Chapter II

Protection of the Environment in the European Human Rights Framework: A Central European Perspective

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Introduction

The importance of the protection of the environment is now recognized on a global level, and the challenges that environmental changes pose to humankind are targeted by the instruments of international law, especially the variety of international environmental treaties. Apart from international treaties, however, an even more protective approach could be needed, in order to reverse or slow down certain environmental processes that might cause huge damage to the planet. This research builds upon the argument that the human rights approach could offer a certain solution, or at least, tackle the problem from a different perspective. The European human rights framework has sophisticated tools and mechanisms due to which the interpretation of human rights has been broadened with environmental considerations, and consequently, the European Court of Human Rights has a well-established case law relating to certain "greening" human rights.

Cases from the Central European countries, especially Hungary, Poland and Romania, have significantly contributed to the formulation of the "greening" case law of the Court. Despite this, scientific works and discussions tend to give more attention to landmark cases in which the Court defined the linkages between the given human rights and environmental considerations for the first time, and thus, introduced the environmental perspective to its case law. The present paper does not

Anikó Raisz – Enikő Krajnyák (2022) Protection of the Environment in the European Human Rights Framework: A Central European Perspective. In: János Ede Szilágyi (ed.) *Constitutional Protection of the Environment and Future Generations,* pp. 73–125. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2022.jeszcpefg_3

contest the importance of these cases but aims to draw attention to the constructive findings of the decisions in Central European cases, which, on the one hand, contributed to the deepening the interrelation between human rights and the environment and thus enabled the human rights framework to solidify the absorption of environmental aspects. On the other hand, these cases highlight region-specific environmental problems, which could, at one point, raise the question of forming a common position on such issues, in order to solve cross-border problems in a more comprehensive way. Finally, the study also attempts to outline the current development path of environmental litigation, which poses challenges not only to the process of the "greening" of human rights but also aims to expand the limits of the actually existing human rights framework in general.

1. Context in international environmental law

The relationship between the environment and human rights is by now undeniable; however, the place of human rights law in the development of international environmental law is still debated: in 1972, the United Nations Conference on the Human Environment (Stockholm) declared *"the fundamental right to freedom, equality and adequate conditions of life in an environment of a quality that permits a life of dignity and well-being"* and that humans bear the responsibility to protect and improve the environment for present and future generations.[1] Despite the great success in the development of international environmental law and the climate change regime, the United Nations Conference on Environment and Development in 1992 did not use the potential to interpret or further elaborate the human right to environmental quality.[2] Nevertheless, the Rio Declaration established an approach to the interrelation between certain human rights and the environment, namely to use procedural rights to address environmental issues.[3] The 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters[4] could be regarded as the implementation of this Rio Principle in the European continent.[5]

1 Stockholm Declaration on the Human Environment, 1972, Principle 1.
2 Birnie, Boyle and Redgwell, 2009, p. 271.
3 Rio Declaration on Environment and Development, 1992, Principle 10.
4 See the Aarhus Convention, 1998, Articles 4–9.
5 Although the analysis of the relationship of human rights and the environment in other continents exceeds the limits of this chapter, it is interesting to note that procedural rights in environmental matters are guaranteed by the 2018 Escazú Agreement in Latin America, which also declared the protection of human rights defenders for the first time in the world. See Escazú Agreement, 2018, Article 9.

Human rights as tools to address environmental issues both procedurally and substantively is only one approach to the relationship between human rights and the environment recognized by international law and the legal scholarship.[6] According to another approach, the environment is a precondition to the enjoyment of human rights, implying that its state can affect the realization of particular rights, such as, inter alia, the right to life.[7] The third approach aims to elaborate a new substantive right to a healthy environment. Although the recognition of this right in the international community is not yet settled,[8] it is certainly promising that the UN Human Rights Council recognized the right to a clean, healthy, and sustainable environment in Resolution no. 48/13 on October 8, 2021,[9] and the UN General Assembly adopted a draft resolution on the recognition of the same right on July 26, 2022.[10] Therefore, given that the introduction of the right to a healthy environment on a global level is now being established, we may conclude that at the current stage of human rights law, the first two solutions seem to be dominant in international jurisdictions.

2. Protection of the environment in the European human rights framework

When talking about the environment and human rights in the European continent, the practice of the European Court of Human Rights is inevitably in the center of attention. Although the European Convention (a.k.a. Convention for the Protection of Human Rights and Fundamental Freedoms, hereinafter the ECHR)—unlike its (Inter-) American counterpart, which has at least a San Salvador Protocol—has no disposition whatsoever on the environment, it is at least courageous that the European Court of Human Rights (ECtHR) took the initiative to include the environment indirectly in the practice of the ECtHR.[11] In addition to environmental adjudication, the Convention is generally interpreted as a "living instrument" in the hands of the ECtHR, which means that the Court takes into account present-day standards, rather than the intention of the states at the time of drafting the Convention, as an important factor.[12]

6 Boyle, 2012, pp. 617–618; Shelton, 2006, pp. 130–131.
7 OHCHR, 2011, paragraph 7. See also Weeramantry, 1997.
8 Binding international human rights documents of a global scale, such as the UN Charter of the Universal Declaration of Human Rights, do not declare the right to a healthy environment explicitly, although the link between some of their provisions and environmental considerations could be established. The recognition on a regional level seems to be more successful (see the Banjul Charter, 1981, Article 24.; Protocol of San Salvador, 1988, Article 11). The UNHRC and the UNGA Resolutions are welcomed, but it shall be emphasized that they are not of a binding nature.
9 HRC/RES/48/13.
10 A/RES/76/300.
11 For an overview on environmental rights within the frames of the ECHR, see: Kecskés, 2021.
12 Letsas, 2013, p. 107. On the development of the law's interpretation, see Kovács, 2009.

One may argue that the importance of environmental protection in human rights law primarily lies in the well-developed mechanisms and responsiveness to actual challenges that human rights systems can offer for the infringement of environmental law: existing human rights procedures were and are being applied in a wide range of environmental complaints, since at the international level, the enforcement of human rights law is more developed and sophisticated than the procedures of international environmental law.[13] The ECHR has an outstanding mechanism that guarantees, through the Committee of Ministers, the enforcement of the judgments delivered by the ECtHR, apart from the requirement for Contracting Parties to observe the rights and obligations deriving from the Convention.[14] The recognition of the prevalence of environmental aspects in human rights law, therefore, may guarantee the coercivity of these considerations, and environmental aspects may thus form an inevitable part of the interpretation of certain human rights. The human rights approach, however, also has its limits, which are particularly shown by the most recent tendencies of climate change litigation:[15] the victims of environmental damages—especially in the case of climate change—cannot be limited to a group of individuals who launch the action in court but may affect the entirety of humankind. Moreover, the representation of future generations, who will presumably be even more exposed to the impacts of the changing climate, is disputed.[16] Although continuous attempts have been made to enforce their rights,[17] the link between a concrete case and people not yet born may seem to be indirect for some courts; nevertheless, such endeavors are certainly to be hailed. Lastly, the issue of biodiversity shall be mentioned in the context of environmental litigation, as their protection often remains in the background: humans tend to protect the fauna and flora for their short-term usability instead of seeing their inherent value and the

13 Kiss and Shelton, 2007, p. 238. It is also important to note that, so far, there is no independent international environmental judicial forum dealing entirely with environmental legal issues. The forums of environmental jurisdiction are manifold and include courts of arbitration, the International Court of Justice, and universal human rights forums, such as the Human Rights Committee, regional human rights courts, the International Tribunal for the Law of the Sea, the Court of Justice of the EU, the WTO dispute settlement panels, or the International Criminal Court. See Raisz, 2017, pp. 450–452.

14 European Convention on Human Rights, Article 46. See also Guide on Article 46, 2022.

15 For an overview of the recent strategies of climate litigation, see Peel and Markey-Towler, 2021.

16 The importance of respecting the needs of future generations in the context of intergenerational equity has been recognized worldwide; however, the scope of future generations is sometimes ambiguous: it is not clear whether the term applies to our children, their children, and all the people yet to be born, or only to the next generations. Furthermore, already born children unable to defend their rights may also belong to the category of future generations, but it is not explicitly stated in the documents dealing with the issue. See, for instance, the Brundtland Report, 1987.

17 The most high-profile cases include the Minors Oposa case (the Philippines), Juliana v. the US (the United States of America), the Urgenda case (the Netherlands), the Colombian Amazonas case (Colombia), the Neubauer case (Germany), or the Sharma case (Australia). These cases appeared in front of national courts and challenged the domestic regulation related to intergenerational equity.

long-term interdependence of species (including humans).[18] The ECtHR also faces the abovementioned challenges: the issue of climate change, the representation of future generations, intergenerational equity (between living generations), and (indirectly) the protection of biodiversity are all reflected in the cases recently communicated to the Court. Given that the Convention does not enshrine the right to a healthy environment, nor is the environment explicitly linked to any right from the Convention, we may rather speak about the potential "greening" and the reinterpretation of certain existing human rights.[19]

The Convention was adopted in the early 1950s, a few decades before international concern for the protection of the environment emerged; therefore, it is not surprising that the first applications were consequently rejected as being incompatible *ratione materiae* with the Convention.[20] The concern for bad environmental conditions and their interference with the effective enjoyment of rights started to appear in some decisions adopted in the 1980s.[21] Parallelly, the Commission began receiving individual complaints regarding the restrictions of certain rights for safeguarding good environmental conditions.[22] Consequently, the real breakthrough for the "greening" of the Convention came in the 1990s with two major judgments: *Powell and Rayner v. the United Kingdom* and *López Ostra v. Spain*. Although the Court did not find a violation of the rights guaranteed under the Convention by the UK in the first case, the Court examined the question of striking the balance between the country's economic interest and the quality of the applicants' lives. The Court admitted that the right to private and family life was affected by the noise generated by air traffic—given that the homes of the applicants were in the vicinity of Heathrow Airport which serves the economic well-being of the country—but not to that extent that it would exceed the margin of appreciation of the British Government. Although the Court did not hold the violation of human rights, the importance of this decision lies in it raising the question of striking a fair balance between the interests of the individual and of the community as a whole,[23] which became and is still a key issue in the practice of the ECtHR.

More successful was the application of Mrs. López Ostra, who claimed the violation of the right to respect for her home due to heavy industrial pollution. The applicant lived a few meters away from a waste-treatment plant that caused nuisance (smells, noise, and polluting fumes), rendering her private and family life

18 Kiss and Shelton, 2004, pp. 18–20.

19 For further information on the "expansion theory" and the "greening" of rights (i.e., the re-interpretation of human rights in light of the development of environmental law) see Hajjar Leib, 2011, pp. 71–80.

20 See Dr S. v. the Federal Republic of Germany; X and Y v. the Federal Republic of Germany.

21 See Arrondelle v. the United Kingdom; G. and Y. v. Norway; Baggs v. the United Kingdom; Powell and Rayner v. the United Kingdom; Vearncombe and others v. the Federal Republic of Germany.

22 See Hakansson and Sturesson v. Sweden; Fredin v. Sweden; Pine Valley Development Ltd and others v. Ireland; Allan Jacobsson v. Sweden.

23 Powell and Rayner v. the United Kingdom, 41.

impossible. The Court held the Spanish local authorities responsible for the inactivity in mitigating nuisance and examined the abovementioned question of a fair balance between individual and community interests, pronouncing that no balance had been struck between the town's economic well-being and the applicant's enjoyment of her rights.[24] However, the Court found no violation of the prohibition of inhuman or degrading treatment as alleged by the applicant. Considering the two judgments, the main difference in which one application was successful and the other was not lies primarily in the activity of state (or local) authorities: the Court indicated that the British Government had adopted a number of measures to mitigate the consequences of the noise disturbance, while the Spanish authorities had not offered redress for the applicant and had been reluctant to remedy the complaints. Furthermore, in the former case, the Court did not explicitly refer to the environment but did so in the latter one, stating that *"severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health."*[25] The applicant, however, proved that there had been a serious risk for her and her family's health based on medical files presented during the proceedings.[26] Therefore, we may conclude that the earliest examples of "greening" human rights in the ECtHR's practice were related to noise and odor pollution and the possible threat they impose on the right to private life. The outcome, as one could see, is highly dependent on the state's compliance with its obligations under the Convention, and the direct linkage between environmental pollution and its influence on one's well-being and health.

The development of the evolutive interpretation of the Court has led to the reinterpretation of several rights with an added environmental dimension, including the right to life, prohibition of inhuman or degrading treatment, right to liberty and security, right to a fair trial, right to respect for private and family life and home, freedom of expression, freedom of assembly and association, right to an effective remedy, and protection of property. The extensive analysis of the abovementioned nine human rights exceeds the limits of this study; therefore, two of them will be presented in detail: (a) the right to life, which is undoubtedly the most important human right; and (b) the right to respect for private and family life, due to the high number of case law with environmental implications. The interrelation of the environment with the abovementioned other human rights will be presented briefly at the end of the chapter.

24 López Ostra v. Spain, 57–60.
25 López Ostra v. Spain, 51.
26 San José, 2005, pp. 7–15.

3. Right to life (Article 2)

The importance of the right to life—which could be regarded as one of the main human rights in Christian culture—is shown by the fact that it occupies a prominent place in human rights declarations and conventions on both universal and regional levels, and it is usually at the top of the list of human rights.[27]

In the European Convention, the right to life is contained in Article 2, and it leads up the other human rights.[28] According to it, *"the law protects everyone's right to life"*. However, it is immediately elaborated that this right is not absolute as there could be exceptions to the premise that *"no one shall be deprived of his life intentionally."* First, if the intentional deprivation of life takes place *"in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."* This clause has lost its importance in European states as the death penalty was abolished in all Member States of the Council of Europe, the last being in Turkey in 2002. As a matter of fact, it was in the same year that the Thirteenth Additional Protocol on the Abolition of the Death Penalty in All Circumstances opened for signature, which supplemented the Sixth Additional Protocol provided for the abolition of the death penalty only in times of peace, although—being an extremely progressive document of the time—it was already opened for signature in 1983.[29] However, the second group of exceptions is still relevant today as, according to Article 2 (2), the deprivation of life shall not be regarded as inflicted in contravention of the Convention *"when it results from the use of force which is no more than absolutely necessary a) in defence of any person from unlawful violence; b) n order to effect a lawful arrest or to prevent the escape of a person lawfully detained; c) in action lawfully taken for the purpose of quelling a riot or insurrection."*

In light of the available statistics, the frequency of finding violations of the right to life has significantly increased—not by chance, since the majority of the most problematic states in this regard are not among the original signatories of the European Convention. Between 1998 and 2008, 15 European states were involved, and by far, most of the violations were committed by Russia and Turkey.[30] What is even more worrisome is that the number of direct violations of the right to life in these states is high, and the violation of the right to life is prominent in the proportion of committed violations (more than 16 and almost 10%, respectively). These statistics

27 See the American Declaration of the Rights and Duties of Man (1948), Article I; the Universal Declaration of Human Rights (1948), Article 3; the European Convention on Human Rights (1950), Article 2; the American Convention on Human Rights (1969), Article 4 (here preceded by the right to juridical personality); the Charter of Fundamental Rights of the European Union (2002), Article 2 (here preceded by the right to human dignity); Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (1995), Article 2; African (Banjul) Charter on Human and People's Rights (1981), Article 4 (preceded by the right to freedom from discrimination and right to equality before the law and equal protection of the law).

28 See Mathieu, 2006.

29 See also Decaux, 2002, pp. 196–214., pp. 199–201.; Ravaud, 2005, pp. 7–26., p. 18.

30 In relation to this, see Riza, 2005, pp. 55–66. and Kaboğlu, 2005, pp. 112–122., p. 121.

could certainly be nuanced with, for instance, the number of the population of the given state, but the aim is not to discuss the sociological aspects. Overall, it can be concluded that violations of the right to life accounted only for 4.67% of the cases.[31]

The violation of the right to life[32] was first held by the ECtHR in the case *McCann and Others v. the United Kingdom* (the so-called Gibraltar case) for shooting three people supposedly preparing for bombings. Although the Court recognized the three victims as terrorists, it pronounced that the violation of Article 2 for the use of force against the suspects was disproportionate to the purpose of defending innocent persons from unlawful violence.[33] Some aspects of the Russo-Chechen war were also evaluated by the Court,[34] which could be supplemented in light of the ongoing war[35] between Russia and Ukraine, although the former will supposedly leave the jurisdiction of the ECtHR in the near future.[36] Other important cases relating to the disproportionate use of force from the side of authorities with possible discriminatory overtones were *Nachova and others v. Bulgaria*[37] and *Ognyanova and Choban v. Bulgaria*.[38] In *Saoud v. France*, the suspect died of asphyxia as a result of a face-down immobilization technique used by the police.[39] On the other hand, the lack of intervention from the police in the father's murder of his children despite several emergency calls also resulted in the violation of the right to life.[40] The violation was not held in *Pretty v. the United Kingdom*, in which the applicant wished to perform euthanasia with the help of her husband and asked for the husband not to be punished for helping her in committing suicide:[41] her request was not supported due to the fact that in the UK—similarly to the majority of European states—suicide is not penalized, but contributing to it is.[42]

31 Overview 1959–2021, p. 6.
32 For further information, see Orentlicher, 1991, pp. 2537–2617., p. 2548.
33 McCann and others v. the UK, 25.
34 See Isayeva and others v. Russia; Kasiyev and Akayeva v. Russia; Katsiyeva and others v. Russia.
35 As of summer 2022.
36 Following the decision of the Council of Europe on March 22, 2022, the Russian Federation ceased to be a Party to the European Convention on September 16, 2022, as confirmed by a Resolution by the Committee of Ministers. Furthermore, the Russian Parliament adopted a law on the withdrawal from the ECtHR on June 7, 2022. See The State Duma adopted laws on non-implementation of the ECHR verdicts [Online]. Available at http://duma.gov.ru/en/news/54515/ (Accessed: September 13, 2022).
37 Nachova and others v. Bulgaria, 162–168.
38 Ognyanova and Choban v. Bulgaria, 148.
39 Saoud v. France, 102.
40 Kontrová v. Slovakia, 52–55.
41 Pretty v. the United Kingdom, 41.
42 In Hungary, only the passive form of euthanasia is recognized (see the Criminal Code). In Europe, the Benelux States and Switzerland recognize certain forms of euthanasia, such as the medically assisted one.

3.1. Right to life and environmental implications

The right to life does not solely concern deaths resulting directly from actions of state authorities, but it also establishes a positive obligation on states to take appropriate steps to safeguard the lives of those within their jurisdiction.[43] In broad terms, this positive obligation has two aspects: (a) the duty to provide a regulatory framework and (b) the obligation to take preventive operational measures.[44] Such obligations under Article 2 have been found by the Court in a wide range of contexts, including healthcare,[45] incidents on vehicles[46] and on road,[47] and dangerous activities, such as nuclear tests and the operation of chemical factories with toxic emissions or waste-collection sites, whether carried out by public authorities or private companies.[48]

3.1.1. Dangerous industrial activities

The most significant case in the Court's practice in relation to dangerous industrial activities was *Öneryildiz v. Turkey*. The applicant's dwelling was built without authorization in the vicinity of a garbage dump in a slum quarter of Istanbul. In April 1993, a methane explosion occurred at the site, as a result of which the refuse erupted from the mountain of waste and engulfed some slum dwellings situated below it, including the applicant's. Thirty-nine people, including some relatives of the applicant, died in the accident. The applicant argued that no measures had been taken to prevent such an explosion as both the city council and the respective ministries had failed to compensate the applicant for pecuniary and non-pecuniary damage. The mayor of the district and one minister—the Minister of the Environment—dismissed the claims, and the other authorities did not even reply. The Court found the violation of Article 2 both from substantive and procedural aspects: firstly, it held that Turkish authorities did not take appropriate steps to prevent the accidental deaths of the applicant's relatives living near the dump. Secondly, there had been a violation on account of the lack of adequate protection by law safeguarding the right to life. The Court emphasized that public access to clear and full information is a basic human right when such dangerous activities are concerned. Furthermore, the Court found a violation of Article 1 of Protocol No. 1 (protection of property) and Article 13 (right to an effective remedy) as regards the substantive head of Article 2 and Article 1 of Protocol No. 1.[49]

43 L.C.B. v. the United Kingdom, 36.
44 Guide on Article 2, 2022, p. 8.
45 See, for instance, Calvelli and Ciglio v. Italy; Vo v. France.
46 See Leray and others v. France; Kalender v. Turkey.
47 See Rajkowska v. Poland; Anna Todorova v. Bulgaria.
48 Öneryildiz v. Turkey, 71.
49 Öneryildiz v. Turkey, 9–10, 37–42, 62, 150–157.

3.1.2. Exposure to nuclear radiation

However, in another landmark case, *L.C.B. v. the United Kingdom* concerning nuclear radiation, the Court did not find a violation of Article 2. The applicant's father—a catering assistant in the Royal Air Force on an island in the Pacific Ocean—was exposed to radiation due to ongoing nuclear tests in the area in the 1950s. The applicant, born in 1966, was diagnosed with leukemia in the early 1970s. The applicant argued that the state had deliberately exposed her father and other servicemen to radiation for experimental purposes but did not provide any information regarding the extent of the exposure to radiation, which would have enabled her to seek treatment at an earlier stage of the illness. As it not had been suggested that the state had intentionally sought to deprive the applicant of her life, the Court assessed the state's obligation to prevent the applicant's life from being avoidably put at risk and held that the link between the exposure of the applicant's father to radiation and the development of the disease in the applicant's infancy is not direct; thus, according to the Court, Article 2 had not been violated.[50]

3.1.3. Natural disasters

Natural disasters, in contrast to dangerous activities, are beyond human control, and as such, they may pose more challenges to the state to comply with the positive obligations' doctrine established by the Court. One of the earliest applications of this kind was found inadmissible: in *Murillo Saldias and others v. Spain*, the applicants were survivors of severe flooding following torrential rain and argued that Spain had not taken all the preventive measures necessary to protect users of the campsite where the disaster had occurred. Having failed to exhaust domestic remedies before lodging their application, the Court found the case inadmissible.[51] In *Viviani and others v. Italy*, the application concerned the risks attached to a potential eruption of the Vesuvius and the measures taken by the authorities to combat those risks. It is interesting to note that the application was not based on a concrete disastrous event but on the potential occurrence of an eruption. The applicants referred to numerous eruptions in the past and scientific evidence that such an eruption in the future is certain; even though its exact moment and intensity were impossible to predict at that moment, its consequences would undoubtedly be catastrophic. Nevertheless, the Court dismissed the application for the reason of not exhausting domestic remedies at the applicants' disposal.[52]

A decision on the merits of a case was delivered in *Budayeva and others v. Russia*, where the Court was asked to evaluate the positive obligation of the state to take appropriate measures to protect the life of its citizens in connection to a

50 L.C.B. v. the United Kingdom, 10–16, 36–41.
51 See Murillo Saldias and others v. Spain.
52 Viviani and others v. Italy, 1–9, 34–55.

mudslide in the town of Tyrnauz. Eight people died in the disaster, and the applicants lost their homes and sustained injuries and psychological trauma. The applicants pointed out that the two tributaries of the Baksan River passing through Tyrnauz were known to be prone to causing mudslides, of which the inhabitants and authorities were generally aware. The authorities failed to prepare the defense infrastructure for the forthcoming hazardous season, and the Court found that the authorities at the time did not seem to implement any alternative land-planning policies in the area, nor did they ensure the functioning of an early warning system. Furthermore, the Court concluded that the question of state responsibility for the accident in Tyrnauz had never been investigated or examined by any judicial or administrative authority, and for these reasons, it found that Article 2 had been violated in its substantive and procedural aspects.[53] Another famous case from Russia is *Kolyadenko and others v. Russia*, concerning a flood in Vladivostok. The Court held the violation of the right to life, the right to respect for private and family life and home, and the protection of property. Although there had been no violation of the right to an effective remedy, the Court dealt with the issue in detail; consequently, it is more suitable to analyze it in connection with the latter right.

The Court may also find a violation of Article 2 solely in its procedural head: this was the case in *Özel and others v. Turkey*, where the applicants' family members had been buried alive under buildings that had collapsed in Çınarcık as a result of a heavy earthquake—one of the deadliest earthquakes ever recorded in the country. The Court recalled that Article 2 requires the state not only to refrain from intentionally causing deaths but also to take appropriate steps to safeguard the lives of those within their jurisdiction. In the case of natural disasters, where the scope of obligations depends on the origin of the threat and the extent to which the risks are susceptible to mitigation, the obligation under Article 2 also applies. The Court thoroughly examined the procedural aspects of the case as there had been numerous domestic proceedings, namely the criminal prosecution of the real estate developers, criminal proceedings against the Mayor and the Head of Technical Services of the Çınarcık Municipality before the earthquake, the prosecution of officials, the application to the Provincial Human Rights Committee and compensation proceedings in the framework of administrative proceedings, as well as civil proceedings against the property developers. The criminal proceedings lasted almost 12 years, with the conviction of only two of the accused; consequently, the Court indicated that the mere passing of time could lead to the detriment of the investigation, fatally jeopardizing its success and inevitably eroding the amount and quality of evidence available. Therefore, the violation of Article 2 in its procedural aspects was held.[54]

53 Budayeva and others v. Russia, 7–38, 147–165.
54 Özel and others v. Turkey, 7–131, 170–179.

3.1.4. Industrial emissions and health

Regarding industrial emissions, the case *Smaltini v. Italy* shall be mentioned, which concerned environmental nuisance caused by the steelwork activity of the Ilva company operating in Taranto, Puglia. The establishment is considered the biggest industrial complex of this type in Europe and has been at the center of polemics for years for its harmful impact on the environment and health. In the given case, however, the applicant failed to prove the causal link between the plant's emissions and the development of her cancer; therefore, the Court found the application inadmissible.[55] The inadmissibility of the application somewhat reminds us of the abovementioned decision in *L.C.B. v. the United Kingdom*, although in this case, the link between the radiation and the development of leukemia was even more distant, as was that with the applicant's father, who had been exposed to the harmful consequences of nuclear tests. In *Smaltini v. Italy*, the applicant herself lived in the plant's vicinity. Nevertheless, it could be concluded from these decisions that the Court does not tend to find the violation of Article 2 in cases where a serious illness has occurred—supposedly, as alleged by the applicants—as a result of harmful human activities as it does not find a direct link between the two events well-founded by the applicants.[56] Furthermore, even though the decision could not be considered a milestone in adjudicating the operation of Ilva, it shall be noted the environmentally harmful activities of the company were challenged in numerous applications[57] in the years following the decision in *Smaltini v. Italy*, as presented in the section dedicated to the right to respect for private and family life and home. Regarding industrial emissions and health, another important—pending[58]—application is *Locascia and others v. Italy,* which concerns a waste disposal plant in the region of Campania. The operation of the waste plant, similarly to the Ilva company, is subject to criticism for environmental nuisance and interference with the right to life and right to respect for private and family life. Given that the Court found the violation of the latter right concerning the waste plant in Campania in *Di Sarno and others v. Italy*, *Locascia and others v. Italy* will also be analyzed in the context of Article 8.

3.1.5. Dumping of toxic waste

When analyzing the case law of the ECtHR, one may conclude that Italy appeared in front of the ECtHR on numerous occasions relating to the management of hazardous human activities: the Ilva steel company in Puglia and the waste plant in Campania are some examples around which individual requests are grouped.

55 Smaltini v. Italy, 4–5, 41–61.

56 For further analysis on the case, see Ferraris, 2016.

57 See Cordella v. Italy, A.A. and others v. Italy, Perelli and others v. Italy, Briganti and others v. Italy, Ardimento and others v. Italy.

58 At the time of writing the chapter.

There is a third "burning" phenomenon—the "Terra dei Fuochi" or the "Land of Fires" in Campania, in the province of Naples, where the biggest illegal waste dump of Europe is situated.[59] The phenomenon is due to the use of formally legal landfills for inappropriate purposes and the existence of illegal landfills, the abandonment of waste, as well as diffuse pollution and the illicit burning of waste, which lead to air pollution, the pollution of drinking water or water used for irrigation, and the exposure of people to harmful materials. The "Terra dei Fuochi" has nearly 3 million inhabitants, which accounts for approximately 52% of the population of the region of Campania.[60] The case *Di Caprio and others v. Italy* was filed by 34 applicants who were victims of different kinds of illnesses, such as cancer, tumor, leukemia, melanoma, and respiratory problems, claiming the violation of Articles 2 and 8. The application is still pending; however, similarly to the applications alleging the violation of human rights by the Ilva company, it may become a precedent for other claims to be brought against the dangerous practices in the "Terra dei Fuochi."

3.1.6. Greenhouse gas emissions

Anthropocenic greenhouse gas emissions are identified as the main drivers of climate change, causing changes to global temperatures, weather patterns, and ecosystems.[61] The development of the climate change legal regime forms a new, currently developing yet crucial part of international environmental law: considering that climate change came to the fore as a political issue only in the 1990s,[62] and its legal foundations were established in the United Framework Convention on Climate Change (UNFCCC) treaty adopted in 1992,[63] attention toward the interrelations between climate change and human rights has recently started growing, certainly boosted by the adoption of the Paris Agreement in 2015 at COP21. Although human rights obligations were mentioned in the context of climate change even before the

59 Euronews, 2015.

60 Di Caprio and others v. Italy, 2–8, Annex I.

61 For an extensive overview of the scientific background of climate change, see IPCC, 2021.

62 The development of the international climate change regime initially took place in the scientific field, recognizing the greenhouse effect and the consequent global warming as a threat to humankind. In the legal field, several conferences were held until the formal treaty-making process started in 1990, when the UN General Assembly established the Intergovernmental Negotiating Committee with the mandate to negotiate a convention on climate change. The UNFCCC was adopted in 1992, being the first international legal instrument to address climate change. Until the adoption of this Convention, international environmental law had little to say about the climate change issue. Further milestones of the development of the climate change regime include the 1997 Kyoto Protocol, the documents of the COP conferences preceding Paris (for instance, the 2009 Copenhagen Accord, the 2010 Cancún Agreements, the 2011 Durban Platform for Enhanced Action), and the 2021 Glasgow Climate Pact. See Bodansky, 2001, pp. 23–24., 31–32; Bodansky, 2016, pp. 291–294.

63 The United Nations Framework Convention on Climate Change, 1992.

adoption of the Paris Agreement,[64] the legally binding nature of this document is what strengthens the justification of the involvement of human rights law in climate change-related issues. The Preamble of the Paris Agreement provides that *"Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity […]"*[65] which draws attention to the Parties' obligations under the treaties they have ratified or may ratify in the future, implying that human rights instruments may be applied when adopting measures to tackle climate change.[66] Furthermore, the prescriptive part of the treaty also makes implicit references to human rights considerations—for instance, responsiveness to vulnerable groups, and environment-related participatory human rights (public awareness, public participation, and public access to information).[67]

Regardless of whether human rights treaties declare an explicit right to a healthy environment or not, human rights courts have developed an extensive interpretation of human rights in a way that considers environmental aspects. Climate change cases, however, have only recently started to appear in front of human rights bodies,[68] and most of these cases are still pending.[69] Therefore, the *locus standi* of climate cases in front of such bodies and the interpretation of climate change in the context of human rights law are questions yet to be answered. Nevertheless, one may see that climate change litigation poses challenges to human rights adjudicators, not only for defining the limits of such an extensive interpretation but also for the fact that such cases confront a systemic problem that will presumably emerge more often in the future. The term "climate change litigation", however, denotes a heterogeneous group of cases that are mostly distinguished by the claimants' intentions. Hence, the first

64 The Cancún Agreements (COP16) emphasize that *"Parties should, in all climate change related actions, fully respect human rights […]"* and refers to Resolution no. 10/4 of the United Nations Human Rights Council on human rights and climate change, which recognizes that *"climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights […]"*. The potential impacts of global warming on certain human rights were elaborated by the UN High Commissioner for Human Rights in Report A/HRC/10/61.

65 Paris Agreement, 2015, Preamble.

66 Savaresi, 2016, p. 25.

67 Paris Agreement, 2015, Article 7(5), 11(2), and 12.

68 From the practice of the human rights treaty bodies, Ioane Teitiota v. New Zeland (UN Human Rights Committee) and Sacchi et al. v. Argentina et al. (UN Committee on the Rights of the Child) shall be highlighted. Although these cases were hailed for the groundbreaking nature of the claims—the first case being related to climate refugees, the second to children's rights—the claim for the protection failed or was found inadmissible. On a domestic level, Milieudefensie et al. v. Royal Dutch Shell plc (the Netherlands), Notre Affaire à Tous, la Fondation pour la Nature et l'Homme (FNH), Oxfam France et Greenpeace France (France), A Sud v. Stato italiano (Italy), and West Virginia v. Environmental Protection Agency (USA) could be regarded as landmark cases.

69 Such pending cases include the Rio Tinto lawsuit (UN Human Rights Committee), Greenpeace Hellas v. the Greek State (Greek Council of State), and the ECtHR cases analyzed below.

category consists of "strategic cases", where the claimants' motives for bringing the claims before a court go beyond the concerns of the individuals and aim at producing systemic impacts on climate regulation. Non-strategic cases, on the other hand, seek to achieve relief for an isolated situation; yet they can still provide opportunities for courts to issue far-reaching judgments.[70]

The ECtHR has also encountered its first climate cases: currently, five applications concerning the human rights impacts of climate change are pending before the Court. One of them, *X. v. Austria*, has not yet been communicated, and it alleges the violation of Article 8 of the Convention; the second one, *Greenpeace Nordic and Others v. Norway*, belongs under a separate category, namely that of petroleum activities. Thus, in this section, the remaining three pending applications, which seek to find the violation of Article 2 resulting from greenhouse gas emissions, will be analyzed.

The first climate change claim before the ECtHR[71]—*Duarte Agostinho and others v. Portugal and others*—fits into the recent tendency of climate change litigation that could be observed in the practice of domestic courts: children, arguing that they will be more exposed to the negative impacts of climate change in the future than older generations, brought a claim before the Court seeking to find guarantees against the increasing interference of global warming with their rights. The argumentation of youth-led cases—including the one discussed—is based on the principle of intergenerational equity,[72] claiming that climate laws unlawfully prioritize present generations over future generations. The applicants' selection is certainly a strategic step[73] that may contribute to the success of climate cases: courts seem to be open to considering children as members of future generations, while they tend to be reluctant to recognize the rights of people not yet born and thus question the legal standing of future generations.[74]

Furthermore, in comparison to other young people's climate cases, where the applicants tended to sue their own countries, the novelty of this case is that the six children brought the claim against 33 countries,[75] including their native country,

70 Setzer and Higham, 2021, pp. 12–13.

71 Lewis, 2021, p. 7.

72 On the principle of intergenerational equity, see Brown Weiss, 2008.

73 Peel and Markey-Towler, 2021, pp. 1487–1488.

74 Donger, 2022, pp. 272–274. Children were considered as part of future generations in the previously mentioned *Neubauer case* or the *Colombian Amazonas case*, while addressing the legal standing of future generations was avoided—for instance, in *Juliana v. the United States*.

75 The application is filed against the following states: Austria, Belgium, Bulgaria, Switzerland, Cyprus, the Czech Republic, Germany, Denmark, Spain, Estonia, Finland, France, the United Kingdom, Greece, Croatia, Hungary, Ireland, Italy, Lithuania, Luxemburg, Latvia, Malta, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, Slovakia, Slovenia, Sweden, Turkey, and Ukraine. Given that there are several Central European countries among the respondent states, it is highly possible that the decision will have an impact on these countries as well. It is also worth noting that by the time the Court issues the final decision, the Russian Federation will not be part of the Council of Europe and the ECtHR (Cf. footnote no. 36). See: Duarte Agostinho and others v. Portugal and 32 other States, Annex II.

Portugal. The applicants argue that the 33 respondent states are not respecting their positive obligations undertaken in the Paris Agreement, namely to hold the global average temperature to well below 2°C above pre-industrial levels and pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels,[76] resulting in the states' failure to comply with their positive obligations under Article 2, Article 8, and Article 14 (prohibition of discrimination) of the Convention. The alleged violation of the prohibition of discrimination is founded upon the abovementioned fact that climate change particularly affects their generation as their perspective of the future is to live in an ever-warming climate during their whole life, which will affect not only them but the generations to come.[77]

The applicants' potential victim status is one of the key issues for the application's success, namely that the claim concerns human rights violations that will take place in the future: even though the applicants have referred to harms related to forest fires in Portugal, the starting point of their argumentation is that such harms will occur in the future due to the inadequacy of the measures taken by high-emitting states.[78] The recognition of potential victimhood in climate cases will be up to the Court's discretion and could open the path for climate litigation in its jurisdiction. In light of Article 34,[79] abstract complaints and *actiones populares* are not allowed before the ECtHR; however, in some specific situations, the Court may accept potential victimhood without a practical interference with the applicant's rights.[80] This reasoning might be acceptable for climate cases owing to the specific nature of its features: the direct effects of climate change are indisputable, and waiting until the harms in question fully manifest—for instance, the irreversible average warming above 2°C or 1.5°C—would lead to disastrous consequences. Therefore, the recognition of the applicants as victims may fall in the category of exceptions under Article 34.

The high number of respondent states further raises the questions of non-exhaustion and extraterritoriality.[81] The applicants did not make use of any domestic remedies, claiming that the exhaustion rule is ill-suited to climate claims, especially when children are concerned. The UN Committee on the Rights of the Child once

76 Paris Agreement, Article 2(a).

77 See Duarte Agostinho and others v. Portugal and 32 other States.

78 Climate litigation cases heavily rely on the facts that: (a) there is a link between man-induced climate change and its negative consequences, and (b) the negative effects of climate change will continue to increase and will lead to more and more severe environmental degradation. However, litigants often neglect there is no scientific certainty about the future effects of climate change. Therefore, scientific uncertainty could be a key obstacle to efficient climate litigation. See: Sulyok, 2021.

79 Article 34 of the ECHR: *"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."*

80 See, for instance, Klauss and others v. Germany, Kennedy v. the United Kingdom, Zakharov v. Russia. See also: Clark, Liston, and Kalpouzos, 2020.

81 See Keller and Heri, 2022, pp. 6–7.

stated that *"children's special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights";*[82] however, it was the Committee itself who, in *Sacchi et al. v. Argentina et al.,* found the complaint inadmissible for not exhausting domestic remedies.[83] Nevertheless, the Committee acknowledged an exception for the non-exhaustion rule, when domestic remedies have no prospect of success in the light of existing suits in the given state.[84] Similarly to *Sacchi et al.*, the exhaustion issue could be a potential hurdle in the case of Duarte Agostinho as well, although the reasoning according to which the exhaustion of domestic remedies in 33 states would represent an unreasonable impediment to such a time-sensitive issue as climate change may stand its ground. The Court shall, however, take into consideration the consequences of such as step, that is, for instance, the potential encouragement of such (more theoretical) cases. Furthermore, despite the application's inadmissibility, *Sacchi et al.* brought a ground-breaking perspective to the adjudication of such transboundary environmental harms by pronouncing that states have extraterritorial jurisdiction over harms caused by carbon emissions.[85]

Children, however, are not the only vulnerable group particularly affected by the negative impacts of climate change:[86] elderly people, who are on the other margin of the age pyramid, are equally vulnerable. Moreover, climate change further exacerbates gender inequality, which stems from sociocultural and economic factors—poverty, dependence on local natural resources, female illiteracy, and their insufficient representation in the environment—and climate-related decision-making processes.[87] That is the reason why a group of elderly women—an association under Swiss law for the prevention of climate change—with an average age of 73 and four elderly women between 78 and 89 brought a climate claim before the ECtHR in 2020. The claim in *Verein KlimaSeniorinnen Schweiz and others v. Switzerland* shows certain similarities with the claim in *Duarte Agostinho* as the elderly applicants argue that the heatwaves resulting from climate change undermine their living conditions and contribute to the deterioration of their health. They claim that the state did not respect the abovementioned goal set out in the Paris Agreement and thus violated their rights to life, respect for their private and family life, and their right to effective remedies as no effective remedy was available to them for the purpose of submitting their complaints under Article 2 and 8.[88]

82 CRC/GC/2003/5, Article 24.

83 CRC/C/88/D/104/2019, 10.21. For further details on the case, see the case law analysis of the Harvard Law Journal [Online]. Available at https://harvardlawreview.org/2022/05/isacchi-v-argentina/ (Accessed: August 30, 2022).

84 CRC/C/88/D/104/2019, 10.18.

85 CRC/C/88/D/104/2019, 10.5.

86 The adverse human-rights consequences of climate change are likely to have the greatest impact on populations already suffering from human rights violations. Besides children, elderly people, and women, indigenous people and workers in many occupations could be considered more vulnerable than other groups of the society. See: Levy and Patz, 2015, pp. 313–314.

87 Prio and Heinämäki, 2017, pp. 194–196.

88 Verein KlimaSeniorinnen Schweiz and others v. Switzerland, A.

Contrary to the previous case, the non-exhaustion of domestic remedies and extraterritorial jurisdiction may be less problematic in this case. Firstly, because they had exhausted all domestic remedies, the domestic courts dismissed their application on the grounds that they had not been individually and directly affected by climate change and thus could not be regarded as victims. Secondly, even though Switzerland is not the only state responsible for carbon emissions, the question of extraterritoriality is not relevant in this case as the applicants challenge only their native country's failure to comply with the Paris climate goals. From an adjudicating point of view, the question arises of whether it is wise to refer to such an agreement as a point of reference when interpreting human rights—especially in this case—when compliance with the Paris Agreement must be evaluated by the ECtHR.

The applicants' victim status, however, could still be questionable in the light of the ECtHR's approach to potential victimhood.[89] With regards to victims of environmental harm, the reasoning of *Cordella and others v. Italy* shall be noted, where the Court held that 19 out of 180 applicants did not qualify as victims[90] since they were not directly affected by environmental damages. Recalling *Kyrtatos v. Greece*, the Court stressed that the Convention does not ensure the general protection of the environment only when environmental pollution has adversely affected the rights guaranteed by the Convention.[91] In the case at hand, it could reasonably be expected that the Court may recognize the applicants as victims: scientific evidence that these women are more likely to be affected by the heatwaves caused by climate change can differentiate their situation from that of other members of the population.[92] On the other hand, the reason why the claim was found inadmissible on a domestic level was eventually the fact that their victim status was not found grounded by the Swiss courts;[93] nevertheless, *Verein KlimaSeniorinnen Schweiz,* similarly to *Duarte Agostinho*, is a strategic endeavor to challenge the systemic problems of climate change policies. The question of whether a more comprehensive approach (i.e., an application filed against 33 states) or a smaller-scale case challenging the policies of one state (or even both approaches) proves to be more successful remains open.

In the frame of climate change litigation, a third pending application is also worth noting: *Carême v. France*, which also challenges the Member State for taking insufficient measures to prevent global warming. The applicant claims that the action taken by France has been insufficient, including the authorities' failure to take all appropriate measures to meet its own targets for maximum levels of greenhouse gas emissions undertaken in the Paris Agreement, thus violating the applicant's right to life and right to respect for private and family life. The fact that the applicant challenges the state's actions under the Paris Agreement renders the application a strategic climate

89 For a brief overview on the question of admissibility in the mentioned case, see Schmid, 2022.
90 Longo, 2019, p. 339.
91 Kyrtatos v. Greece, 52.; Cordella and others v. Italy, 100.
92 Misasi, 2022.
93 Verein KlimaSeniorinnen Schweiz and others v. Switzerland, A.

case as the litigant aims to produce systemic impacts on the state's climate policy.[94] However, contrary to *Duarte Agostinho* and *Verein KlimaSeniorinnen Schweiz,* the applicant, in this case, does not belong to a group particularly vulnerable to the impacts of climate change, but in his capacity as mayor of the municipality of Grande-Synthe, the applicant represents the whole community, including all age groups and genders living in the territory. Considering the typical problems of climate change litigation presented above, the issue of non-exhaustion does not apply to this case: the claim to the ECtHR was preceded by a domestic proceeding before the French Conseil d'État, which ordered the government to take additional measures by March 31, 2022 to attain the target of a 40% reduction in greenhouse gas emissions by 2030.[95] The question of victimhood, however, is more problematic in this case as well, as the Conseil d'État held that the applicant could not prove his interest in bringing proceedings against the state in relation to climate change but found that the municipality had such an interest for its exposure to the risks stemming from climate change.

In addition to alleging the violation of the right to life, the applicant argues that the Conseil d'État disregarded his right to private and family life. He submits that the state's failure to combat climate change and the violation of his private and family life are directly linked as this failure increases the risk that his home might be affected in the years to come and is already affecting the conditions in which he occupies his property, in particular by not allowing him to plan his life peacefully in that area.[96] As one may conclude from the above, the question of victimhood is one of the most significant issues that can affect the admissibility of climate cases if the Court will adjudicate the issue in light of its established jurisdiction. On the other hand, it could also be expected that the Court starts developing a new approach adaptable only to climate change cases, where the recognition of the (potential) victimhood will be evaluated in a different way. Considering the growing number of climate cases before the ECtHR, this outcome is highly possible—if not in the currently pending cases, then in the cases to be filed in the next years.

3.1.7. Petroleum activities

Climate change litigation often revolves around the states' positive obligations to take appropriate measures to prevent global warming. These positive obligations can manifest in several ways: (a) in the form of the states' failure to adopt adequate climate laws and policies to comply with climate goals undertaken in international treaties, such as the Paris Agreement; or (b) when states engage in overt acts that clearly oppose to the duties of protection.[97] The former is supposed in the abovementioned strategic climate cases of *Duarte Agostinho, Verein KlimaSeniorinnen Schweiz*,

94 See Batros and Khan, 2020.
95 Commune de Grande-Synthe v. France, 7.
96 See Carême v. France (relinquishment).
97 See Duffy and Maxwell, 2020.

and *Carême*, while the applicants of the fourth climate case—*Greenpeace Nordic and others v. Norway*—build their claim upon the latter form of violation of positive obligations to combat climate change: the applicants argue that the state violated their right to life and right to respect for private and family life by granting oil exploration licenses. The domestic court—the Norwegian Supreme Court—refused to annul these licenses, holding that granting licenses was a parliamentary decision that could be overruled only if there had been gross neglect of duties to protect claimants' constitutional rights.[98] Furthermore, the Court argued that the Paris Agreement only requires states to limit emissions on their own territory rather than considering extraterritorial emissions (i.e., the emissions occurring in third states resulting from the oil export from Norway).[99] Interestingly, this was the first time the Norwegian Supreme Court was asked to rule on the remarkably progressive constitutional provision guaranteeing the right to a healthy environment. The right is perceived here as a substantive and procedural right, having an anthropocentric-ecocentric approach, which also focuses on sustainable development and thus on intergenerational equity.[100] However, the Supreme Court only considered the procedural aspect of the provision, and failed to examine the substantive side of the constitutional right, as well as to consider the intergenerational aspect of climate change in the context of rights of future generations.[101]

The application was brought by two organizations (Greenpeace Nordic and Young Friends of the Earth) and six individuals. Disappointed by the decision of the domestic court, they continued their endeavors to hinder further exploration of oil on the Norwegian continental shelf. The issue is particularly relevant these days, not only for the topicality of climate change emphasized by the Paris Agreement but also in the light of the ongoing war in Ukraine.[102] According to the applicants, the government tries to use the war to justify the demand for Norwegian oil, which will consequently

98 People v. Arctic Oil, 142.

99 Greenpeace International, 2022.

100 It is worth citing Article 112 of the Constitution of the Kingdom of Norway that was challenged before the Supreme Court: *"Every person has the right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources shall be managed on the basis of comprehensive long-term considerations which will safeguard this right for future generations as well. In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to information on the state of the natural environment and on the effects of any encroachment on nature that is planned or carried out. The authorities of the state shall take measures for the implementation of these principles."* For a more detailed analysis of this provision, see: Giunta, 2017.

101 Voigt, 2021, 706–707.

102 The response of the EU to the war Ukraine is to accelerate the transition to renewable energy, which fits into the previously adapted EU policies in this field; see, for instance, the EU Green Deal. Norway, although not a Member State, closely cooperates with the EU in climate goals. See Norway and the EU [Online]. Available at https://www.norway.no/en/missions/eu/values-priorities/climate-env/#local-content (Accessed: September 5, 2022). The EU aims to reduce the dependence on fossil fuels imported from Russia by fast forwarding to clean transition and joining forces to achieve a more resilient energy system. See RePower EU Plan. Therefore, the import of Norwegian fossil fuels would be a half-solution for the EU as it would fulfill only one part of the goal set in the RePower EU Plan, but it would not facilitate the transition to renewable energy.

result in increasing greenhouse gas emissions in the upcoming years,[103] thus moving backward from the climate goals undertaken in Paris. Moreover, Norway would particularly be affected by the negative consequences of climate change: being a coastal state, the country is threatened by sea-level rise, one of the most challenging issues in international law. The rise of sea levels worldwide may lead to serious consequences, which can result in rethinking the existing international legal regime and especially international law of the sea, as international law strongly relies on geographical conditions that are generally perceived as stable.[104] Sea-level rise may reshape state territory due to the territorial losses it may cause,[105] and it can also lead to massive disputes between adjacent or opposite states: the delimitation of maritime zones, the role of islands in the construction of baselines and maritime delimitations, or the status of natural and artificial islands may be few examples of the challenges to be solved.[106] It is true, however, that low-lying islands, coasts, and communities—such as the Pacific Islands—are the most likely to be affected by sea-level rise,[107] but due to the continuous rise of sea levels these days, all coastal states—including those of the Arctic—are potential victims.[108] Therefore, Norway could be among the first states to be directly affected by the negative consequences of climate change, which is why it is particularly important for them to respond adequately to the issue.

Of the strategic climate cases pending before the ECtHR, the case of *Greenpeace Nordic* is particularly likely to produce systemic impacts on climate policies for raising the question of how to find the balance between economic interest and environmental protection. The decision of the Court could definitely serve as a precedent for other states either way: in case it holds the violation of the ECHR and obliges the state to focus on complying with the climate targets, it will send the message to other Member States that climate change is above economic interest and that the energy

103 Duffy and Maxwell, 2020.

104 Vidas, 2014, pp. 70–73.

105 In extreme cases, sea level rise may lead to islands becoming uninhabitable, which would have significant implications for the realization of a range of individual and collective human rights, including people's right to self-determination: persons whose land has been rendered uninhabitable, may find themselves in a situation of being citizens of a state that no longer has territory. Given that territory is a fundamental criteria of statehood, in case it would completely disappear due to the effects of climate change, certain people would be victims of "de facto statelessness", for which the current framework of international law does not provide an effective solution. See: Willcox, 2012, pp. 11–12.

106 For an overview of the legal problems sea level rise can cause, see ILC, A/CN.4/74. It is worth noting that the UN Convention on the Law of the Sea does not provide a solution for the phenomenon as it was tailored to the geographical circumstances of its own time, and it could not foresee such substantial changes. In relation to sea level rise and law of the sea, Article 7 of the UNCLOS is often recalled as it refers to "highly unstable" coastlines, of which the interpretation is still not clear—especially, whether coastlines subject to sea level rise could be understood by the term mentioned in the Article. See Andreone, 2017, p. 7.; Vidas, 2014, p. 75.

107 More on the perspective of the Pacific Islands on sea level rise could be found in Freestone and Çiçek, 2021.

108 See, for instance, ILC, A/CN.4/74, p. 12.

demand shall be satisfied from renewable energy sources. On the other hand, there is a possibility that temporarily pressing economic crises may override climate goals that were undertaken prior to the outbreak of such disasters.

4. Right to respect for private and family life

The right to the protection of private and family life[109] or the right to respect for private and family life[110] may not explicitly be declared as a human right in all international human rights treaties; instead, some documents guarantee the rights of the family, including the right to marry and to form a family. Therefore, in international human rights law, the protection of the family could either be considered a human right per se or a state task;[111] nevertheless, the importance of the family as a fundamental group of society is recognized on a high level.[112] However, the right to respect for private and family life may also be intertwined with the right to privacy or the protection from arbitrary interference with privacy, family, home, or correspondence.[113]

In the European Convention on Human Rights, Article 8 declares that *"everyone has the right to respect for his private and family life, his home and his correspondence"* which could be characterized as the sphere of personal or private interest. The Article provides that there shall be no interference by a public authority with the exercise of this right; however, this prohibition is not absolute—exceptions may occur *"in accordance with the law and to the extent that is necessary in a democratic society in 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".* The right guaranteed under Article 8 could be interpreted as a negative obligation for the state, interpreting the right

109 See, for instance, the American Declaration of the Rights and Duties of Man (1948), Article V.

110 The European Convention on Human Rights (1950), Article 8; Charter of Fundamental Rights of the European Union (2002), Article 7; Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (1995), Article 9.

111 See, for instance, the text of the American Convention on Human Rights, Article 17: *"The States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. […]"*, or the African (Banjul) Charter on Human and People's Rights (1981), Article 18(2): *"The State shall have the duty to assist the family which is the custodian or morals and traditional values recognized by the community."*

112 See the Universal Declaration of Human Rights (1948) Article 16: *"The family is the natural and fundamental group unit of society and is entitled to protection by society and the State";* and the Banjul Charter (1981), Article 18: *"The family shall be the natural unit and basis of society."*

113 See the Universal Declaration of Human Rights (1948), Article 12; and the American Convention on Human Rights (1969), Article 11.

to respect for private and family life from a liberal perspective, according to which human rights pertain to an area of freedom enjoyed by the individual—an area upon which the state may impinge only in defined circumstances.[114] For instance, the Court found no justification for the interference in the case of the censorship of prisoners' correspondence, when the applicants were prevented from writing to a legal adviser until the inquiry into the matter on which they wanted advice had been completed.[115] On the other hand, "respect" could be perceived as a positive obligation for the state, implying that the state shall take some positive action to ensure the effective enjoyment by individuals of the right guaranteed by Article 8. This approach renders irrelevant the exceptions provided in Article 8(2).[116] In light of the Court's practice, the state shall take some positive measures rather than merely abstain from intrusion; this means, inter alia, that when the state determines certain rules of family law in its domestic legal system, it shall calculate to allow those concerned to lead a normal family life.[117]

In assessing whether the complaint gives rise to a violation of Article 8, the Court applies a two-stage test. Firstly, it shall be determined whether the complaint falls within the scope of application of Article 8, which depends on whether it is possible to conclude that the situation concerns "private life", "family life", "home", or "correspondence" in light of specific circumstances.[118] Although private life is a broad concept without an exhaustive definition within the meaning of Article 8, the Court has provided some guidance as to the meaning and scope of this broad concept. This covers, inter alia, the physical and psychological integrity of a person and, to a certain degree, the right to establish and develop relationships with other human beings. It also may embrace aspects of an individual's physical and social identity, the right to "personal development" or to self-determination, and the right to respect for the decisions both to have and not have a child.[119] Within the scope of physical, psychological, or moral integrity, Article 8 may be applicable in a number of situations, including violence/abuse, reproductive rights, forced medical treatment, health care and treatment, end-of-life issues, disability issues, issues concerning burial, environmental issues, and sexual orientation and sexual life.[120] The Court consistently held that the concept of private life extends to aspects of privacy, data protection, protection of individual reputation, information about one's health, police surveillance, privacy during detention and imprisonment, and so on.[121] In the context of identity, the right to discover one's origins—inter alia, the right to name/identity

114 Connelly, 1986, p. 570.
115 Campbell and Fell v. the United Kingdom, 108–110.
116 Connelly, 1986, p. 572–573.
117 Marckx v. Belgium, 31. See also Forder, 2009.
118 Roagna, 2012, pp. 10–11.
119 Paradiso and Campanelli, 159. Although, in this regard, the decision in Evans v. the United Kingdom may be regarded as doubtful.
120 Guide on Article 8, 2022, pp. 30–44.
121 Guide on Article 8, 2022, pp. 44–60.

documents—the right to ethnic identity, or statelessness and citizenship issues could be highlighted.[122]

The notion of family life is an autonomous concept; therefore, whether or not "family life" exists is rather a question of fact depending upon the de facto existence of close personal ties,[123] such as applicants living together,[124] the length of the relationship, mutual commitment, or having children together.[125] It could be said generally that the sphere of application of family life extends to couples, parents, children, and other family relationships[126]—including, for instance, siblings,[127] aunts/uncles and nieces/nephews,[128] grandparents and grandchildren.[129] Similarly to the notion of family, the notion of home is also an autonomous concept that does not depend on the classification under domestic law.[130] The answer to the question of whether a habitation could be considered a "home" in light of Article 8 rather depends on the factual circumstances, especially the existence of sufficient and continuous links with a specific place.[131] It shall also be noted that the English term "home" may not be regarded as the equivalent French term "domicile", which has a broader connotation: it may extend, for instance, to a professional person's office.[132] Nevertheless, the Court does not limit "home" to traditional residences; it may include caravans and other unfixed abodes,[133] cabins or bungalows stationed on land, regardless of the question of the lawfulness of the occupation under domestic law.[134] Furthermore, it may encompass second homes or holiday homes,[135] partially furnished residential premises,[136] and hotel rooms.[137] However, the Court has established certain limits to the protection of homes guaranteed by Article 8: it does not apply to property on which it is intended to build a house,[138] land used by owners for sports purposes,[139] industrial buildings and facilities used exclusively for professional purposes,[140] or uninhabited or empty buildings.[141]

122 Guide on Article 8, 2022, pp. 60–70.
123 Paradiso and Campanelli, 140.
124 Johnston and others v. Ireland, 56.
125 X, Y, and Z. v. the United Kingdom, 36.
126 Guide on Article 8, 2022, pp. 73–91.
127 Boyle v. the United Kingdom, 41–47.
128 Boughanemi v. France, 35.
129 Marckx v. Belgium, 45; Bronda v. Italy, 51; T.S. and J.J. v. Norway, 23. For more information on the interpretation of "family" under Article 8 of the ECHR, see: Pelloux, 1980, pp. 317–327.
130 Chiragov and Others v. Armenia, 206.
131 Winterstein and others v. France, 141.
132 Niemietz v. Germany, 30.
133 Chapman v. the United Kingdom, 61–74.
134 Winterstein and others v. France, 141. See also: Nadaud and Marguénaud, 2015, pp. 85–88.
135 Demades v. Turkey, 32–34.
136 Halabi v. France, 41–43.
137 National Federation of Sportspersons' Associations and unions (FNASS) and Others v. France, 158.
138 Loizidou v. Turkey, 66.
139 Friend and others v. the United Kingdom, 45.
140 Khamidov v. Russia, 131.
141 Halabi v. France, 41.

Lastly, the scope of the concept of correspondence shall be examined. Generally, the right to respect for correspondence aims to protect the confidentiality of communications in a wide range of situations. The concept covers letters of a private or professional nature,[142] telephone conversations,[143] data from a smartphone,[144] electronic messages, internet use,[145] and data stored on computer servers.[146] Specific issues under the protection of correspondence include prisoners' correspondence, lawyers' correspondence, surveillance of telecommunications in a criminal context, as well as special secret surveillance of citizens or organizations.[147]

After determining whether the complaint falls within the remits of Article 8 (i.e., the situation at stake amounts to private life, family life, home, or correspondence), the second stage is to examine whether there has been an interference with these concepts. In case there has been no interference with the exercise or enjoyment of the right protected under Article 8, the Court further assesses whether the state had a positive obligation to take measures to ensure the fulfillment of its obligations under the Convention. In comparison to the positive obligations under Article 2, the specific nature of Article 8 in this context lies in the Court allowing states a wide margin of appreciation: firstly, the Convention itself provides certain restrictions on the right to private and family life (e.g., necessity in a democratic society). Secondly, the notion of "respect" is not clear-cut, especially the inherent positive obligations; one may conclude that the notion's requirements will vary from case to case. Thirdly, the Court rarely goes so far as to indicate appropriate positive measures for the state—most of the time, it merely declares that there has been a violation of the Article as the state did not strike a fair balance between the interests involved.[148]

4.1. Right to respect for private and family life and environmental implications

In addition to the right to life, environmental issues are the most often interlinked with the right to respect for private and family life, which is also shown by the high number of cases analyzed below. The strong linkage between Articles 2 and 8 was even explicitly recognized by the ECtHR in the abovementioned case of *Budayeva et al v. Russia*, stating that state's positive obligations under the Articles in question *"largely overlap"* in the context of environmental harm;[149] therefore, only those not detailed in the context of Article 2 will be analyzed below.

In the framework of Article 8, the Court examines various situations in relation to the protection of the environment—mainly different kinds of pollution, including

142 Niemietz v. Germany, 32.
143 Margareta and Roger Andersson v. Sweden, 72.
144 Saber v. Norway, 48.
145 Copland v. the United Kingdom, 41–42.
146 Wieser and Bicos Beteiligungen GmbH v. Austria, 45.
147 Guide on Article 8, 2022, pp. 117–139.
148 Akandji-Kombe, 2007, p. 36.
149 Budayeva et al v. Russia, 133.

(but not limited to) noise pollution, emission from vehicles, soil and water contamination, or waste management—as the right to respect for private and family life implies respect for the quality of private life as well as the enjoyment of the amenities of one's home. However, the degradation of the environment violates Article 8 only if the environmental factors directly and seriously affect private and family life or the home.[150]

4.1.1. Dam construction threatening archeological site

The Court defined certain limits to the scope of application of the right to respect for private and family life in relation to the Hasankeyf archeological site in Turkey, which was claimed to be threatened by the planned construction of a dam. The application of *Ahunbay and others v. Turkey* was found inadmissible as being incompatible *ratione materiae* with the Convention: the Court indicated that, according to the knowledge of the time, the Member States had not reached a consensus on the protection of cultural heritage, but the application could rather be falling within the evolving area of the conservation of the cultural heritage and access to it.[151] In light of the above, it could also be concluded that archeological sites could hardly fit in any of the categories falling under the scope of Article 8, namely in private life, family life, home, or correspondence.

4.1.2. Environmental risks and access to information

One of the earliest cases in the practice of the ECtHR where environmental aspects were considered was *Guerra and others v. Italy*. In this case, the applicants complained about the operation of a chemical factory (ENICHEM Agricoltura) producing fertilizers, situated near the town of Manfredonia in the province of Foggia; specifically, they complained about the pollution and poisoning caused by accidents in the factory and the lack of adequate measures from the state, including the authorities' failure to inform the public about potential risks and the procedures to be followed in the event of a major accident. Based on the abovementioned two-stage test to determine whether Article 8 is applicable in the given case, the Court first concluded that the applicants live approximately one kilometer away from the factory, which fits into the scope of "home" protected under the right to private and family life. As for the second stage, the Court assessed the question of infringement of this right: given that the applicants did not complain of an act of the state but of its failure to act, it could be concluded that the state did not comply with its positive obligations required under Article 8. In light of the fact that the factory's malfunctioning had led to serious consequences—for instance, in 1976, owing to an explosion, 150 people were admitted to hospital with acute arsenic poisoning—the

150 Manual on Human Rights and the Environment, pp. 45–46.
151 Ahunbay and others v. Turkey, 19.

Court found a direct link between the damage caused and the operation of the factory.[152] In the context of the state's failure to take positive measures to guarantee the right to respect for private and family life, the applicants alleged that there had also been a violation of their right to freedom of information established in Article 10 of the Convention. However, the Court held that it was not applicable in the given case as Article 10 generally only prohibits a government from interfering with a person's ability to receive information that others wish or may be willing to impart. Therefore, the state's failure to inform the public about the hazards and risks that the factory may cause was interpreted as failure to comply with the positive obligations required from the state to effectively protect citizens' right to respect for private and family life.[153] The relevance of this judgment—apart from the inhabitants' satisfaction—lies exactly in this very clarification of questions falling under Article 8 or Article 10.

4.1.3. Industrial pollution

Issues related to environmental pollution form a significant part of the ECtHR's jurisprudence within the frames of Article 8 and play an important role in extending the interpretation of the Convention from an environmental perspective. The first successful application in which the Court established the foundation of using environmental aspects in its jurisprudence—the abovementioned *López Ostra v. Spain*—was actually related to industrial pollution. Since that decision, the Court has dealt with several similar issues that are considered groundbreaking for the development of the environmental perception within the European human rights framework.

One of the most disputed environmental cases in Central Europe was related to the massive cyanide spill in northern Romania as a result of an industrial accident. The dam released more than 100,000 m^2 of cyanide, and over the course of a few weeks, the polluted water traveled through several countries[154]—Romania, Hungary, and Serbia—and had catastrophic outcomes for the fauna and flora of the river, threatening the region's drinking water supplies.[155] Although numerous (administrative, criminal, and civil) cases have been brought before national courts, this analysis will focus only on the proceeding before the ECtHR. The applicants of the case of *Tătar v. Romania*, father and son, complained that the activities conducted by the company violated their right to life laid down in Article 2 of the Convention. However, the Court considered that the applicants had not succeeded in proving the existence of a causal link between the exposure to cyanide and the aggravation of the applicant's asthma with which he was diagnosed. Instead, the

152 Guerra and others v. Italy, 39–63.
153 Shelton, 2006, pp. 137–138.; See also Born and Haumont, 2011, pp. 1435–1436.
154 UN News, 2010.
155 Danube Watch, 2002.

Court concluded that the existence of a serious and substantial risk to the health and well-being of the applicants could be observed from the perspective of the right to respect for their private and family life.[156] Referring to *López Ostra* and *Guerra*, the Court observed that noise and odor pollution could interfere with a person's private and family life by harming their well-being and that Article 8 could be applied in environmental issues in case the pollution was directly caused by the state or the state's responsibility stemmed from the absence of adequate regulation of private sector activity. Therefore, the Court found a violation of Article 8 as the Romanian authorities had failed to assess the risks that the company's activity entail and to take appropriate measures to protect the rights of those concerned.[157]

The complexity of addressing environmental disasters, such as the one in *Tătar v. Romania*, shows the deficiencies of the currently available legal mechanisms. The several proceedings brought before Hungarian and Romanian domestic courts could only reflect on certain aspects of the disaster but not on the complexity of the issue as a whole. Similarly, the ECtHR could only deal with the human rights aspects of the case: given that the Convention does not enshrine any right to a healthy environment as such (which could have been perfectly applied in the given case) the Court had to evaluate which human right from the Convention is the most suitable to the given situation—the right to life or the right to respect for private and family life. As one could conclude, it may not always be obvious to determine, especially in the case of Articles 2 and 8, under the scope of which human right the given case could fall. Furthermore, even if the Court pronounces the violation of the Convention, it may only find the responsibility of the state. However, in *Tătar v. Romania*, because the company liable for the leak was dissolved without a legal successor, finding the responsibility of the state does not seem to offer a comprehensive solution for the overall problem but rather for individual applicants, and thus, it cannot serve as a retentivity for future (non-state) polluters.[158]

Furthermore, the currently existing mechanisms do not provide effective protection for the damage caused in the fauna and flora, mainly because the protection of the environment in international law is mainly based on the anthropocentric approach, which supports nature conservation due to human comfort, quality of life, and the benefits that a healthy environment could provide for the well-being of humans. On the other hand, the ecocentric perspective supports environmental protection for the intrinsic value of nature, regardless of the economic or lifestyle implications of the conservation.[159] Although the latter approach has also been declared

156 Seminara, 2016, p. 736.

157 Tătar v. Romania, 70–97; 106–107. See also: Nadaud and Marguénaud, 2010, pp. 62–67.

158 On possible state-investor disputes, see, among others, Investor-State Dispute Settlement and Environmental Justice [Online]. Available at: https://ccsi.columbia.edu/content/investor-state-dispute-settlement-and-environmental-justice (Accessed: September 13, 2022).

159 Gagnon Thompson and Barton, 1994, pp. 149–150.

in some international agreements,[160] the effective enforcement of the protection of nature per se still seems to be problematic. The solution to this problem now seems distant, but it illustrates the complexity of environmental disasters well: in light of the above, the current legal mechanisms could provide answers for individual claims but may not tackle all the challenges that such a disaster may cause, including civil, criminal, procedural, and human rights aspects on both the national and international levels as well as the protection of biodiversity and sustainability. On the other hand, considering that the protection of the environment in international law emerged only a few decades ago,[161] it is already a great achievement of the ECtHR that environmental problems could be addressed within the human rights' legal framework through the extensive interpretation of certain human rights.

Another important case from the Central European region is *Apanasewicz v. Poland*, which concerned the construction of concrete works without planning permission on the land adjacent to the applicant's. The operation started immediately, and the factory facilities were expanded gradually. To put an end to the nuisances the operation of the factory caused, the applicant instituted a domestic civil proceeding, as a result of which the court ordered the factory's closure. Given that the factory had not yet been closed at the time of the judgment of the ECtHR, the applicant also complained about the failure to enforce the judgment of the domestic court. Although a major part of the judgment assessed the case in light of Article 6 (right to a fair trial), it also found a violation of Article 8 for the lack of positive measures on the part of the authorities.[162]

Lastly, in the context of industrial pollution, the cases related to the operation of the Ilva steel plant in the region of Puglia in Italy shall be examined. As mentioned above, the Court did not find a violation of the Convention in *Smaltini v. Italy,* but the decision paved the way for the adjudication of other claims arising from the operation of Ilva. *Cordella and others v. Italy* shall be noted for the evaluation of the victim status: the Court, as presented above, found a direct link between the deterioration of their health and the company's environmentally harmful operation in the case of 161 applicants out of 180. The other 19 applicants were not considered victims since they did not live in one of the towns classified as being at high environmental risk, and they could not successfully prove that they were personally affected

160 See, for instance, the UN World Charter for Nature (1982), Preamble: *"Every form of life is unique, warranting respect regardless of its worth to man, and, to accord other organisms such recognition, man must be guided by a moral code of action"*; and the Brundtland Report (1987), 55: *"[…] the case for the conservation of nature should not rest only with development goals. It is part of our moral obligation to other living beings and future generations."* On the other hand, several international environmental agreements express a strong anthropocentric approach, such as the Stockholm Declaration (1972), Principle 1: *"Man […] bears a solemn responsibility to protect and improve the environment for present and future generations"* and the Rio Declaration (1992), Principle 1: *"Human beings are at the centre of concerns for sustainable development."* See also Washington, Taylor, Kopnina, Cryer and Piccolo, 2017.

161 See above.

162 Apanasewicz v. Poland, 5–6, 60–61, 84–85.

by the situation.[163] Compared to the Court's approach to evaluating the right to life, one may see that proving the causality is less complicated in the context of the right to respect for private and family life, presumably because the distance between the home and the location of the environmentally harmful company already establishes a certain nexus, while it is more difficult to prove that a given harmful practice directly threatened the applicant's life. Based on this affirmation, one could conclude that the abovementioned pending applications of *Duarte Agostinho, Verein KlimaSeniorinnen Schweiz, Carême,* and *Greenpeace Nordic* may be evaluated on the basis of Article 8, rather than Article 2.

The environmentally harmful operation of the Ilva company was challenged by four pending applications: in *A.A. and others v. Italy*, the applicants (altogether 207) are current or former employees of the company, most of them residents of towns considered to be at high environmental risk.[164] Similarly, the applicants of *Perelli and others v. Italy* and *Ardimento and others v. Italy* are or were employed by Ilva, and some of them claim that their illnesses resulted from the factory's toxic emissions.[165] In the fourth application, *Briganti and others v. Italy*, the applicants argue that (a) their working conditions constitute inhuman or degrading treatment, considering the harmful emissions that the applicants were exposed to during their work; (b) their right to respect for their private life was violated, taking into account the findings of *Cordella and others v. Italy;* and (c) they did not have effective remedies at their disposal, as required by Article 13 of the Convention.[166] The outcome of these applications is yet to be seen; however, given that the argumentation of the cases significantly relies on those of *Cordella*, their success could reasonably be expected. The high number of applications and applicants in these cases shows the severity of industrial pollution not only in the province of Taranto but also generally, and it also points to the fact that such activities shall be monitored more thoroughly as the number of potential victims is undoubtedly high.

4.1.4. Noise pollution

The adjudication of issues related to noise pollution within the frames of Article 8 was laid down by *Hatton and others v. the United Kingdom*. Similarly to *Powell and Rayner* mentioned above, the applicants of the case argued that the noise generated by Heathrow Airport violated their rights under the Convention. Although 10 years had passed between the delivery of the two judgments, the Court found no violation of Article 8 in any of the cases, holding that the state did not overstep its margin of appreciation by failing to strike a fair balance between the rights of the individuals

163 Cordella and others v. Italy, 100–110. See also Ceddia, Graziano, Mezzi, Pasanisi and Ramellini, 2020, pp. 10–14.
164 A.A. and others, 1–5, Annex.
165 Perelli and others, 1–8.; Ardimento and others v. Italy, 1–4.
166 Briganti and others v. Italy, 1–3.

and the conflicting interests of others and of the community as a whole.[167] However, the Court held that there had been a breach of Article 13 (right to an effective remedy). In the context of aircraft noise, one could conclude that the Court does not tend to accept the applicants' argumentation, but rather, that it tends to pronounce no violation of Article 8 and decides in favor of the state's public and economic interest.[168]

Finding the violation of the right to private and family life in the matter of noise pollution, therefore, depends on the competing interest: in cases of nightclubs and computer clubs, for instance, the Court pronounced the breach of Article 8. In *Moreno Gómez v. Spain*, the applicant complained of noise and of being disturbed at night by nightclubs near her home. Although the local City Council of Valencia adopted legislative measures to mitigate the noise pollution, they did not prove to be enough not to violate the rights of people living in the area.[169] The judgment had a significant impact on the European legislation: after the adoption of the decision in *Moreno Gómez*, the EU issued the Directive 2006/12/EC on waste, which regulates pollution causing *"nuisance through noise or odours"*.[170] More than 10 years after the Moreno Gómez judgment, a very similar case, *Cuenca Zarzoso v. Spain*, was brought before the Court by an applicant living in the same acoustically saturated zone in the city of Valencia. The Court concluded that these applications do not concern interference by public authorities with the right to respect for the home but their failure to take action to put a stop to third-party breaches.[171] Based on similar reasonings, the Court found a breach of Article 8 in *Mileva and others v. Bulgaria* for the noise and nuisance caused by the running of a computer club in the building where the applicants lived, especially considering that the club was operating without the necessary license and the explicit prohibition of the use of the flat for this purpose.[172] On the other hand, in *Chiş v. Romania*, the Court did not consider the arguments of the applicant well established to find the violation of the right to respect for private and family life; thus, it found the application inadmissible. The Court noted that the minimum threshold of seriousness required to engage Article 8 is inherently relative, and it depends on the set of data of the cause, notably the intensity and the duration of the nuisance, their physical and mental effects, as well as the fact of knowing whether the damage caused was comparable to that linked to the environmental risks inherent to living in any modern city. Based on the research conducted by the competent municipal department and by a private laboratory, the Court found that the noise level did not significantly affect the quality of life of the building's inhabitants.[173]

167 Hatton and others v. the United Kingdom, 119.
168 See also Flamenbaum and others v. France.
169 Moreno Gómez v. Spain, 9–10, 61–63.
170 Directive 2006/12/EC, Article 4(1)(b).
171 Cuenca Zarzoso v. Spain, 44–54; Climent Gallart, 2018, pp 533–534.
172 Mileva and others v. Bulgaria, 99–102.
173 Chiş v. Romania, 31–32.

The case of *Deés v. Hungary* serves as a typical example for noise pollution caused by road traffic. The heavy traffic in the applicant's street rendered his home almost inhabitable due to the unbearable noise and odor pollution. For instance, the applicant observed damage to the walls of his house, which, according to an expert, was caused by the vibrations resulting from the heavy traffic in the neighborhood. The government argued that they had complied with the requirements of positive obligations under Article 8 by several measures, including a speed limit at night, traffic lights to improve traffic safety, or a prohibition of access for vehicles over 6 tons. The Court, however, considered the fact that the measures taken by the authorities had not been properly enforced and had proved insufficient; thus, the road traffic hindered the enjoyment of his home. It shall be noted that, according to the Court, noise pressure significantly above statutory levels, neglected by state measures, may as such constitute a violation of Article 8,[174] while the claim may not be well founded when the noise levels do not reach the high threshold established by domestic law.[175] Furthermore, the Court found a violation of Article 6 of the Convention as the domestic procedures in the case lasted for 6 years and 9 months, which is contrary to the right to a fair trial within a reasonable time.[176]

The case could be considered important for several reasons; firstly, it was the first environment-related application in the jurisdiction of the ECtHR concerning Hungary. Secondly, the case significantly differs from the abovementioned ones in the sense that the Court found the violation of Article 8 not for the lack of positive measures by the state but by the inadequacy and inefficacity of the measures taken. Thirdly, the case could be compared to claims related to aircraft noise, such as *Powell and Rayner* and *Hatton*, as they all concern some kind of nuisance related to traffic; however, in contrary to cases of air traffic, *Deés v. Hungary* was successful. The probable reason for this lies in whether the problems are related to concrete establishments (such as the Heathrow Airport) or to a cross-country network of traffic roads, as in the given case.[177]

Regarding heavy traffic noise, a parallel could be drawn between Deés and another case concerning the same country, *Bor v. Hungary*. Firstly, the applicant alleged the violation of Article 8 for extreme noise disturbance caused by rail traffic near his home. The government argued that the state had taken positive measures to protect people's right to respect for the home: a clear sanction system was introduced, which aimed at prohibiting the railway company from making excessive noise emission by obliging it to bear the costs of installing soundproof doors and windows, and the remaining noise should have been tolerated by the applicant as his house was situated by a railway station, the activity of which served both public and private interests. Nevertheless, the Court noted that the remaining noise was still significantly above

174 Cf. Oluić v. Croatia.
175 Cf. Fägerskiöld v. Sweden.
176 Deés v. Hungary, 7, 18–27.
177 Fodor, 2011, pp. 90–93.

statutory levels, to which the state has not responded with appropriate measures. Considering that the applicant brought the first proceeding on the national level in 1991 and that the first noise-reduction measures were only implemented in 2010, the Court found that the length of the domestic proceedings had been excessive and failed to meet the requirement of a reasonable time, thus violating Article 6 of the Convention.[178]

The two judgments in connection with Hungary draw attention to two severe problems: (a) the length of the proceedings in general; and (b) the marginality of environmental aspects in the implementation of the laws. However, it would be unjust not to mention that the Hungarian framework for environmental protection significantly improved since the decisions were delivered: for instance, in 2011, due to the adoption of the new Constitution (the Fundamental Law), the constitutional frames of the protection of the environment were fundamentally broadened; in 2012, the institution of the Deputy Commissioner for Future Generations was established, continuing the preceding works.

Regarding road traffic noise, a relatively new case from Poland could also be mentioned: in *Kapa and others v. Poland*, the facts of the case were relatively similar to those of *Deés v. Hungary*. The applicants complained about the rerouting of traffic during the construction of a motorway, which had the effect of exposing them to severe nuisance—noise (exceeding domestic and international norms), vibrations, and exhaust fumes. The government submitted that the residents of the area had been regularly informed about the mitigation measures and had been free to lodge complaints and applications in respect of the motorway's operation. The Court concluded that the adverse effects of the pollution emitted by the heavy traffic that affected the applicants' homes had attained the necessary minimum level to bring the applicants' claims within the scope of Article 8.[179]

Lastly, it shall also be noted that although most cases in relation to noise pollution arise from heavy traffic in the vicinity of the applicants' homes, industrial activities may also cause an unbearable nuisance to the inhabitants of the area; however, in the cases brought before the ECtHR, the Court did not find that such noise would establish the violation of the right to respect for private and family life. In *Borysiewicz v. Poland*, the applicant complained about the noise emanating from a tailoring workshop located in an adjacent building; however, as the Court observed, the noise levels complained of were not serious enough to reach the high threshold established in former cases. The applicant also failed to prove that her health had been negatively affected by the noise, and thus, the claim was declared inadmissible,[180] but the Court held the violation of Article 6 for the length of the domestic proceedings.[181] Furthermore, *Martinez Martinez and María*

178 Bor v. Hungary, 22–23, 29–31.
179 Kapa and others v. Poland, 148–152, 153–155, 174–175.
180 Borysiewicz v. Poland, 5, 47–56.
181 Cf. Leon and Agnieszka Kania v. Poland, 82–84, 93–104.

Pino Manzano v. Spain concerned a couple living in the vicinity of an active stone quarry who complained of psychological disorders caused by the noise from the quarry. Despite finding that the noise and pollution levels were equal to or slightly above the norm and considering that the industrial zone where the applicants lived was not meant for residential use, the Court found no violation of Article 8 of the Convention.[182]

Considering the above-presented judgments relating to noise pollution, one may conclude that the most successful applications, in terms of the violation of Article 8 being well founded, concern claims arising from heavy road traffic. While in relation to air traffic and aircraft noise, the Court tends to emphasize the importance of striking a fair balance between public (economic) and private interests, adjudicating in favor of the former, in cases of road and railway traffic, arguments of the latter seem to be preponderant. As indicated above, this could be due to the expansivity of the road or railway systems, in contrary to which airports are concrete establishments in a given location that play an important role in the countries' economies. Furthermore, the reasonings of these judgments suggest that the violation of Article 8 could be established in the event of a lack of positive measures required from the state but also in case of the inadequacy and inefficiency of the measures taken.

In addition to nuisance arising from either air, road, or railway traffic, the Court found that unbearable noises connected to nightlife established a violation of Article 8. The noise levels, however, must reach a certain threshold to fall under the scope of the protection of private and family life. In connection to industrial noise pollution, it may seem more difficult to prove the direct relationship between the effects caused and the operation of an industrial establishment. Nevertheless, the protection of the environment and the implicit right to a healthy environment under Article 8 may not extend to applicants residing in a non-residential industrial area. Additionally, it could be observed that the noise-related case law of the ECtHR is strongly intertwined with Article 6—the right to a fair trial—particularly for exceeding the reasonable timeframe.

4.1.5. Waste collection, management, treatment, and disposal

Concerning Italy, two significant cases were analyzed in the present chapter in various contexts: the harmful emissions of the Ilva company in Puglia and the hazardous phenomenon of the "Terra dei Fuochi" in Campania. Regarding the Ilva company, a major, expectedly precedent-setting judgment, *Cordella v. Italy*, was delivered under the scope of Article 8, and there are currently four other pending applications on the basis of the same merits. In connection to the "Terra dei Fuochi" the abovementioned pending case of *Di Caprio and others v. Italy* is expected to be equally influential as *Cordella*. In addition to these issues, Italy

182 Martinez Martinez and María Pino Manzano v. Spain, 4, 48–51.

faces severe problems with waste management, which was also challenged before the ECtHR.

The first related case, *Di Sarno v. Italy*, concerned a state of emergency lasting for some 15 years in relation to waste collection, treatment, and disposal in the region of Campania, where the applicants lived or worked. This period included 5 months during which the garbage piled up in the streets. In addition to domestic criminal investigations, the European Commission brought an action for non-compliance against Italy. Concerning environmental hazard, the Court of Justice of the EU found the violation of the abovementioned Directive 2006/12 as the accumulation of such large quantities of waste along public roads had given rise to a *"risk to water, air or soil, and to plants or animals"* and had caused *"a nuisance through noise or odours"* within the meaning of Article 4(1)(b) of the Directive. Before the ECtHR, the applicants alleged the violation of Article 8 and Article 13 (right to an effective remedy) of the Convention. Given that they could not prove the existence of a causal link between exposure to waste and an increased risk of developing pathologies, the Court considered that the case did not concern direct interference with the applicants' right to respect for their homes and private life; however, it found the violation of Article 8 in the state's failure to provide adequate measures to ensure the proper functioning of waste management, especially considering the fact that the acute phase of the crisis had lasted for several months. In addition, the Court also found the violation of Article 13, in so far as the complaint related to the effective remedies in the domestic legal system was concerned.[183]

Furthermore, another (although) pending case concerning waste management in the region of Campania shall be mentioned. The applicants of *Locascia and others v. Italy* complained about the danger to their health and the interference with their private life and home caused by the operation of the "Lo Uttaro" waste disposal plant. The plan to reopen the establishment emerged during the waste crisis, which was challenged in the case of *Di Sarno* to manage the disastrous waste situation in Campania. After closing the operation of the "Lo Uttaro" plant in the early 90s, several scientific studies investigated the possible health effects of the waste cycle in Campania, pointing out, inter alia, that the cancer mortality rate in the area was significantly higher than in the rest of the region.[184] Considering the case law of the ECtHR on waste management—especially the findings of Di Sarno—and the scientific evidence in the given case, it is reasonable to expect the violation of Article 8 in the given case as well, for the non-compatibility of the state with the positive measures required to protect the right to respect for private and family life.

183 Di Sarno and others v. Italy, 6–9, 52–56, 104–113.
184 See: Locascia and others v. Italy.

5. The interpretation of further human rights from an environmental perspective

As mentioned above, although the European Convention on Human Rights does not include a specific provision on the right to a safe, clean, and healthy environment, it has progressively developed an environmental dimension to the Convention. Given the extensive case law of the right to life and the right to respect for private and family life, the present chapter focuses on their environmental implications; however, the interpretation of certain other human rights included in the Convention shall also be briefly presented. Thus, the next section will be dedicated to the analysis of the "green" interpretation of these human rights in the practice of the ECtHR.

5.1. Prohibition of inhuman or degrading treatment (Article 3)

Article 3 of the ECHR declares that *"no one shall be subjected to torture or to inhuman or degrading treatment or punishment"*. According to the Court's practice, the distinction between these notions derives principally from a difference in the intensity of the suffering inflicted. Furthermore, treatment is considered "degrading" when it humiliates or debases an individual, showing a lack of respect for—or diminishing—their human dignity. The Court tends to find a violation of this article if the purpose of the treatment was to humiliate or debase the victim. The interrelation between the prohibition of inhuman treatment and environmental protection was shown in *Florea v. Romania* and *Elefteriadis v. Romania*, both cases linked with tobacco control. The applications concerned severely ill applicants serving a sentence in a cell with smokers, despite the doctors' advice and the law in force. The Court thus found a breach of Article 3 for the reason that the conditions of detention to which the applicants had been subjected had exceeded the threshold of severity required.[185] In such cases, several factors shall be considered, including the health condition of the persons exposed to smoke, the duration of the exposure to some, whether the person exposed was a smoker, whether the authorities had adopted any measures to address such exposure, and others.[186]

5.2. Right to liberty and security (Article 5)

Under Article 5, the Convention provides a person's right to liberty and security, of which no one shall be deprived with the exception of a few cases related to their lawful arrest or detention. The right also incorporates (a) one's right to be informed promptly, in a language that they understand, of the reasons of their arrest and of any charge against them; (b) the right to be brought promptly before a judge; (c) the right to trial

185 See Florea v. Romania; Elefteriadis v. Romania.
186 Tsampi, 2022, pp. 62–63.

or to be released pending trial; (d) the right to have lawfulness of detention speedily examined by a Court; and (e) the right to compensation for unlawful detention.[187]

Regarding the interrelation between the right to liberty and security and the environment, *Mangouras v. Spain* is particularly worth mentioning. The case concerned an oil leak in the Atlantic Ocean near the Spanish exclusive economic zone off the coast of Galicia. The spillage of the ship's cargo caused an ecological disaster, including the coloration of beaches and cliffs black, the destruction of the marine fauna and flora, damage to protected natural areas, and repercussions on several sectors of the economy, such as fishing, commerce, and tourism. A criminal investigation was opened, and the applicant—the former captain of the ship—was remanded in custody with the possibility to be released on a bail of 3 million euros. After a detention of 83 days, the applicant was released and granted provisional release as his bail was paid by the shipowner's insurance. Nevertheless, the applicant complained that the amount of bail had been excessively high and had been fixed without regard for his personal situation (e.g., his status as an employee, his nationality and place of permanent residence, his lack of ties in Spain, and his age). The Court found no violation of the right to liberty and security for the amount of bail to be paid for the damage, considering the severity of the environmental disaster caused by the spill. The Court indicated that such huge environmental pollution had seldom been seen in the area and that the tendency to use criminal law as a means of enforcing environmental obligations could be observed in European but also in international law.[188] In this regard, the Court found that the amount of loss imputed on the applicant could also justify the amount set for bail; this argument certainly proves that environmental aspects were duly taken into account in the given case.

5.3. Right to a fair trial (Article 6)

The right to a fair trial is guaranteed by Article 6 of the Convention. According to the text of the provision, *"in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law"*. The case law of the Court on this Article is extensive; therefore, it is divided into civil and procedural limbs due to the extensive scope of the right to a fair trial. Both limbs encompass (a) the right of access to a court; (b) institutional requirements of a tribunal, including establishment by law, independence, and impartiality; (c) procedural requirements, such as fairness, public hearing, and a reasonable-time requirement. The criminal limb of the right establishes further specific guarantees, namely the presumption of innocence and the rights of the defense.[189]

187 See Guide on Article 5, 2022, pp. 33–53.

188 Mangouras v. Spain, 13–17, 88–93. On the prevalence of environmental interests over human rights requirements in the Mangouras case, see: Raisz and Seres, 2015.

189 See Guide on Article 6 (civil limb), 2022, and Guide on Article 6 (criminal limb).

Through the right to a fair trial, the ECtHR provides robust support for the right to access to justice in environmental matters guaranteed by the Aarhus Convention. Thus, contrary to the other human rights presented above—the right to life, the right to respect for private and family life, the prohibition of inhuman or degrading treatment, and the right to liberty and security—for whose realization the environment serves as a precondition, the right to a fair trial belongs to the procedural human rights through which environmental issues could be addressed. As presented above, the Court has adjudicated in several environmental matters where a violation of the right to a fair trial arose: in *Apanasewicz v. Poland*, the Court found the violation of Article 6 for the lack of diligence on the part of the authorities and the lack of effective judicial protection; in *Deés v. Hungary*, *Bor v. Hungary* and *Borysiewicz v. Poland*, the Court found a breach of the right to a fair trial on account of the length of the proceedings, that is, exceeding the limits set by the reasonable-time criteria. In addition to the violation of procedural requirements under Article 6, violations of the right to access to a court have also emerged in relation to the environment: for instance, in *L'Érablière A.S.B.L. v. Belgium*, the applicant—a non-profit association campaigning for the protection of the environment—complained against the granting of planning permission to expand a waste-collection site, which was refused by the Conseil d'État on procedural grounds. The Court held a violation of Article 6, given that the imposed limitation had been disproportionate to the requirements of legal certainty and proper administration of justice.[190]

5.4. Freedom of expression and freedom to receive and impart information (Article 10)

Freedom of expression, according to the Court, *"constitutes one of the essential foundations of [democratic] society, one of the basic conditions for its progress and for the development of every man"*.[191] The Convention declares that the right to freedom of expression includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers and that the exercise of these freedoms may be subject to certain formalities, conditions, restrictions, or penalties. Similarly to the right to a fair trial, freedom of expression could also be considered a procedural right through which people have the right to access to information on environmental matters.

As one could see above, numerous applicants argued that the state or state authorities had failed to provide them with relevant and appropriate information about the state of the environment and the potential risks they had faced;[192] however, those mentioned above are not typical examples of the interrelation of freedom of expression and environmental issues. As such, a recent decision of the Court could

190 L'Érablière A.S.B.L. v. Belgium, 39–44.
191 Handyside v. the United Kingdom, 49.
192 See above: Guerra and others v. Italy.

be mentioned—*Bumbeș v. Romania*, in which the applicant, who was a well-known activist, had to face sanctions for taking part in a protest against proposed gold- and silver-mining activity in the Roșia Montană area, a landscape registered on the UNESCO's world heritage list. The applicant indicated that the protestors had intended to raise awareness with the action and that the protest had been very short and had not led to the destruction of public property. Given that the situation was clearly interrelated with the freedom of assembly, the Court interpreted freedom of expression in this light and declared the violation of both rights, finding that the interference with the applicant's rights had not been necessary and proportionate.[193] Furthermore, a pending application before the ECtHR—*Bryan and others v. Russia*, which concerns Greenpeace activists and two freelance journalists protesting against oil production in the Arctic[194]—alleged the violation of the obligation to respect human rights (Article 1), the right to liberty and security (Article 5), and Article 10 (freedom of expression). Considering also the arguments of the above-presented case of *Greenpeace Nordic and others v. Norway*, it could be concluded that oil production in the Arctic is a topical issue these days, not only for environmentally critical activities but also for the pressure on the countries of the Arctic circle other than the Russian Federation, that is, the dilemma of striking the balance between the economic interest and combating climate change.

In light of the case law related to the environmental aspects of the right to a fair trial and freedom of expression, one may see that the ECtHR provides a high-level forum for the enforcement of procedural environmental rights. Although no direct legal connection exists between the ECHR and the Aarhus Convention,[195] nor do the two conventions reflect similar environmental objectives,[196] the fact that both conventions allow for the protection of the environment through procedural human rights raises the need for a schematic comparison of the two approaches. Firstly, contrary to the ECHR, the compliance mechanism of the Aarhus Convention does not provide a judicial body, and thus, the three procedural rights guaranteed by it could not be as effectively enforced as the rights enshrined in the ECHR. The Aarhus

193 Bumbeș v. Romania, 5–6, 86–102.

194 See Bryan and others v. Russia.

195 The ECHR does not mention the Aarhus Convention as a relevant and applicable *lex specialis* on matters concerning environmental protection, nor does the Aarhus Convention refer to the rights guaranteed by the ECHR or the case law of the ECtHR on procedural human rights. See Peters, 2018.

196 See, for instance, the following excerpt from the Preamble of the Aarhus Convention: *"Affirming the need to protect, preserve, and improve the state of the environment and to ensure sustainable and environmentally sound development, […] Recognizing that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself, […] Recognizing also that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations […]."* Cf. excerpts from the Preamble of the ECHR: *"Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend […]."*

Convention Compliance Committee is a non-confrontational, non-judicial body of a consultative nature,[197] and therefore, it is not entitled to issue binding decisions. Although the protection of environmental interests is a secondary aspect in the jurisprudence of the ECtHR (considering that environmental protection per se is not guaranteed in the Court's practice), as those depend on the primary interest of ensuring effective protection of the individual rights enshrined in the Convention, the Court still seems to provide the best solution within the currently available mechanisms in Europe.

5.5. Freedom of assembly and association (Article 11)

Given that participatory rights also form part of procedural environmental rights, the environmental implications of freedom of assembly in the Court's practice are also worth examining. Article 11 of the Convention declares that everyone has a right to freedom of peaceful assembly and to freedom of association with others and that the restrictions placed on the exercise of these rights shall be prescribed by law and be necessary in a democratic society. Apart from *Bumbeș v. Romania*, concerning an environmental protest, the interference with freedom of association arose in connection with the refusal of the registration of an environmental association in *Costel Popa v. Romania*. The association's objectives were, inter alia, to promote the principles of sustainable development at the public policy level in Romania by increasing expertise in the development of sustainable public policies; improve the process of the development of sustainable public policies by facilitating public participation in and access to relevant information about the environment; raising citizens' awareness; informing people of matters of public concern; raising the awareness of the community and of public authorities about the need to protect the environment; and organizing meetings between citizens and representatives of public authorities. The Court held that no pressing social need would have justified the refusal to register the association, and observed that such a refusal by the authorities amounted to an interference with the freedom of association.[198]

5.6. Right to an effective remedy (Article 13)

Article 13 of the Convention guarantees the right to an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity. At first glance, one could notice a linkage between this right and the right to a fair trial, which was also crystallized by the

197 The Aarhus Convention, Article 15: *"The Meeting of the Parties shall establish, on a consensus basis, optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of this Convention. These arrangements shall allow for appropriate public involvement and may include the option of considering communications from members of the public on matters related to this Convention."*

198 Costel Popa v. Romania, 7, 45–46.

Court's jurisprudence: according to this, the right to a fair trial is *lex specialis* in relation to the right to an effective remedy.[199] In many cases where the Court has found a violation of Article 6, it did not rule separately on a complaint about Article 13. The violation of Article 13 arose in the above-presented *Hatton and others v. the United Kingdom*, in which, although the substantive complaint was rejected, the right to an effective remedy was held. The Court indicated that the domestic law concepts of the time did not allow consideration of the claimed increase in night flights represented a justifiable limitation on Article 8 of the Convention.[200]

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

Lastly, the environmental aspects of Article 1 of Protocol No. 1 of the ECHR could be highlighted. The Article ensures that *"every natural or legal person is entitled to the peaceful enjoyment of his possessions"*. Deprivation of one's possessions is only allowed in the public interest and under the conditions provided for by law and by the general principles of international law. Although the Protocol refers to the "enjoyment of possessions", according to the Court, Article 1 is in substance guaranteeing the right of property. In this scope, negative effects caused by environmental nuisances could indirectly amount to interference with the protection of property; however, in practice, these are not likely to be considered interference unless the property declines in value.[201] Thus, the protection of the enjoyment of possessions is rather interpreted from an economic—and thus restrictive—perspective.[202] Furthermore, the protection of the environment may constitute a legitimate aim of general interest that may justify interference with property rights. Such aspects of environmental protection are, inter alia, town and country planning, the protection of natural sites, the management of forests, or the alleviation of water pollution and sanitary problems.[203]

The above-presented human rights could be interpreted from an aspect that serves the protection of the environment; for instance, a healthy environment serves as a precondition for the enjoyment of substantive rights, such as the right to life or the right to respect for private and family life, and procedural rights, notably the right to a fair trial and the right to an effective remedy, which could be used as a tool for environmental protection. Contrary to these two approaches, the protection of property is interrelated with environmental protection from a different point of view: the protection of the environment, in this case, may pose a restriction to the enjoyment of one's possessions.[204] This affirmation manifests in the Court's practice in the non-violation of Article 1 of the Protocol, that is, finding the protection of the

199 Guide on Article 13, 2022, p. 41.
200 Hatton and others v. the United Kingdom, 141.
201 Desgagné, 1995, pp. 277–278.
202 Weber, 1991, cited in Desgagné, 1995, p. 277.
203 Desgagné, 1995, p. 282.
204 Déjeant-Pons, 1994, pp. 398–408.

environment as a legitimate reason for the interference with the property. This was phrased by the Court in the case of *Hamer v. Belgium* as follows: *"in today's society the protection of the environment is an increasingly important consideration"* and *"even certain fundamental rights, such as ownership, should not be afforded priority over environmental protection considerations, in particular when the state has legislated in this regard"*.[205] Such an approach prevailed, for instance, in a case with Central European implications, *Yaşar v. Romania*. The case concerned the confiscation of a vessel for being illegally used for fishing in the Black Sea. The Court held that there had been no violation of the protection of property: the aim of preventing offenses relating to illegal fishing could have been considered legitimate as such activities pose a serious threat to the biological resources in the area.[206]

6. Concluding remarks

Although no consensus has been reached in international law about the recognition of the right to a clean, healthy, and sustainable environment, human rights law certainly provides a sophisticated platform for the protection of the environment. Human rights bodies have developed numerous ways through which an environmental perspective could prevail in their jurisprudence in the absence of an explicit right to a healthy environment: firstly, the environment could be perceived as a precondition for the enjoyment of certain substantive rights, and thus, its degradation could lead to the violation of such rights; secondly, procedural rights could be used for addressing environmental issues; and thirdly, the protection of the environment could be considered a public interest, and as such, justify the interference with some rights.

The current European human rights framework does not provide a substantive right to a healthy environment; however, the ECtHR developed an extensive interpretation of several human rights, which could be seen from the fact that the reasoning of its judgments, in some cases, may rely on environmental considerations. The interdependence of a healthy environment and the enjoyment of human rights could be best observed in the case law of Article 2 (the right to life) and Article 8 (the right to respect for private and family life). However, environmental aspects were also considered in adjudicating Article 3 (the prohibition of inhuman or degrading treatment), Article 5 (the right to liberty and security), and Article 10 (the freedom of expression). Procedural rights guaranteed by Article 6 (the right to a fair trial) and Article 13 (the right to an effective remedy) were, in numerous cases, used as a tool for strengthening environment-related activities. Lastly, the protection of the

205 Hamer v. Belgium, 79.
206 Yaşar v. Romania, 59.

environment may constitute a legitimate aim for interference with Article 1 of Protocol No. 1 of the Convention (the protection of property).

Regarding the right to life, although the Court has a well-established practice of adjudicating dangerous activities, toxic industrial emissions, and natural disasters, the recent wave of so-called climate litigation cases—which emerged primarily before domestic courts—has also reached the Court. A common characteristic of these strategic applications is that they aim to produce a systemic solution for addressing climate change by broadening the limits of the ECtHR. Considering the facts of the cases, however, several problems may arise that could hinder the successful outcome of the applications: the issues of non-exhaustion, extraterritoriality, potential victimhood, and non-compliance with an agreement outside of the scope of the (European) human rights framework will definitely challenge the Court's margin of appreciation and its willingness to push its boundaries further. Although Central European countries are scarcely represented in the environment-related case law of the right to life, it does not necessarily mean that such problems do not exist in the region. Climate change, for instance, is one of the topical examples of cross-border environmental problems, and it could be expected that the outcome of such cases will have an impact on this region as well—either directly or indirectly. A direct impact could be produced especially by *Duarte Agostinho*, where most countries examined in this volume appear as respondent states. On the other hand, a judgment in other climate litigation cases could pave the way for future climate actions: in case of a positive outcome (i.e., if the Court finds a breach of the Convention for not respecting the goals set in the Paris Agreement), the judgments could call for a more involving state approach to address climate change, while inadmissibility or non-violation could discourage the states from focusing on climate goals and also individuals from standing up for the issue.

Furthermore, the environmental implications of the right to life and the right to respect for private and family life may overlap: as one could conclude from the above, the ECtHR has dealt with several cases where both rights were alleged to have been violated, and determining under the scope of which right the given case fell was a question at the Court's discretion. The importance of the interrelation of the right to respect for private and family life and the protection of the environment is also shown by the fact that the first "green" cases of the Court, which established the evolutive interpretation of the Convention, invoked this right. One could say that cases relating to industrial pollution and noise pollution—including neighboring noise and traffic noise—constitute the core of the environmental case law of the right to private life. Apart from groundbreaking decisions, such as *López Ostra, Cordella and others, Moreno Gómez* and *Di Sarno*, which laid down the fundamentals of the adjudication of environmental aspects of the right to private life, one may come across several cases from the Central European region in various contexts. The cases of *Deés*, *Bor*, and *Kapa and others* significantly contributed to the interpretation and evaluation of the positive obligation of states to guarantee individuals' right to

respect for the home and private life, and the case of *Tătar* points to the deficiencies of the human rights approach to environmental protection.

Given that the enforceability of international environmental law seems problematic—for instance, there is no independent international tribunal for environmental law—the fact that there is a certain flexibility in the human rights framework that allows the inclusion of environmental considerations in the jurisprudence is certainly a great progress for environmental law. However, the human rights approach also has its limits: the question of liability of non-state actors, the protection of biodiversity, the scope of victims compared to the actual applicants, and the choice of right(s) under which the given case might fall are among the most serious challenges to tackle for human rights adjudicating bodies. As for the scope of human rights, a further question may also arise, that is, whether the introduction of a substantive right to a clean, healthy, and sustainable environment would really be necessary. It could be admitted that such a step would be a milestone in the development of international environmental law as it would undoubtedly extend the scope of environmental protection (considering that now the Convention does not guarantee the protection of the environment per se, only if its degradation results in the interference with other human rights); however, would it solve other problems of the human rights approach, such as the question of accountability? Is or is not the current system susceptible to adjudicate systemic problems, such as climate change, loss of biodiversity, or sea-level rise? These are the questions to be decided in the near future.

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