 may be of certain relevance. An interesting feature of the balancing exercise in environmental cases is the fact that the environment, which undoubtedly is a public interest, appears on the individual's side of the case, standing against another interest of the community as a whole.[65]

3.3.1. Negative obligations

3.3.1.1. Determining whether the interference was in accordance with the law

In cases concerning negative obligations, i.e. the authorities' interference with the individual's right to respect for private and family life, the Court is called to deter-

---

62 For example, *Taşkın and Others v Turkey*, 46117/99, 10 November 2004, paras. 112-113; *Thibaut v. France (dec.)*, nos. 41892/19 and 41893/19, 14 June 2022, para. 38.

63 E.g., *Kotov and Others v Russia*, nos. 6142/18 and 13 others, 11 October 2022, para. 109; *Jugheli and Others v Georgia*, no. 38342/05, 13 July 2017, para. 62.

64 E.g., *Giacomelli v Italy*, no. 59909/00, 2 November 2006, para. 78; *Kapa and Others v Poland*, *op. cit.*, note 49, para. 150.

65 Since the Court provides only for indirect protection of the environment through the ECHR, it does not assess the environmental values separately. Müllerová, H., *Environment Playing Short-handed: Margin of Appreciation in Environmental Jurisprudence of the European Court of Human Rights*, Review of European Community & International Environmental Law, Vol. 24, No. 1, 2015, pp. 89, 91.

mine whether the interference was prescribed by law, pursued a legitimate aim and was necessary in a democratic society. Cases *Dzemyuk v Ukraine*[66] and *Solyanik v Russia*[67] both involve complaints of the unlawful construction and use by the municipal authorities of a cemetery in close proximity to the applicant's house which led to the contamination of drinking water, exposing him and his family to a risk. Considering that the Government did not dispute the breach of the domestic environmental health regulations, that both the conclusions of the environmental authorities and the judicial decisions ordering closure of the cemetery were disregarded, the Court came to a conclusion that the interference with the applicants' right to respect for their home and private and family life was not in accordance with the law within the meaning of Article 8 of the ECHR.[68]

3.3.1.2. Legitimate aims and the margin of appreciation

In environmental cases, the interference with the individual's right to respect for private and family life is usually based on the economic interest of the country or a local area,[69] occasionally on "the interest of the local community in benefiting from the protection of public peace and security by the police force".[70] The issue of legitimate aim can be observed in connection with the margin of appreciation allowed to States due to the fact that this margin involves the Court's determining whether a fair balance was struck between conflicting interests at stake.

Namely, one of the well-established general principles that the Court consistently applies in cases pertaining to the right to private and family life, thus including the cases concerning the 'green' aspect of the realisation of those rights, is that the national authorities, who are in principle better placed than an international court to evaluate local needs and conditions, enjoy wide margin of appreciation in determining the steps to be taken to ensure compliance with the ECHR as well as making the initial assessment of the necessity for an interference.[71] The margin of appreciation doctrine has been criticised for leaving autonomy to respondent States thus making it easier for the Court to refrain from reviewing certain issues,[72]

---

66 *Dzemyuk v Ukraine*, *op. cit.* note 51.

67 *Solyanik v Russia*, *op. cit.* note 61.

68 *Ibid.*, paras. 51-54; *Dzemyuk v Ukraine*, *op. cit.* note 51, paras. 91-92.

69 *Inter alia, Fadeyeva v. Russia*, *op. cit.* note 60, para. 101; *Powell and Rayner v United Kingdom*, no. 9310/81, 21 February 1990, para. 42.

70 *Yevgeniy Dmitriyev v Russia*, *op. cit.* note 53, para. 57.

71 E.g., *Hudorovič and Others v Slovenia*, nos. 24816/14 and 25140/14, 10 March 2020, para. 140; *Grimkovskaya v Ukraine*, no. 38182/03, 21 July 2011, para. 65; *Strand Lobben and Others v. Norway*, no. 37283/13, 10 September 2019, paras. 210-211.

72 Müllerová, *op. cit.* note 65, pp. 83-84.

while the proof of overstepping the margin of appreciation is generally on the applicant.[73]

The aforementioned is reflected, e.g., in *Hatton and Others v the United Kingdom,*[74] case concerning the applicants complaining that the government policy on night flights at nearby airport violated their rights under Article 8 of the ECHR because the noise pollution caused considerable sleep disturbance to them and their children. The Court found that in balancing the applicants' individual interest against the public interest - the economic interests of the country, the authorities had not overstepped their margin of appreciation.[75] This case was subject to criticism[76] as it represented a regression from the Court's otherwise evolving, environmentally friendly case law.[77] Affording wide margin of appreciation to the respondent State meant allowing the economic interests to prevail[78] over the individual ones.

3.3.2. Positive obligations

Positive obligations of the States arising from the application of Article 8 in environmental context involve taking all the reasonable and appropriate measures necessary[79] for ensuring protection of the rights covered by that Article. Those responsibilities extend to the sphere of the relations between private individuals, which includes situations where the environmental pollution was the result of the actions of private actors.[80] For example, the breach of the State's obligations may be found as a result of a failure to regulate private industry, or to adopt measures to protect the rights of individuals exposed to pollution and to accompanying health risk. Due to a fairly wide margin of appreciation being allowed, the choice of means of fulfilling their obligations belongs to the respondent State.[81]

---

73 Peters, B., *The European Court of Human Rights and the Environment*, in: Sobenes, E.; Mead, S.; Samson, B. (eds.), The Environment Through the Lens of International Courts and Tribunals, T.M.C. Asser Press, The Hague, 2022, pp. 211.

74 *Hatton and Others v the United Kingdom*, no. 36022/97, 8 July 2003.

75 *Ibid*., paras. 121, 126, 128-130.

76 The Grand Chamber's decision in this case was not unanimous and five judges joined in expressing their dissenting opinion. *Ibid*.

77 Zahradnikova, E., *European Court of Human Rights: Giving the Green Light to Environmental Protection*, Queen Mary Law Journal, Vol. 8, 2017, p. 18.

78 See, by contrast, *Băcilă v Romania*, no. 19234/04, 30 March 2010, paras. 70-72.

79 For example, *Cordella and Others v Italy*, *op. cit*. note 60, para. 173; *Guerra and Others v Italy*, *op. cit*. note 56, para. 58.

80 E.g., *Oluić v Croatia*, no. 61260/08, 20 May 2010; *K.U. v Finland,* no. 2872/02, 2 December 2008, para. 43.

81 See, e.g., *Apanasewicz v Poland*, no. 6854/07, 3 May 2011, paras. 84, 103-104, case concerning the failure to enforce a decision ordering the closure of a concrete production plant built unlawfully by the

In *Mileva and Others v Bulgaria*[82] the applicants, who lived on the first floor of the residential building, complained about the noise and other nuisance from a computer gaming club unlawfully operating on the ground floor of the same building. The authorities received a number of complaints, yet they failed to take effective steps to determine the effect of the club's operating on the well-being of the building residents. Notwithstanding the fact it is not tasked with determining what exactly should have been done to put an end to or reduce the disturbance, the Court can, however, assess whether the authorities approached the matter with due diligence and took all the competing interests into consideration.[83] In this case the Court found that the authorities failed to discharge their positive obligation to ensure the applicants' right to respect for their homes and their private and family lives.[84]

Cases involving complex environmental and economic policy issues, and especially dangerous activities, engage a number of specific positive obligations[85] serving the purpose of effectively respecting one's right to private and family life. Among others, this includes obligations related to effective prevention of damage to the environment and human health, which is significant as the human rights approach to environmental issues is often criticised as being exclusively reactive.[86]

Environmental considerations in the Court's reasoning reveal that procedural elements are used both as means for evaluating the applicability of Article 8 and for establishing violation of positive obligations.[87] Procedural safeguards available to the individual will be especially relevant for the Court when determining whether the State has stepped out of its margin of appreciation.[88] In *Taşkın and Others v*

---

applicant's neighbour. The Court found that the measures adopted by the authorities were insufficient and wholly ineffective, which amounts to breach of the applicant's right to private and family life as guaranteed by Article 8.

82 *Mileva and Others v Bulgaria,* nos. 43449/02 and 21475/04, 25 November 2010.

83 *Inter alia*, *Kotov and Others v. Russia*, *op. cit*. note 63, para. 134. Also, the Court almost never orders consequential measures in environmental cases on the basis of Article 46 of the ECHR. One of the exceptions is case *Cordella v. Italy, op. cit.*, note 60. More details in: Keller, H.; Heri, C.; Piskóty, R., *Something Ventured, Nothing Gained? – Remedies before the ECtHR and Their Potential for Climate Change Cases*, Human Rights Law, Review, Vol. 22, No. 1, 2022, pp. 17-19.

84 *Mileva and Others v. Bulgaria, op. cit*. note 82, paras. 99-102.

85 E.g., *Di Sarno and Others v. Italy*, no. 30765/08, 10 January 2012, 106-107; Öneryıldız v. Turkey, no. 48939/99, 30 November 2004, paras. 89-90.

86 Pedersen, *op. cit*. note 17, p. 89.

87 More in: Krstić, I.; Čučković, B., *Procedural aspect of Article 8 of the ECHR in environmental cases - the greening of human rights law*, Annals FLB - Belgrade Law Review, Year LXIII, 2015, No. 3, pp. 186-187.

88 For example, *Dubetska and Others v. Ukraine*, no. 30499/03, 10 February 2011, paras. 143-144; *Buckley v. the United Kingdom*, no. 20348/92, 25 September 1996, para. 76.

Turkey[89] the Court emphasised that the decision-making process must involve appropriate investigations and studies; this enables the authorities to evaluate in advance the effects of the activities with the potential to damage the environment and infringe individuals' rights. Besides the public access to information allowing them to assess the risk to which they are exposed being "beyond question", the individuals concerned must also have access to courts if they consider that their interests have not been given due weight in the decision-making process.[90] At the same time, "allowing applicants to assess the risk" suggests that the applicants are left on their own in this regard, even though they usually do not possess expert knowledge on the issues at stake.[91]

The dispute in this case involved the operation of a gold mine using a dangerous process of cyanidation. After the domestic court revoked the permit it took ten more months until the closure of the mine had been ordered. Later, in a decision which was not made public, the authorities granted the continuation of the gold mine's operation. The Court held that the procedural safeguards were available to the applicants, but the authorities had deprived them of any useful effect, which led to conclusion that the applicants' right to respect for their private and family life vas violated.[92] The significance of this judgment lies also in the fact that it is the first time the Court cited the Aarhus Convention as the relevant international standard concerning procedural environmental rights. Moreover, the Court did so despite the fact Turkey had not ratified the Aarhus Convention.[93]

Within this context, case *Tătar v Romania*[94] also stands out. Considering that several official reports and studies established serious environmental damage and a threat to human health as consequences of the accident in a gold mine, the Court stated that the population of the town, including the applicants, must have lived in a state of anxiety and uncertainty exacerbated by the passivity of the national authorities. The latter failed in their obligation to assess in advance the possible risks of the activity in question, and to take adequate measures capable of protect-

---

89 *Taşkın and Others v. Turkey*, *op. cit*. note 62.

90 *Ibid*., para. 119.

91 Krstić; Čučković, *op. cit*. note 87, pp. 183-184.

92 *Taşkın and Others v Turkey*, *op. cit*. note 62, paras. 120-126. Subsequently, the Court delivered other judgments concerning the operation of the same polluter, also establishing violations of the applicants' right to private and family life. See: Öçkan and Others v Turkey, no. 46771/99, 28 March 2006; *Lemke v Turkey*, no. 17381/02, 5 June 2007; *Genç and Demirgan v Turkey*, nos. 34327/06 and 45165/06, 10 October 2017.

93 For more details on the subsequent case-law mentioning the Aarhus Convention see: Peters, *op. cit*. note 73, p. 10.

94 *Tătar v Romania*, no. 67021/01, 27 January 2009.

ing the rights of the persons concerned to respect for their private and family life,[95] and "more generally, the enjoyment of a healthy and protected environment".[96]

This is so far the only environmental case in which the Court's ruling relied on the precautionary principle.[97] Further, the Court made discernible shift in its language, opening the way for the concept of a right to a safe and healthy environment to influence its subsequent case-law.[98] Regrettably, the Court has been reluctant towards developing the precautionary principle further,[99] even though it has been giving hints of willingness to abandon the mainly procedural approach to environmental rights and to engage in the further evolution of their substantive perspective.[100] Namely, the statement about the right to live in a safe and healthy environment has been repeated since. For example, in Băcilă v Romania[101] the applicant complained that the pollution generated by the plant built near her home had severe detrimental effects on her health, in particular poisoning by lead and sulphur dioxide. The Court held that the economic stability of the town cannot prevail over "the right of the persons concerned to enjoy a balanced and healthy environment",[102] and ruled that by failing to strike a fair balance between the interests at stake, the authorities violated the applicant's right to respect for her home and for her private and family life.[103]

Furthermore, the States' positive obligations include not only the duty to provide information when asked, which requires establishing appropriate procedure for

---

95 *Ibid*., paras. 104, 122-125.

96 *Ibid*., paras. 107, 112.

97 *Ibid*., paras. 109, 120. The precautionary principle suggests that scientific uncertainty should not be used as an excuse to postpone effective and proportionate measures aimed at preventing the irreparable damage to the environment. More about this principle in international law: Atapattu, S., *Emergence of International Environmental Law: A Brief History from the Stockholm Conference to Agenda 2030*, in: Sobenes, E.; Mead, S.; Samson, B. (eds.), The Environment Through the Lens of International Courts and Tribunals, T.M.C. Asser Press, The Hague, 2022, pp. 15-18. More about the interpretation of this principle in the context of the EU law: Garben, S., *op. cit*. note 36, pp. 1519-1520.

98 Cenevska, *op. cit*. note 39, pp. 312-313.

99 See: Pedersen, *op. cit*. note 17, pp. 89-90. It should be noted that the principle itself was mentioned again, e.g., in *Di Sarno and Others v. Italy*, *op. cit*. note 85, para. 75, but only in the context of citing the relevant EU law, not as a part of the Court's reasoning.

100 Cenevska, *op. cit*. note 39, pp. 312-314.

101 *Băcilă v Romania*, *op. cit*. note 78.

102 See also: *Di Sarno and Others v. Italy*, *op. cit*. note 85, para. 110, reiterating "the right of the people concerned to live in a safe and healthy environment"; *Kotov and Others v Russia*, *op. cit.*, note 63, para. 135, mentioning "applicant's individual interest in living in favourable environmental conditions"; *Pavlov and Others v. Russia*, no. 31612/09, 11 October 2022, para. 85, pointing to "the applicants' interest in living in a safe environment".

103 *Băcilă v. Romania*, *op. cit*. note 78, paras. 71-73.

acquiring environmental information, but also an obligation to actively inform about the risks[104] those persons who are facing a health hazard. The Court expressed this view already in *Guerra and Others* by ruling that the State failed to provide the applicants with essential information about the risks they and their families might face if they continued to live in the close proximity of the chemical factory.[105] One of the reasons for finding a violation of Article 8 in Tătar was that the respondent state did not provide the applicants with sufficient information on the past, present and future consequences of the gold mine accident on their health and the environment, and on the preventive measures in case of similar events in the future.[106]

4. THE PLACE FOR "THE RIGHT TO RESPECT FOR FAMILY LIFE" IN ENVIRONMENTAL CASE-LAW

The Court's views regarding the specific circumstances which trigger the applicability of the right to family life in addition to the right to private life (and often the right to home) have not been analysed up until this point. The reason why is that the Court's environmental case-law within the framework of Article 8 of the ECHR simply lacks of any elaboration on that matter specifically. It is possible, however, to discern some guidelines from the cases themselves.[107]

When rejecting as inadmissible the applications in which the applicants claimed concretely that their right to respect for family life was violated, the Court usually simply declares, for example, that it has not been proven that a particular activity or nuisance would expose applicants to an environmental hazard in such a way that "their ability to enjoy their private and family life or their home would be directly and seriously affected"[108]. Similar style is used in cases where the Court finds no violation of the right to private and family life. For example, in *Martínez Martínez and Pino Manzano v Spain,*[109] after observing that the expert's report showed that the levels of noise and pollution complained of were equal to or slightly above the norm, and that the applicants had deliberately placed them-

---

104 Krstić; Čučković, *op. cit*. note 87, p. 181.

105 *Guerra and Others v Italy, op. cit*. note 56, paras. 58-60.

106 *Tătar v. Romania*, *op. cit*. note 94, paras. 122-125.

107 Inevitably, the analysis in this section has to be focused on environmental cases in which the applicants themselves explicitly invoked their right to family life, besides their right to private life and home, or they generally relied on Article 8 without singling out any of the interests protected by that Article.

108 *Thibaut v France (dec.)*, *op. cit.* note 62, para. 47. See also, *inter alia*: *Fieroiu and Others v Romania (dec.)*, no. 65175/10, para. 28; *Calancea and Others v the Republic of Moldova (dec.)*, no. 23225/05, 1 March 2018, para. 32.

109 *Martínez Martínez and Pino Manzano v Spain*, no. 61654/08, 3 July 2012.

selves in an unlawful situation by settling in an industrial zone which was not meant for residential use, the Court ruled that there was no interference with the applicants' right to respect for their home and their private and family life, thus there is no violation of those rights.[110]

It is understandable why in those two categories the Court would consider it unnecessary to discuss in detail what specific circumstances turn an environmental situation into a violation of the right to family life. However, judgments in which the Court found the violation of the right to private and the right to family life also provide no explanation on that issue. Certain conclusions might be drawn from those cases in which both the applicants complained of their right to private and family life being violated and the Court established the violation to the same extent. For example, the aforementioned cases *López Ostra*,[111] *Guerra and Others*,[112] *Taşkın and Others*,[113] Băcilă[114] or *Mileva and Others*[115] suggest that, besides the existence of the adverse direct and serious effect on the applicant and his/her family's health and overall well-being which had already been materialised, or of the high level of risk, the close proximity of the source of pollution or the source of risk is also a relevant factor.[116] This observation is further supported by, e.g., *Giacomelli*,[117] case concerning the issuing of an operating licence to the waste treatment plant, located only 30 metres away from the applicant's house, without any prior study. The Court ruled that the State failed to ensure the applicant's effective enjoyment of her right to respect for her home and her private and family life.[118]

The State is under an obligation to protect family life and enable the normal development of family relationships. It is not difficult to imagine how environmental pollution may have a negative effect on the mutual enjoyment by parent and

---

110 *Ibid.*, paras. 49-51. See also *Kyrtatos v Greece*, *op. cit.*, note 50, paras. 53-55.

111 *López Ostra v Spain*, *op. cit.*, note 47.

112 *Guerra and Others v. Italy*, *op. cit*. note 56.

113 *Taşkın and Other v Turkey, op. cit*. note 62.

114 *Băcilă v Romania*, *op. cit*. note 78.

115 *Mileva and Others v Bulgaria*, *op. cit*. note 82.

116 See, by contrast, *Kotov and Others v Russia*, *op. cit.*, note 63, paras. 81, 101-109, where the distance between the applicants' homes and the source of pollution varied from 5.8 to 13 kilometres. See also *Pavlov and Others v Russia*, *op. cit.*, note 102, paras. 68-71. In both cases the applicants also provided no medical evidence which could point to any conditions that they had allegedly developed. Considerable distance from the sources of pollution is presumably the reason why the right to respect for home was also excluded from the examination of the merits in these cases.

117 *Giacomelli v Italy*, *op. cit.* note 64.

118 *Ibid.*, paras. 86-88, 92-94, 97.

child of each other's company,[119] or on the relationships between family members in general. At the same time, it appears that the applicant's allegations about the adverse effects of environmental nuisance on the members of his/her family are not decisive for the violation of the right to family life to be established, as follows from, e.g., *Apanasewicz v Poland*[120] or Băcilă v Romania[121]. In neither of those cases did the applicant make arguments with regard to her family members.

The applicants in *Dubetska and Others v Ukraine*[122] asserted that they suffered chronic health problems and damage to their living environment as a result of a coal mine and a factory operating nearby. Interestingly enough, the applicants submitted that "their frustration with environmental factors affected communication between family members. In particular, lack of clean water for washing reportedly caused difficulties in relations between spouses. Younger family members sought to break away from the older ones in search of better conditions for their growing children."[123] The Court expressly noted the applicants' accounts of their daily routine and communications, and stated that they "appear to be palpably affected by environmental considerations".[124] Since the Government has failed to adduce sufficient explanation for their failure in finding some kind of effective solution for more than 12 years, the Court found there has been a breach of Article 8 in this case.[125]

Besides the lack of expressly stated principles in this context, judgments themselves sometimes lack clarity. Namely, there are cases in which the applicants explicitly relied on their right to private and family life, but in the end the Court's ruling pertained only to right to home and/or private life. In the latter category of cases, the concept of family life is always at least mentioned in the Court's deliberations on the applicability of Article 8, however, after that, the right to family life 'disappears' from the Court's examination of the merits.

For example, in *Grimkovskaya v Ukraine*[126] the applicant complained about a motorway being rerouted right next to her house, relying on her right to respect for home, private and family life. The Court, when giving its ruling, did not explicitly

---

119 It is well established in the Court's case-law that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life. See, e.g., *Strand Lobben and Others v. Norway*, *op. cit.*, note 71, paras. 202-203.

120 *Apanasewicz v Poland*, *op. cit.* note 81.

121 *Băcilă v Romania*, *op. cit.* note 78.

122 *Dubetska and Others v Ukraine*, *op. cit.* note 88.

123 *Ibid.*, para. 29.

124 *Ibid.*, para. 112.

125 *Ibid.*, paras. 73, 119.

126 *Grimkovskaya v Ukraine, op. cit.,* note 71.

refer to any particular interest protected by this provision, stating just that Article 8 was infringed.[127] It is safe to assume, though, that the scope of the established violation corresponds to the applicant's complaints. However, sometimes the exact scope of the violation found or not found by the Court is not obvious at first. In *Hatton and Others*[128] the applicants relied generally on Article 8 of the ECHR. The Court ruled that the applicant's right to respect for home and private life was not violated. After that, when it discussed the issue of damage suffered by the applicants, the Court stated that it found "no violation of the substantive right to respect for private life, family life, home and correspondence under Article 8".[129]

Similarly, in *Di Sarno and Others v Italy*[130] the applicants relied generally on Article 8 and complained about the authorities' failure to take appropriate measures to guarantee the proper functioning of the public waste disposal service. Reiterating that it is master of the characterisation to be given in law to the facts of the case,[131] the Court considered that the applicants' complaints should be examined from the standpoint of the right to respect for private life and home.[132] In so doing, the Court offered no explicit explanation as to why the right to family life could not be considered a suitable basis for considering the applicant's grievances. Recalling the Court's previous case-law, the answer may be found in the fact that the applicants had not claimed to have had any health problems linked to their exposure to the waste.[133]

In *Kapa and Others v Poland*[134] the applicants argued that by rerouting of traffic by their house during the construction of a motorway, which exposed them to pollution (noise, vibrations, exhaust fumes), the authorities had violated their right to the peaceful enjoyment of their private and family life and their home. The Court held that "the applicants' right to the peaceful enjoyment of their homes

---

127 *Ibid*., paras. 41, 73. The same approach was applied in, for example, *Dubetska and Others v Ukraine*, *op. cit*., note 88, paras. 73, 156.

128 *Hatton and Others v the United Kingdom*, *op. cit*., note 74.

129 *Ibid*., paras. 84, 129, 147. See also para. 13 of the dissenting opinion annexed to this judgment, where five judges state that, in their opinion, "the problem of noise, when it seriously disturbs sleep, does interfere with the right to respect for private and, under specific circumstances, family life, as guaranteed by Article 8, and may therefore constitute a violation of said Article, depending in particular on its intensity and duration". Unfortunately, the judges did not elaborate further on that thought.

130 *Di Sarno and Others v Italy*, *op. cit*. note 85.

131 *Ibid*., para. 96. See also: *Hardy and Maile v the United Kingdom*, *op. cit.* note 53, para. 184.

132 *Ibid*., *Di Sarno and Others v Italy*, paras. 94, 96.

133 See also, e.g., *Jugheli and Others v Georgia*, *op. cit*. note 63, para. 71, referring to the lack of proof of any quantifiable harm to the applicants' health.

134 *Kapa and Others v Poland*, *op. cit.* note 49.

was breached", thus there has been "a violation of Article 8".[135] Besides the scope of this ruling departing from that of the applicants' claims, as soon as the Court, for the purposes of examining the merits of the case, started reiterating general principles applicable to this case, it immediately focused on the right to home. As the facts of this case are similar to those in *Grimkovskaya*,[136] the explanation for the difference in the Court's conclusions, presumably, lies in the fact that in *Kapa and Others* the domestic court already found that the applicants' right to health and the peaceful enjoyment of their home had been infringed.[137]

When comparing *Dzemyuk v Ukraine*[138] and *Solyanik v Russia*[139] one finds that in both cases: the applicant complains of a violation of Article 8, arguing that the construction and use of a cemetery near his house had contaminated his supply of drinking water, preventing him from making normal use of his home and its amenities; the cemetery was located near the applicant's house (38 metres in *Dzemyuk*; 77.1 metres in *Solyanik*); the applicant alleged his own and his wife's mental health was affected, however no evidence of actual damage to their health was submitted; the Court concluded that the nuisance complained of constituted an interference with the applicant's right to respect for his home and private and family life; 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 and held that there has been a violation of Article 8 of the ECHR.[140] However, it was not until the Court considered "that the effects that the environmental nuisance had on the applicant's right to respect for his private life and his home cannot be compensated for by the mere finding of a violation"[141] that we find out that the extent of the violation found is, apparently, narrower in *Solyanik*. The reasoning behind this difference in the Court's conclusions on such similar cases is not clear as the only obvious differences seem to be twice the distance between the cemetery and the applicant's house in *Solyanik* in comparison to *Dzemyuk,* and the applicant's complaint in *Solyanik* about his grandchildren being afraid to visit him because he had *de facto* lived in the cemetery.[142] Certainly, there is also possibility that this was just an oversight.

---

135 *Ibid*., paras. 119, 174-175.

136 *Grimkovskaya v Ukraine, op. cit.* note 71.

137 *Kapa and Others v Poland*, *op. cit*. note 49, paras. 88, 153.

138 *Dzemyuk v Ukraine*, *op. cit*. note 51.

139 *Solyanik v Russia*, *op. cit*. note 61.

140 *Dzemyuk, v Ukraine*, *op. cit.* note 51, paras. 33, 73, 82-84, 92; *Solyanik v Russia*, *op. cit*. note 61, paras. 14, 37, 41, 43, 45, 54.

141 *Ibid*., *Solyanik v Russia*, para. 58.

142 *Ibid.,* para. 48. For relevant principles relating to the meaning and scope of family life between grandchildren and grandparents see, e.g., *Q and R v Slovenia*, no. 19938/20, 8 February 2022, para. 94.

Finally, it should be mentioned that what also contributes to the lack of clarity on this issue is the fact that it is not uncommon that the press releases[143] on judgments incorrectly report on the violations (not) found. For example, press releases on *Kapa and Others* and *Di Sarno and Others* state that the violation of private and family life was found even though the violation of the right to respect for home and the right to respect for home and private life was found respectively.[144] On the other hand, the press release on *Apanasewicz* states that the Court unanimously held that there had been "a violation of Article 8 (right to respect for the home)" even though the judgment established violation of the applicant's right to private and family life.[145] Press release on *Mileva and Others* omits the violation of the applicants' right to home which was established in the judgment besides the violation of the right to private and family life.[146]

It would be useful if the Court would elaborate specifically on the question of what constitutes a violation f the right to family life in environmental cases. Even if protection afforded to the right to respect for home and private life inevitably has favourable effects to the family life as well, clarification on this point would be convenient. If nothing else, it would be easier on the applicants if there were more guidance from the Court pertaining to the right to family life in particular.

5. THE PERSPECTIVE OF FURTHER DEVELOPMENT OF THE ENVIRONMENTAL PROTECTION BY MEANS OF THE RIGHT TO LIVE PRIVATE AND FAMILY LIFE IN A SAFE AND HEALTHY ENVIRONMENT

It is safe to say that there is potential for further evolution of the scope of protection afforded to the environment through the right to respect for private and family life embedded in Article 8 of the ECHR, if not for explicit recognition of the human right to live in a healthy environment. That, at the same time, means broadening the scope of protection of the individual's right to live his/her private and family life in a favourable environment. After the *Tătar* judgment it seemed like the Court is retreating from its precautionary tone which caused concerns that its case-law might be at a standstill. However, it seems that the Court has not yet reached the end point of how far it is willing to expand the ECHR to cover

143 All press releases issued by the Registry of the Court since 1 January 1999 are available at [http://hudoc.echr.coe.int/sites/eng-press], Accessed 15 April 2023.

144 *Kapa and Others v. Poland, op. cit*. note 49, para. 174; *Di Sarno and Others v. Italy*, *op. cit*. note 84, para. 112.

145 *Apanasewicz v Poland*, *op. cit*. note 81, paras. 84, 103, 108.

146 *Mileva and Others v. Bulgaria*, *op. cit*. note 82, para. 101. See also: *Martínez Martínez and Pino Manzano, op. cit*. note 110, para. 50.

environmental issues.[147] The Court recently widened the substantive aspect of environmental protection, thus raising the bar of expectations for the future.

Before turning to the Court, the applicants in *Pavlov and Others v Russia*[148] unsuccessfully brought proceedings against 14 national agencies relying on, *inter alia*, their right to private and family life under Article 8 of the ECHR. In particular, they complain about the respondent State's failure to take appropriate measures in order to improve the environmental situation and to reduce effects of long-standing pollution which was the result of industrial facilities operating around the city they lived in. Unlike in earlier cases, where the close proximity of the source of pollution to the applicant's home was an important factor, 2 to 15 kilometres of distance from industrial facilities in this case was considered by the Court as only one of the relevant factors to be taken into account.[149] Reiterating once again that the applicants have an "interest in living in a safe environment",[150] the Court found that despite certain targeted measures and programmes being implemented, the air pollution in the city where the applicants lived had not been curbed sufficiently to prevent the exposure of the residents to related health risks. Therefore, the Russian authorities had failed to secure the applicants' right to respect for their private life.[151]

The Court departed from its previous conservative approach towards reviewing and giving opinion on domestic environmental policies and measures, which it had employed in 2009 in *Greenpeace E.V. and Others v Germany,*[152] and has downplayed his subsidiary role a bit. This stepping forward was not welcomed by all,[153] as could be expected. However, 14 years have passed since the *Greenpeace E.V.* and the "present-day conditions"[154] to which interpretation and application of the ECHR rights should be adapted, especially of the right to private and family life, have significantly changed. Serious consequences of environmental destruction, and particularly of climate change crisis, are visible all over the globe. Abundance of scientific evidence is publicly available and the approach taken in *Pavlov and*

147 See: Pedersen, *op. cit*. note 17, p. 90.

148 *Pavlov and Others v. Russia*, *op. cit*. note 102.

149 *Ibid.*, paras. 63-64.

150 *Ibid*., para. 85.

151 *Ibid*., paras. 92-93.

152 *Greenpeace E.V. and Others v. Germany (dec.)*, no. 18215/06, 12 May 2009.

153 Respected reader is referred to four separate opinions annexed to *Pavlov and others*, *op. cit.*, note 101, as they are all raising important issues to be considered in the context of dealing with environmental issues by means of human rights.

154 *Tyrer v the United Kingdom*, *op. cit*. note 15, para 31.

Others may be suggesting the Court's willingness to tackle evidentiary problems[155] in the environmental context more actively, thus to assume more responsibility for the protection of environment and the protection of human rights which are seriously undermined by environmental degradation.

It will be known relatively soon whether the case-law concerning the relationship and mutual influence of environmental pollution and the right to private and family life will continue to evolve on the path the Court set out in *Pavlov and Others*. Namely, several climate cases are currently pending before the Grand Chamber.

Case *Verein KlimaSeniorinnen Schweiz and Others v Switzerland*[156] is brought before the Court by a group of elderly women[157] complaining of adverse effects of climate change on their health and private and family life. They argue that Switzerland has failed in fulfilling its duties under the Article 8 by not doing everything in its powers to reduce the global temperature rise.[158] In *Carême v France*[159] the applicant alleges that the authorities have not taken all appropriate measures in order to comply with the maximum levels of greenhouse gas emissions, and that this failure constitutes a disregard for his right to a normal private and family life.[160] The applicants in *Duarte Agostinho and Others v Portugal and Others*[161] complain about the failure by the 33 Signatory States[162] to the 2015 Paris Agreement[163] to

---

155 There are different possibilities to that end, and the expertise on environmental law is already present within the Court. See more in: Keller, H.; Heri, C., *The Future is Now: Climate Cases Before the ECtHR*, Nordic Journal of Human Rights, Vol. 40, No. 1, 2022, pp. 168-169.

156 *Verein KlimaSeniorinnen Schweiz and others v Switzerland*, no. 53600/20 (communicated case), 17 March 2021.

157 The applicants are an association concerned with the consequences of climate change whose members are older women (more than 2,000 members, and one-third of whom are over 75) as well as four individual women (over 80 years old).

158 European Court of Human Rights, *Grand Chamber hearing on consequences of global warming on living conditions and health*, Press Release, 29 March 2023, [https://hudoc.echr.coe.int/eng-press?i=003-7610087-10470692], Accessed 15 April 2023.

159 *Carême v France*, no. 7189/21 (communicated case), 7 June 2022.

160 European Court of Human Rights, *Grand Chamber hearing concerning combat against climate change*, Press Release, 29 March 2023, [https://hudoc.echr.coe.int/eng-press?i=003-7610561-10471513], Accessed 15 April 2023.

161 *Duarte Agostinho and Others v. Portugal and Others*, no. 39371/20 (communicated case), 13 November 2020. The applicants are six Portuguese nationals between 8 and 21 years of age (at the moment of applying to the Court).

162 Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Russian Federation (ceased to be a Party to the ECHR on 16 September 2022), Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine and United Kingdom.

163 United Nations, Paris Agreement, FCCC/CP/2015/10/Add.1,12 December 2015. The Paris Agreement is the first legally binding international treaty on climate change. Its primary goal is to keep the

comply with their commitments in order to limit the effects of climate change. They argue that this is already affecting their living conditions and health, and that they experience 'eco-anxiety'[164] caused by the natural disasters and by the prospect of spending their whole lives in an increasingly warm environment, affecting them and any future families they might have.[165]

There is no room here for thorough review, however few issues should be mentioned because they could prove to be stumbling blocks[166] to the further evolution of the Court's environmental case-law under Article 8.

Firstly, the fact that individual applicants in *Verein Klimaseniorinnen Schweiz and Others* are represented by an association could potentially disable their victim status,[167] while in *Carême* this could happen because of the applicant's resident situation as he presently lives in Belgium, not in France.[168] On the other hand, the Court has dealt with applications related to broader policy measures or situations,[169] and it has already acknowledged the important role of NGOs in environmental litigation.[170] Secondly, taking the case directly to the Court, without exhausting the domestic remedies, could prove to be an insurmountable obstacle

---

increase in the global average temperature to well below 2°C above pre-industrial levels while simultaneously pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels. The EU and its Member States are parties to this Agreement. See: Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change [2016] OJ L 282/1.

164 "Eco-anxiety" is described as distress relating to the climate and ecological crises which causes anxiety about the future of the planet and the individuals' own lives. Studies show it is wide-spread globally. See: Hickman, C., *et al.*, *Climate anxiety in children and young people and their beliefs about government responses to climate change: a global survey*, The Lancet Planetary Health, Vol. 5, No. 12, 2021, pp. e863-e873.

165 European Court of Human Rights, *Grand Chamber to examine case concerning global warming*, Press Release, 30 June 2022, [https://hudoc.echr.coe.int/eng?i=003-7374717-10079435], Accessed 15 April 2023.

166 Keller; Heri, *op. cit.* note 155, pp. 154-155.

167 For the criteria applied in the Court's previous case-law for the purposes of assessing whether a legal entity can be allowed to represent the alleged victim see e.g., *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, no. 47848/08, 17 July 2014, paras. 96-113. On the relevance of the environmental associations see: *Collectif national d'information et d'opposition à l'usine Melox - Collectif stop Melox and Mox v. France (dec.)*, no. 75218/01, 28 March 2006, para. 4.

168 Pedersen, *Climate Change hearings and the ECtHR*, 2023, [https://www.ejiltalk.org/climate-change-hearings-and-the-ecthr/], Accessed 15 April 2023. The author's analysis indicates that the optimism in this context is not unfounded.

169 Keller; Heri; Piskóty, R., *op. cit.* note 83, p. 18. For a more detailed discussion on arguments *pro* adopting a flexible approach to the question of victim status see Keller, H.; Heri, C., *op. cit.* note 155, pp. 155-158.

170 Kobylarz, *op. cit.* note 16, p. 109.

in *Duarte Agostinho and Others*,[171] although cautious optimism arises from the fact that the case was communicated to the respondent States, it was assigned with the priority status, and the hearing before the Grand Chamber[172] is scheduled to be held on 27 September 2023.[173] Perhaps, also, the Court's liberal approach to the issue of exhaustion of domestic remedies in previously mentioned *Pavlov and Others*[174] offers some hope. Thirdly, the transboundary nature of climate cases raises the further question of (extra)territorial jurisdiction of the Court, especially in *Duarte Agostinho and Others.* Vertical nature and territorial application are generally considered as the main limitations of the human rights framework,[175] and the Court's approach to this matter has been conservative so far.[176]

Within the substantive context, one issue arises from the fact that all three cases concern for the most part the risks of future harm and the violations of the applicants' right to private and family life that have yet to occur. In this connection, it has been argued that the ECHR itself is future-oriented and the Court has established that States have positive obligations under Article 8 which apply to violations of which the State knew or ought to have known.[177] Generally, the Court's applicability tests have become more relaxed which may open the door for rulings of more preventative nature.[178]

Central issue in the hearings in the *Verein Klimaseniorinnen Schweiz and Others* and *Carême,* held before the Grand Chamber on 29 March 2023,[179] was the specific content and detail of the state's positive obligation in climate cases, i.e. what criteria the Court ought to apply when establishing whether the mitigation efforts of the respondent States were insufficient. The reasonable solution suggested by

---

171 Keller; Heri, *op. cit.* note 155, pp. 158-159.

172 The respondent Governments in all three cases were given notices on the applications, the cases were assigned priority status, and the Chambers of the Court to which the cases had been allocated relinquished jurisdiction in favour of the Grand Chamber. European Court of Human Rights, *Factsheet – Climate change*, March 2023, pp. 1-2, [https://www.echr.coe.int/Documents/FS_Climate_change_ENG.pdf], Accessed 15 April 2023.

173 European Court of Human Rights, *Cases pending before the Grand Chamber*, [https://www.echr.coe.int/pages/home.aspx?p=hearings/gcpending&c], Accessed 15 April 2023.

174 *Pavlov and others*, *op. cit*. note 102, paras. 54-57.

175 Atapattu, S; Schapper, A., *Human Rights and the Environment: Key Issues*, Routledge, London and New York, 2019, pp. 65-66.

176 See Keller; Heri, *op. cit.* note 155, pp. 159-163, where the authors discuss the possibilities for overcoming this obstacle.

177 *Ibid.*, pp. 163-166.

178 Kobylarz, *op. cit.* note 16, p. 112.

179 European Court of Human Rights, *Grand Chamber procedural meeting in climate cases*, Press Release, 3 February 2023, [https://hudoc.echr.coe.int/eng-press?i=003-7559178-10387331], Accessed 15 April 2023.

the applicants was to simply apply the Court's existing environmental case-law to their cases in combination with the principle of 'harmonious interpretation' through which the Court draws inspiration from international environmental law for the purposes of filling in the gaps inherent to the application of the ECHR to environmental cases.[180]

Environmental case-law of the Court definitely proves that the story of the development of Article 8 of the ECHR continues[181] in all its aspects. Even if the Court chooses to take prudent approach in climate cases, for which there is enough ground,[182] that would still mean further advancement of *de facto* already recognised right to live in a favourable environment, as well as extending the scope of protection of the 'green' side of the right to peacefully enjoy in private and family life within one's home, and within the protected environment.

6. CONCLUSION

It is hardly necessary to reiterate that the clean environment is a *conditio sine qua non* to the enjoyment of all the fundamental human rights. Not only has this mutual connection and dependence been recognised on the international level, individuals are facing the consequences of the environmental destruction in their everyday lives as they adversely affect, among others, their right to peacefully live their private and family lives in their homes.

Despite the proliferation of policies and legislation aiming at building a comprehensive system which would incorporate human rights based approach to environmental action, the EU has failed in its efforts to protect both the environment and the human rights affected by environmental degradation. Its human rights system is based on the Charter which treats the environmental protection only as a principle, and on the jurisprudence of the CJEU that had been consistently employing highly unsatisfactory approach to admissibility issues in environmental matters since the 1960's, which could be described as "injury to all is injury to none".[183] Furthermore, the EU failed on a practical level. The European Environment Agency's reports on the state of the European environment and EU policy targets reveal discouraging outlook and show that EU environmental law is not

---

180 Pedersen, *op. cit.* note 168.

181 Burbergs, M., *How the right to respect for private and family life became the nursery in which new rights are born*, in: Brems, E.; Gerards, J. (eds.), Shaping Rights in the ECHR - The Role of the European Court of Human Rights in Determining the Scope of Human Rights, Cambridge University Press, Cambridge, 2014, p. 329.

182 Pedersen, *op. cit.*, note 168.

183 Woerdman; Roggenkamp; Holwerda, *op. cit.* note 14, p. 286.

being properly implemented.[184] The EU also fails in fulfilling its obligations undertaken by the Paris Agreement.[185] After recent legislative amendments which allowed the members of public to challenge EU's administrative acts and relaxed the criteria of proving the direct and individual concern, the CJEU will be forced to adapt. Hopefully, this might also serve as an incentive to initiate the dialogue between the CJEU and the Court on environmental matters, even though, due to the fact the EU's and the ECHR's human rights systems rest on different foundations,[186] it is not likely that there will ever be equivalent protection of human rights in the jurisprudence of these two courts.

On the other hand, notwithstanding the lack of any mention of the environment in the ECHR, the Court keeps finding ways to provide protection to the environment by means of human rights that the ECHR guarantees, most notably by virtue of Article 8 providing for the right to respect for private and family life and home. The 'living instrument' doctrine and its ability to transform have been playing a significant part in continuous widening the scope of Article 8[187] in all its aspects. It is true that the Court**'s** doctrine of "direct harmful effect", coupled with its position that the right of individual petition cannot serve the purpose of preventing a violation of the ECHR, has been used as an argument against human rights litigation in the field of environmental protection. At the same time, its case-law clearly shows that the Court will examine the merits of cases in which applicants can arguably claim that their ECHR rights are at, not too remote, risk of being harmed[188] which is of particular significance for the pending climate cases.

As follows from the previous analysis in this paper, states' positive obligations under Article 8 include a wide range of preventive and protective measures, including those of procedural nature, not just the 'reactive' ones.[189] What is also

---

184 Pánovics, *op. cit*. note 32., pp. 107-108, 124. See also: European Environment Agency, *The European environment — state and outlook*
[https://www.eea.europa.eu/soer], Accessed 15 April 2023.

185 See: Climate Action Tracker: EU,
[https://climateactiontracker.org/countries/eu/], Accessed 15 April 2023. The Climate Action Tracker is an independent scientific project that tracks government climate action and measures it against the globally agreed Paris Agreement aims. The EU climate targets, policies, and finance are rated as "insufficient" which means that substantial improvements are necessary in order to achieve the Paris Agreement's 1.5°C temperature limit

186 Pedersen, *op. cit.* note 17, p. 94.

187 Burbergs, *op. cit.* note 181, p. 319.

188 Kobylarz, *op. cit*., note 16, pp. 109-110.

189 In the course of the implementation of the Court's judgments specific obligations were imposed on the States which were required to undertake both legal and practical measures aiming at putting an end to the situation that gave rise to violations. More details in: *Ibid*., pp. 114-115.

noticeable is the Court's willingness to further extend the scope of the 'green' side of the rights embedded in Article 8 of the ECHR. *De facto*, it has already acknowledged, several times, that the individual has a right to live in a safe, healthy and favourable environment. Considering the urgency inherent in environmental matters, especially in climate change context, it is hard to be patient and wait for the Court to incrementally evolve its general principles further and to find or adapt its tools and doctrines to the pressing challenges of degrading environment. Still, in the absence of other mechanisms comparable to the Court with regard to their direct effect and efficiency, both the applicants and the Court itself should employ the possibilities offered by the ECHR to the maximum extent. Certainly, it would not be realistic to expect giant leaps forward, but even small steps taken in the direction outlined so far would be a progress.

It would be more than convenient, even necessary for the Court to elaborate its reasoning on specific criteria upon which a violation of the right to family life, in addition to the right to private life and/or home, may be argued by the applicants and established by the Court. Clarification on this point would most likely result in positive contribution to future environmental case-law which will certainly continue to evolve, as it has been evolving so far. Naturally, any further expansion of the scope of protection afforded to the right to private life and home will inevitably have a favourable impact on the right to family life, i.e. on the possibility of maintaining and developing relationships between members of the family without being disturbed by adverse effects of environmental pollution. Even if the Court chooses to refrain from deciding on the merits of the pending climate cases, the progress achieved in recent decades raises hopes that the environmental protection by means of the right to private and family life will continue to develop, which will also mean further advancing of the right of every individual to live his/her private and family life in a safe and favourable environment.

REFERENCES

BOOKS AND ARTICLES

1. Antonopoulos, I., *The day after: Protecting the human rights affected by environmental challenges after the EU accession to the European Convention on Human Rights, Environmental Law Review*, Vol. 20, No. 4, 2014, pp. 213-224
2. Atapattu, S., *Emergence of International Environmental Law: A Brief History from the Stockholm Conference to Agenda 2030*, in: Sobenes, E., Mead, S., Samson, B. (eds.), The Environment Through the Lens of International Courts and Tribunals, T.M.C. Asser Press, The Hague, 2022, pp. 1-33
3. Atapattu, S. Schapper, A., *Human Rights and the Environment: Key Issues*, Routledge, London and New York, 2019

4. Burbergs, M., *How the right to respect for private and family life became the nursery in which new rights are born*, in: Brems, E., Gerards, J. (eds.), Shaping Rights in the ECHR - The Role of the European Court of Human Rights in Determining the Scope of Human Rights, Cambridge University Press, Cambridge, 2014, pp. 315-329
5. Cenevska, I., *A Thundering Silence: Environmental Rights in the Dialogue between the EU Court of Justice and the European Court of Human Rights*, Journal of Environmental Law, Vol. 28, No. 2, 2016, pp. 301–324
6. Garben, S., *Article 1919 TFEU*, in: Kellerbauer, M., Klamert, M., Tomkin, J. (eds.), The EU Treaties and the Charter of Fundamental Rights: A Commentary, Oxford University Press, New York, 2019, pp. 1516-1525
7. Groussot, X., Gill-Pedro, E., *Old and new human rights in Europe – The scope of EU rights versus that of ECHR rights*, in: Brems, E.; Gerards, J. (eds.), Shaping Rights in the ECHR-The Role of the European Court of Human Rights in Determining the Scope of Human Rights, Cambridge University Press, Cambridge, 2014, pp. 232-258
8. Keller, H., Heri, C., *The Future is Now: Climate Cases Before the ECtHR*, Nordic Journal of Human Rights, Vol. 40, No. 1, 2022, pp. 153-174
9. Keller, H., Heri, C., Piskóty, R., *Something Ventured, Nothing Gained? – Remedies before the ECtHR and Their Potential for Climate Change Cases*, Human Rights Law, Review, Vol. 22, Issue 1, 2022, pp. 1-26
10. Kobylarz, N., *The European Court of Human Rights: An underrated forum for environmental litigation*, in: Tegner Anker, H.; Egelund Olsen, B. (eds.), Sustainable Management of Natural Resources – Legal Instruments and Approaches, Intersentia, Cambridge-Antwerp-Portland, 2018, pp. 99-120
11. Krstić, I., Čučković, B., *Procedural aspect of Article 8 of the ECHR in environmental cases - the greening of human rights law*, Annals FLB - Belgrade Law Review, Year LXIII, 2015, No. 3, pp. 170-189
12. Lombardo, M., *The Charter of Fundamental Rights and the Environmental Policy Integration Principle*, in: Di Federico, G. (ed.), The EU Charter of Fundamental Rights: From Declaration to Binding Instrument, Springer Dordrecht, 2011, pp. 217-240
13. Marshall, F., *Participatory rights under the Aarhus Convention – more important than ever*, in: Council of Europe, Human Rights for the Planet, Proceedings of the High-level International Conference on Human Rights and Environmental Protection, Strasbourg, 5 October 2020, 2021, pp. 44-48
14. Morgera, E., Marin-Duran, G., *Commentary to Article 37: Environmental Protection*, in: Peers, S., Hervey, T., Kenner, J., Ward, A. (eds.), The EU Charter of Fundamental Rights: A Commentary, Hart Publishing, Oxford, 2021, pp. 1041-1064
15. Müllerová, H., *Environment Playing Short-handed: Margin of Appreciation in Environmental Jurisprudence of the European Court of Human Rights*, Review of European Community & International Environmental Law, Vol. 24, No. 1, 2015, pp. 83-92
16. Pánovics, A., *The missing link: Access to justice in environmental matters, EU 2020 – lessons from the past and solutions for the future*, in: Duić, D., Petrašević, T. (eds.), EU and comparative law issues and challenges series (ECLIC 4), Josip Juraj Strossmayer University of Osijek, Faculty of Law Osijek, 2020, pp. 106-127

17. Pedersen, O. W., *The European Court of Human Rights and International Environmental Law*, in: Knox, J., Pejan, R. (eds.), The Human Right to a Healthy Environment, Cambridge University Press, New York, 2018, p. 86-96
18. Peiffert, O., *European Union Court System and the Protection of the Environment*, in: Sobenes, E., Mead, S., Samson, B. (eds.), The Environment Through the Lens of International Courts and Tribunals, T.M.C. Asser Press, The Hague, 2022, pp. 219-248
19. Peters, B., *The European Court of Human Rights and the Environment*, in: Sobenes, E., Mead, S., Samson, B. (eds.), The Environment Through the Lens of International Courts and Tribunals, T.M.C. Asser Press, The Hague, 2022, pp. 189-217
20. Romaniszyn, A., *Human rights climate litigation against governments*: *a comparative overview of current cases and the potential for regional approaches*, McGill Journal of Sustainable Development Law, Vol. 16, Issue 2, 2020, pp. 233-272
21. Woerdman, E., Roggenkamp, M., Holwerda, M. (eds.), *Essential EU Climate Law*, Edward Elgar Publishing, Cheltenham, 2021
22. Zahradnikova, E., *European Court of Human Rights: Giving the Green Light to Environmental Protection*, Queen Mary Law Journal, Vol. 8, 2017, pp. 13-26

CJEU

1. Case 25/62 *Plaumann & Co. v Commission of the European Economic Community*, 15 July 1963

ECHR

1. *Apanasewicz v Poland*, no. 6854/07, 3 May 2011
2. *Băcilă v Romania*, no. 19234/04, 30 March 2010
3. *Buckley v the United Kingdom*, no. 20348/92, 25 September 1996
4. *Calancea and Others v the Republic of Moldova (dec.)*, no. 23225/05, 1 March 2018
5. *Carême v France*, no. 7189/21 (communicated case), 7 June 2022.
6. *Centre for Legal Resources on behalf of Valentin Câmpeanu v Romania*, no. 47848/08, 17 July 2014
7. *Çiçek and Others v Turkey (dec.)*, no. 44837/07, 4 February 2020
8. *Collectif national d'information et d'opposition à l'usine Melox - Collectif stop Melox and Mox v France (dec.)*, no. 75218/01, 28 March 2006
9. *Cordella and Others v Italy*, nos. 54414/13 and 54264/15, 24 January 2019
10. *Di Sarno and Others v Italy*, no. 30765/08, 10 January 2012
11. *Duarte Agostinho and Others v Portugal and Others*, no. 39371/20 (communicated case), 13 November 2020
12. *Dubetska and Others v Ukraine*, no. 30499/03, 10 February 2011
13. *Dzemyuk v Ukraine*, no. 42488/02, 4 September 2014
14. *Fadeyeva v Russia*, no. 55723/00, 9 June 2005
15. *Fieroiu and Others v Romania (dec.)*, no. 65175/10

16. *Fredin v Sweden (no. 1)*, no. 12033/86, 18 February 1991
17. *Genç and Demirgan v Turkey*, nos. 34327/06 and 45165/06, 10 October 2017
18. *Giacomelli v Italy*, no. 59909/00, 2 November 2006
19. *Greenpeace E.V. and Others v Germany (dec.)*, no. 18215/06, 12 May 2009
20. *Grimkovskaya v Ukraine*, no. 38182/03, 21 July 2011
21. *Guerra and others v Italy*, no. 14967/89, 19 February 1998.
22. *Hardy and Maile v the United Kingdom*, no. 31965/07, 14 February 2012
23. *Hatton and Others v the United Kingdom*, no. 36022/97, 8 July 2003
24. *Hudorovič and Others v Slovenia*, nos. 24816/14 and 25140/14140, 10 March 2020
25. *Jugheli and Others v Georgia*, no. 38342/05, 13 July 2017
26. *Kapa and Others v Poland*, nos. 75031/13, 75282/13, 75286/13, and 75292/13, 14 October 2021
27. *Kotov and Others v Russia,* nos. 6142/18 and 13 others, 11 October 2022
28. *K.U. v Finland,* no. 2872/02, 2 December 2008
29. *Kyrtatos v Greece,* no. 41666/98, 22 May 2003
30. *Lemke v Turkey*, no. 17381/02, 5 June 2007
31. *López Ostra v Spain*, no. 16798/90, 9 December 1994
32. *Marchiş and Others v Romania (dec.)*, no. 38197/03, 28 June 2011
33. *Martínez Martínez and Pino Manzano v Spain*, no. 61654/08, 3 July 2012
34. *Mileva and Others v Bulgaria,* nos. 43449/02 and 21475/04, 25 November 2010
35. *Öçkan and Others v Turkey*, no. 46771/99, 28 March 2006
36. *Oluić v Croatia*, no. 61260/08, 20 May 2010
37. *Öneryıldız v Turkey,* no. 48939/99, 30 November 2004
38. *Pavlov and Others v Russia*, no. 31612/09, 11 October 2022
39. *Powell and Rayner v United Kingdom*, no. 9310/81, 21 February 1990
40. *Schmidt v Federal Republic of Germany (dec.)*, no. 715/60, 5 August 1960
41. *Solyanik v Russia*, no. 47987/15, 10 May 2022
42. *Strand Lobben and Others v Norway*, no. 37283/13, 10 September 2019
43. *Taşkın and Others v Turkey*, 46117/99, 10 November 2004
44. *Tătar v Romania*, no. 67021/01, 27 January 2009
45. *Thibaut v France (dec.)*, nos. 41892/19 and 41893/19
46. *Tolić and Others v Croatia (dec.)*, no. 13482/15
47. *Tyrer v the United Kingdom*, no. 5856/72, 25 April 1978
48. *Verein KlimaSeniorinnen Schweiz and others v Switzerland*, no. 53600/20 (communicated case), 17 March 2021
49. *Yevgeniy Dmitriyev v Russia*, no. 17840/06, 1 December 2020
50. *Zammit Maempel v Malta*, no. 24202/10, 22 November 2011

EU LAW

1. Charter of Fundamental Rights of the European Union [*2012*] *OJ C 326*/391
2. Council Decision of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters [2005] OJ L 124/1
3. Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change [2016] OJ L 282/1
4. Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies [2006] OJ L264/13
5. Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 amending Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies [2021] OJ L356/1

UN

1. Declaration of the United Nations Conference on the Human Environment, A/CONF.48/14/Rev.1, 16 June 1972
2. United Nations General Assembly, Resolution: The human right to a clean, healthy and sustainable environment, A/RES/76/300, 28 July 2022
3. United Nations, Paris Agreement, FCCC/CP/2015/10/Add.1,12 December 2015

NATIONAL REGULATIONS

1. Convention for the Protection of Human Rights and Fundamental Freedoms (Konvencija za zaštitu ljudskih prava i temeljnih sloboda), Official Gazette, International Agreements No. 18/1997, 6/1999, 8/1999, 14/2002, 13/2003, 9/2005, 1/2006, 2/2010, 13/2017
2. Convention on access to information, public participation in decision-making and access to justice in environmental matters (Konvencija o pristupu informacijama, sudjelovanju javnosti u odlučivanju i pristupu pravosuđu u pitanjima okoliša), Official Gazette, International Agreements No. 1/2007, 7/2008

WEBSITE REFERENCES

1. Climate Action Tracker, *EU*, [https://climateactiontracker.org/countries/eu/], Accessed 15 April 2023
2. European Commission, *Environment*, [https://environment.ec.europa.eu/index_en], Accessed 15 April 2023
3. European Court of Human Rights, *Cases pending before the Grand Chamber*, [https://www.echr.coe.int/pages/home.aspx?p=hearings/gcpending&c], Accessed 15 April 2023

4. European Court of Human Rights, *Factsheet – Climate change*, March 2023, [https://www.echr.coe.int/Documents/FS_Climate_change_ENG.pdf], Accessed 15 April 2023
5. European Court of Human Rights, *Guide on Article 8 of the European Convention on Human Rights - Right to respect for private and family life*, 31 August 2020, [https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf], Accessed 15 April 2023
6. European Court of Human Rights, *Grand Chamber procedural meeting in climate cases*, Press Release, 3 February 2023, [https://hudoc.echr.coe.int/eng-press?i=003-7559178-10387331], Accessed 15 April 2023
7. European Court of Human Rights, *Grand Chamber to examine case concerning global warming*, Press Release, 30 June 2022, [https://hudoc.echr.coe.int/eng?i=003-7374717-10079435], Accessed 15 April 2023
8. European Court of Human Rights, *Grand Chamber hearing on consequences of global warming on living conditions and health*, Press Release, 29 March 2023, [https://hudoc.echr.coe.int/eng-press?i=003-7610087-10470692], Accessed 15 April 2023
9. European Court of Human Rights, *Grand Chamber hearing concerning combat against climate change*, Press Release, 29 March 2023, [https://hudoc.echr.coe.int/eng-press?i=003-7610561-10471513], Accessed 15 April 2023
10. European Environment Agency, *The European environment — state and outlook*, [https://www.eea.europa.eu/soer], Accessed 15 April 2023
11. Pedersen, O. W., *Climate Change hearings and the ECtHR*, 2023, [https://www.ejiltalk.org/climate-change-hearings-and-the-ecthr/], Accessed 15 April 2023
12. Yildirim, O., *Environmental protection as a prerequisite for respect for fundamental rights (information report - SDO)*, 2021, [https://www.eesc.europa.eu/en/our-work/opinions-information-reports/information-reports/environmental-protection-prerequisite-respect-fundamental-rights-information-report-sdo], Accessed 15 April 2023