

# The Right to a Fair Trial and the Right to an Effective Remedy in Environmental Protection (Perspective of the ECtHR Case Law Under Articles 6 and 13 ECHR)

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## ABSTRACT

This paper provides a detailed overview of the jurisprudence of the European Court of Human Rights on the application of Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms in environmental cases, highlighting the specific nature of this case law. The study examines: the predominance of cases relating to the civil limb of Article 6 § 1 of the Convention, the catalogue of civil rights relevant to environmental matters, the entitlement of environmental associations to claim or exercise such rights (the associations' standing), the "directly decisive" outcome of domestic proceedings for applicants' civil rights, the application of Articles 6 § 1 and 13 to general acts, and the interrelation between these provisions. Reference material includes the Court's jurisprudence in "key cases", and those concerning Central and Eastern European countries.

## KEYWORDS

right to a fair trial, right to an effective remedy, ECtHR's case law, protection of the environment

## 1. Introduction

It is a well-established fact that the environment is protected under various international conventions regulating specific issues such as climate change, biodiversity, landscape, and air pollution<sup>1</sup>. However, the fundamental treaty, described as 'a constitutional instrument of European public order'<sup>2</sup>, i.e. the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>3</sup> (hereinafter the "ECHR" or

1 Cliza and Spătaru-Negură, 2020, p. 123; Manual, 2022, p. 7.

2 *Loizidou v. Türkiye*, p. 75.

3 Council of Europe, 1950.

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the “Convention”), neither directly includes provisions on environmental preservation, nor explicitly guarantees the right to a safe, clean, quiet, healthy or sustainable environment<sup>4</sup>.

Nevertheless, in light of the evolving case law of the European Court of Human Rights (hereinafter: the “ECtHR” or the “Court”), it can be assumed that the ECHR indirectly provides a degree of environmental protection when alleged violations of Convention rights are associated with potential or actual interference with the environment<sup>5</sup>. In other words, the Court cannot declare environmental complaints admissible unless they directly concern individual rights expressly protected under the ECHR<sup>6</sup>. The ECtHR has already identified that such issues may affect the right to life (Article 2 ECHR), the prohibition of inhuman or degrading treatment (Article 3 ECHR), the right to a fair trial and access to a court (Article 6 ECHR), the right to respect for private and family life as well as home (Article 8 ECHR), the right to receive and impart information and ideas (Article 10 ECHR), the right to freedom of peaceful assembly and association (Article 11 ECHR), the right to an effective remedy (Article 13 ECHR) and the right to peaceful enjoyment of one’s possessions (Article 1 of Protocol No. 1 ECHR)<sup>7</sup>. This linkage is possible because the quality of the environment is closely related to the effective enjoyment of human rights<sup>8</sup>.

The subject of this paper is an analysis of the ECtHR’s jurisprudence based on Articles 6 and 13 ECHR and their application to cases where domestic resolutions had, or could have had, at least an indirect effect on the environment. The analysis assumes the need for at least a general definition of the term “environment”. In this context, the findings of the “Manual” prepared within the framework of the Council of Europe were considered. Under the “Manual”, international law (including the Convention) does not provide a standard definition of the environment, and the ECtHR refrains from doing so due to the nature of the court’s tasks. However, within the Council of Europe framework, the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment<sup>9</sup> seeks to indicate the scope of the concept of environment (Article 2, point 10). Similarly, the International Court of Justice has attempted to define it.<sup>10</sup> The “Manual” provides as follows: ‘Considering the various definitions, it appears to be commonly accepted that the environment includes a wide range of elements, including air, water, land, flora, and fauna, as well as human health

4 Caglayan, 2015, p. 83; Cliza and Spătaru-Negură, 2020, p. 124, 133; Fehete, 2012, p. 1073; Manual, 2022, p. 7; Pedersen, 2010, p. 573; Spătaru-Negură, 2024, p. 334.

5 Cliza and Spătaru-Negură, 2020, p. 124; Manual, 2022, p. 7; Raisz and Krajnyák, 2022, p. 75.

6 Caglayan, 2015, p. 86; Machińska, 2014, p. 60.

7 Manual, 2022, p. 8; see also: Cliza and Spătaru-Negură, 2020, p. 124; Desgagné, 1995, pp. 266–280; Council of Europe and European Court of Human Rights, 2024; Raisz and Krajnyák, 2022, p. 78.

8 Desgagné, 1995, p. 293.

9 Council of Europe, 1993.

10 E.g. International Court of Justice, 1996, p. 29.

and safety, and that it is to be protected as part of the more global goal of ensuring sustainable development.<sup>11</sup>

Therefore, this approach serves as a point of reference for reviewing ECtHR case law. At the same time, the overview answers the specific application of Articles 6 and 13 ECHR in environmental contexts. Given the broad scope of the issue, the focus is put on “key cases” and jurisprudence concerning Central and Eastern European countries.

## 2. General Remarks Concerning the Right to a Fair Trial and the Right to an Effective Remedy

To address the specific application of Articles 6 and 13 ECHR in environmental cases, it is necessary to first outline the normative content of these provisions in general terms, without yet considering their specific scope.

Article 6 § 1 ECHR (“Right to a fair trial”) stipulates: ‘In the determination of his civil rights and obligations, or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly (...)’.

In light of the ECtHR’s case law in environmental matters, it is unnecessary to quote or analyse the remaining sections of Article 6. They specify the guarantees of the right to a fair trial in criminal matters (i.e. the presumption of innocence, the right to be promptly informed of the nature and cause of the accusation, the right to adequate time and facilities for the preparation of defense, the right to self-defense or legal assistance, the right to examine witnesses, and the right to free assistance of an interpreter), which have not yet been specifically referenced in the Court’s environmental jurisprudence.

As for the “civil limb” of Article 6 § 1 ECHR, the notion of “civil rights and obligations” is an “autonomous” concept derived from the Convention and cannot be interpreted solely by reference to domestic law. Accordingly, Article 6 § 1 applies regardless of the nature of the provisions governing the ‘dispute’ (civil, commercial, administrative law, etc.)<sup>12</sup>. However, ‘The principle according to which the autonomous concepts contained in the Convention must be interpreted in the light of present-day conditions in democratic societies does not give (...) power to interpret Article 6 § 1 as though the adjective “civil” (...) were not present in the text’.<sup>13</sup>

The civil nature of a right or obligation must be determined by its substantive content and effects under the domestic law of the State concerned, while also considering the objectives of the Convention and the legal systems of other Contracting

11 Manual, 2022, pp. 133–134.

12 Council of Europe, European Court of Human Rights, 2025a, p. 7.

13 *Ferrazzini v. Italy*, para. 30.

States.<sup>14</sup> In principle, the applicability of Article 6 § 1 to disputes between private individuals classified as “civil” in domestic law is uncontested. This provision also extends to proceedings that come under “public law” domestically when their outcome is decisive for private rights and obligations or for the protection of “pecuniary rights”.<sup>15</sup> Moreover, the ECtHR has adopted a broad interpretation of the “civil limb”, encompassing cases that may not initially appear to concern a civil rights but that directly and significantly affect an individual’s pecuniary or non-pecuniary rights.<sup>16</sup> For example, Article 6 § 1 applies to building permits, administrative permission to pursue an occupation, licenses for serving alcoholic beverages,<sup>17</sup> and disciplinary proceedings before professional bodies where the right to practice a profession is directly at stake.<sup>18</sup>

Recently the Court summarised its case law relating the other requirements for applying Article 6 § 1 in *Verein Klimasenioren Schweiz and Others v. Switzerland*. According to the judgement: ‘For Article 6 § 1 in its civil limb to be applicable, there must be a “dispute” (“contestation” in French) over a right which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether that right is protected under the Convention (...). The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play.’<sup>19</sup>

The concept of a “criminal charge” has also an “autonomous” meaning, independent of categorisations employed in the national legal systems. This applies both to determining the “criminal” nature of the charge and the moment from which such a “charge” exists.<sup>20</sup> The ECtHR prefers a “substantive”, rather than “formal”, conception of a “charge” under Article 6 § 1<sup>21</sup>. It could be defined as ‘the official notification given to an individual by the competent authority of an allegation that he [or she] has committed a criminal offence’<sup>22</sup>. The answer to the question whether there is a “criminal offence” or “criminal charge” in a particular case is determined using the “Engel criteria”: (1) classification in domestic law, (2) nature of the offence, and (3) severity of the potential penalty. The first criterion carries relative weight and serves only as a starting point, while the second and third are of greater significance.<sup>23</sup> The Court points out that these latter criteria are alternative, not cumulative, thus Article

14 *König v. Germany*, para. 89.

15 Council of Europe, European Court of Human Rights, 2025a, p. 17.

16 Council of Europe, European Court of Human Rights, 2025a, p. 18.

17 Council of Europe, European Court of Human Rights, 2025a, p. 17.

18 Council of Europe, European Court of Human Rights, 2025a, p. 18.

19 *Verein Klimasenioren Schweiz and Others v. Switzerland*, para. 595.

20 Council of Europe and European Court of Human Rights, 2025b, p. 9.

21 *Deweert v. Belgium*, para. 44.

22 *Deweert v. Belgium*, para. 46.

23 Council of Europe and European Court of Human Rights, 2025b, p. 11; *Engel and Others v. the Netherlands*, para. 82.

6 applies if the offence is “criminal” by its nature under the Convention or exposes the person to a sanction that, by its nature and degree of severity, belongs to the “criminal” sphere.<sup>24</sup> On this basis, the criminal limb of Article 6 § 1 has been applied, for example, to offences against military discipline carrying a penalty of committal to a disciplinary unit for several months<sup>25</sup>, road-traffic offences punishable by fines or driving restrictions, administrative offences related to public assemblies<sup>26</sup>, tax surcharges<sup>27</sup>, and administrative fines imposed by Competition Protection Agency for obstructing inspections.<sup>28</sup>

Article 6 § 1 ECHR sets out general principles of broad application (explicitly to two basic categories of trials, i.e. civil and criminal, but also including administrative judicial proceedings), which serve as guarantees of procedural fairness<sup>29</sup>. These guarantees are both procedural and institutional in nature.

First, they include the “practical and effective”<sup>30</sup> right of access to a court<sup>31</sup>, which contains the rights to legal aid (representation)<sup>32</sup> and to the execution of a final judicial decision or an interlocutory order pending that decision.<sup>33</sup>

Second, these provisions establish requirements for what constitutes a “tribunal”: a body with a judicial function (i.e. deciding matters within its competence under the law after proceedings are conducted in a prescribed manner); existing on a legal basis, in accordance with the specific rules governing it (including the composition of the court hearing the case); composed of judges selected on merit, who fulfil the requirements of technical competence and moral integrity required to perform judicial functions and are appointed under relevant rules; an independent and impartial body, referring to both personal and institutional independence, which ensures impartial decision-making and reflects, on one hand, a state of mind denoting a judge’s moral integrity and resistance to external pressure, and a set of institutional and operational guarantees<sup>34</sup>; a body with “full jurisdiction” to examine all questions of fact and law relevant to the dispute before it.<sup>35</sup>

Third, the guarantees under Article 6 § 1 cover the following procedural requirements of: a fair hearing, encompassing effective participation of a party in the procedure, equality of arms, adversarial proceedings, reasoned judicial decisions, and fair

24 *Lutz v. Germany*, para. 55.

25 Council of Europe and European Court of Human Rights, 2025b, p. 12.

26 Council of Europe and European Court of Human Rights, 2025b, p. 13.

27 Council of Europe and European Court of Human Rights, 2025b, p. 14.

28 *Produkcija Plus Storitveno Podjetje D.O.O. v. Slovenia*, paras. 45–46.

29 Schabas, 2015, pp. 270–271.

30 *Weissman and Others v. Romania*, para. 37.

31 Schabas, 2015, pp. 284–285; *Golder v. the United Kingdom*, para. 36; Council of Europe and European Court of Human Rights, 2025b, p. 17.

32 Council of Europe and European Court of Human Rights, 2025a, pp. 54–56.

33 *Okyay and Others v. Türkiye*, para. 72.

34 *Guðmundur Andri Ástráðsson v. Iceland*, paras. 218–234. For specific guarantees of independence and impartiality, see: Council of Europe and European Court of Human Rights, 2025a, pp. 74–88; Council of Europe and European Court of Human Rights, 2025b, pp. 23–33.

35 *Ramos Nunes de Carvalho e Sá v. Portugal*, paras. 176–177.

administration of evidence<sup>36</sup>; a public hearing (which implies *inter alia*, the right to an “oral hearing” and the public pronouncement of judgments)<sup>37</sup>; reasonable duration of proceedings (applicable to all stages of a domestic case, counted from the initiation of the proceedings until the enforcement of the judgment).<sup>38</sup>

According to the ECtHR, Article 6 § 1 constitutes a *lex specialis* in relation to Article 13 of the Convention<sup>39</sup>. This means that the safeguards in the former, ‘implying the full panoply of a judicial procedure, are stricter than, and absorb, those of Article 13’<sup>40</sup> (except in cases alleging a violation of the right to trial within a reasonable time under Article 6 § 1<sup>41</sup>). Article 13 ECHR provides for the “right to an effective remedy”, saying: ‘Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.’

This provision articulates the State’s obligation to secure the protection of the Convention primarily within its own legal system, reflecting the subsidiary nature of the ECtHR’s complaint mechanism, as also articulated in Article 35 § 1 ECHR.<sup>42</sup> The effect of Article 13 is to require a domestic remedy capable of addressing the substance of an ‘arguable complaint’ under the Convention and of granting proper relief, while allowing Contracting States some discretion in how they meet their obligations.<sup>43</sup> Thus, Article 13 has no independent viability; it complements the substantive clauses of the Convention and its Protocols and applies only in combination with an alleged violation of another article. The underlying grievance must, however, be “arguable” under the Convention.<sup>44</sup>

The “authority” mentioned in Article 13 need not always be a judicial institution or a tribunal within the meaning of Article 6 § 1. It may instead be an ombudsman, an administrative authority, or even a political authority such as a parliamentary commission. However, the authority’s powers and procedural safeguards, and independence must be considered, as well as whether the applicant is provided with procedural guarantees.<sup>45</sup>

For a “remedy” to be “effective,” it must directly provide redress for the impugned situation, encompass the merits of the applicant’s complaint, be prompt and

36 Council of Europe and European Court of Human Rights, 2025a, p. 88, pp. 106–117; Council of Europe and European Court of Human Rights, 2025b, pp. 35–44, pp. 47–51.

37 Council of Europe and European Court of Human Rights, 2025a, pp. 118–125; Council of Europe and European Court of Human Rights, 2025a, pp. 60–67.

38 Council of Europe and European Court of Human Rights, 2025a, pp. 125–131 ; Council of Europe and European Court of Human Rights, 2025b, pp. 68–72.

39 *Kudła v. Poland*, para. 146; Chanturia, 2023, p. 20.

40 *Kudła v. Poland*, para. 146.

41 *Kudła v. Poland*, para. 147; Chanturia, 2023, p. 20.

42 *Kudła v. Poland*, para. 152.

43 *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, para. 148.

44 Council of Europe and European Court of Human Rights, 2025c, p. 8. For more on the “arguability of the claim”, see: Council of Europe and European Court of Human Rights, 2025c, pp. 8–12.

45 Council of Europe and European Court of Human Rights, 2025c, p. 13.

accessible, and exist at the same time the application is brought before the Court.<sup>46</sup> The “effectiveness” of a remedy does not depend on the certainty of a favourable outcome for the applicant.<sup>47</sup> The ECtHR also indicates that: ‘In the evaluation of the effectiveness of a remedy for the purposes of Article 13 of the Convention, the requirements of Article 6 may be relevant. As a rule, the fundamental criterion of fairness, including the equality of arms, is a constituent element of an effective remedy.’<sup>48</sup>

The scope of Article 13 ECHR extends to acts of the administration (of government) or executive, acts of the judiciary, and even acts of private persons where the State shares responsibility for such acts or has failed to take necessary preventive measures.<sup>49</sup> However, this provision does not guarantee a remedy allowing domestic laws to be challenged before a national authority on the grounds of incompatibility with the Convention,<sup>50</sup> nor does it allow the questioning of general policy.<sup>51</sup>

### 3. “Civil Right” and “Criminal Charge” Recognised Under Domestic Law That Relate to the Environment

Environmental cases alleging violations of Article 6 § 1 ECHR concern the civil limb of that provision. Examples of domestic “civil rights” that the ECtHR has treated as protected under Article 6 § 1 are set out below.

In *Athanassoglou and Others v. Switzerland*, the applicants complained that they were denied effective access to the courts because Swiss law did not permit them to challenge the Federal Council’s decision to grant Nordostschweizerische Kraftwerke AG a limited licence for the Beznau II Nuclear Power Plant.<sup>52</sup> The ECtHR held that Article 6 § 1 of the Convention did not apply since: ‘the outcome of the procedure before the Federal Council was decisive for the general question whether the operating licence of the power plant should be extended, but not for the “determination” of any “civil right”, such as the rights to life, to physical integrity and of property, which Swiss law conferred on the applicants in their individual capacity.’<sup>53</sup>

In *Posti and Rahko v. Finland*, the applicants alleged lack of access to a tribunal to challenge fishing restrictions imposed by government decrees.<sup>54</sup> The applicants were fishermen operating in the coastal region of the Gulf of Bothnia, based on lease agreements concluded with the State.<sup>55</sup> In this case, the ECtHR defined a “civil right” as the

46 Council of Europe and European Court of Human Rights, 2025c, pp. 17–18.

47 *Kudła v. Poland*, para. 157.

48 *Csüllög v. Hungary*, para. 46.

49 Council of Europe and European Court of Human Rights, 2025c, pp. 23–24; Chanturia, 2023, p. 19.

50 *Supreme Holy Council of the Muslim Community v. Bulgaria*, para. 107.

51 *Hatton and Others v. the United Kingdom*, para. 138.

52 *Athanassoglou and Others v. Switzerland*, para. 35.

53 *Athanassoglou and Others v. Switzerland*, para. 55.

54 *Posti and Rahko v. Finland*, para. 3.

55 *Posti and Rahko v. Finland*, para. 8.

right to fish for salmon and sea trout in those waters beyond the limits introduced by the contested 1996 and 1998 Decrees, which the applicants had enjoyed under a 1995–99 lease agreement.<sup>56</sup>

Several cases involve non-implementation of final court judgments or administrative decisions. In *Kyrtatos v. Greece*, the applicants complained that authorities failed to enforce the Supreme Administrative Court's annulment of two permits for the construction near their properties.<sup>57</sup> The permits were illegal because associated buildings had to be demolished since the Cyclades Prefect's decision 9468/1985, altering settlement boundaries, violated Article 24 of the Greek Constitution protecting the environment. The altered boundaries threatened the Ayios Yiannis swamp, an important habitat for protected species, such as birds, fish, and sea turtles.<sup>58</sup> Similarly, *Apanasewicz v. Poland* concerned failure to enforce a final judgment prohibiting a neighbouring property owner from producing and selling concrete;<sup>59</sup> the domestic court noted that the neighbour's activities had impaired the applicant's peaceful enjoyment of the property beyond normal neighbourhood inconvenience.<sup>60</sup> In both cases, the ECtHR found a violation of Article 6 § 1 ECHR,<sup>61</sup> although the Court did not elaborate the civil nature of protected rights.

A comparable problem of non-implementation arose in *Taşkın and Others v. Türkiye* and in *Okyay and Others v. Türkiye*. The first case involved the authorities' failure to implement administrative court judgments quashing the operating permit for the Ovack gold mine issued by the Ministry of the Environment.<sup>62</sup> As the ECtHR pointed out, the claimants had invoked their right to adequate protection of physical integrity from risks associated with the gold mine located in the neighbourhood.<sup>63</sup> This right is recognised under Turkish law as the right to live in a healthy and balanced environment (Article 56 of the Turkish Constitution). Accordingly, the applicants were entitled under Turkish law to protect against the environmental damage caused by the activities of the mine in question.<sup>64</sup> Once the administrative court had cancelled the permit, any administrative decision taken to circumvent that judgment opened the way to compensation.<sup>65</sup>

The ECtHR provided similar reasoning in *Okyay and Others v. Türkiye*. Applicants complained that their right to a fair hearing had been breached on account of the authorities' failure to enforce administrative courts' decisions and orders to halt the operation of three thermal power plants, polluting the environment in the province

56 *Posti and Rahko v. Finland*, para. 52.

57 *Kyrtatos v. Greece*, paras. 2, 27.

58 *Kyrtatos v. Greece*, para. 13.

59 *Apanasewicz v. Poland*, para. 3.

60 *Apanasewicz v. Poland*, p. 14.

61 *Kyrtatos v. Greece*, para. 32; *Apanasewicz v. Poland*, paras. 82–83.

62 *Taşkın and Others v. Türkiye*, p. 21, paras. 27–28, para. 127.

63 *Taşkın and Others v. Türkiye*, para. 131.

64 *Taşkın and Others v. Türkiye*, para. 132.

65 *Taşkın and Others v. Türkiye*, para. 133.

of Muğla, south-west Türkiye.<sup>66</sup> The applicants relied on their constitutional right to live in a healthy and balanced environment which is recognised in the Turkish Constitution,<sup>67</sup> and thus had the standing to seek suspension of the plants' operations and annulment of authorising administrative acts. Administrative refusal to implement the favourable judgments or attempts to bypass them likewise opened the way to compensation.

Therefore, the outcomes of the proceedings before the administrative courts as a whole can be considered to relate to the "civil right" of the applicants.<sup>68</sup> Against such a background, the ECtHR in both above cases found violations of Article 6 § 1 of the Convention.<sup>69</sup>

In *Gorraiz Lizarraga and Others v. Spain*, the applicants, five Spanish citizens and the Coordinadora de Itoiz Association, claimed that they were not given a fair hearing in the judicial proceedings to stop the construction of the Itoiz Dam because they were prevented from participating in the preliminary constitutional ruling proceedings of the 1996 Autonomous Community Act.<sup>70</sup> The construction of the dam would flood three nature reserves and several small villages, including Itoiz, where the applicants lived.<sup>71</sup> While the ECtHR found no violation of Article 6 § 1, it analysed the rights involved in the case. The Court noted that the proceedings, beyond defending the public interest, sought to protect the applicants' specific interests (including members of the association), namely, their home, property, and lifestyle in the valley that was to be flooded. Regarding the Constitutional Court's ruling, declaring the unconstitutionality of the Autonomous Community Act could have protected the environment, homes, and other properties of the applicants.<sup>72</sup> A direct and specific threat menacing personal assets and lifestyles gave the proceedings an "economic" and civil dimension.<sup>73</sup> The ECtHR, therefore, found that the proceedings might concern the "civil rights" of the applicants.<sup>74</sup>

The "civil rights" were also protected in cases involving alleged violation of the right to a hearing within a reasonable time. This occurred not only in *Kyrtatos v. Greece*,<sup>75</sup> but also in *Borysiewicz v. Poland*, where this allegation concerned proceedings to protect the applicant's "home" from nuisances (primarily noise) arising from the operation of a neighbouring workshop.<sup>76</sup>

In *Leon and Agnieszka Kania v. Poland*, the disputed duration of the procedures concerned obtaining and implementing a final administrative decision ordering the

66 *Okyay and Others v. Türkiye*, paras. 3, 9, 60.

67 *Okyay and Others v. Türkiye*, para. 67.

68 *Okyay and Others v. Türkiye*, para. 67.

69 *Taşkın and Others v. Türkiye*, 138; *Okyay and Others v. Türkiye*, para. 75.

70 *Gorraiz Lizarraga and Others v. Spain*, paras. 3, 32.

71 *Gorraiz Lizarraga and Others v. Spain*, para. 9.

72 *Gorraiz Lizarraga and Others v. Spain*, para. 45.

73 *Gorraiz Lizarraga and Others v. Spain*, para. 46.

74 *Gorraiz Lizarraga and Others v. Spain*, para. 47.

75 *Kyrtatos v. Greece*, paras. 2, 33.

76 *Borysiewicz v. Poland*, para. 3, paras. 57–58.

liquidation of the craftsmen's cooperative "Wielobranżowa", located next to the applicants' home.<sup>77</sup> They claimed it caused intolerable noise and pollution, resulting in profound and long-lasting health problems. The cooperative carried out maintenance services for trucks, metal cutting and grinding, and other operations in the iron and steel industry.<sup>78</sup>

In *Deés v. Hungary* the complaint referred to procedures seeking protection from noise, pollution, and smell caused by heavy traffic, which made the applicant's house practically uninhabitable.<sup>79</sup>

In *Bor v. Hungary*, domestic proceedings involved measures to counter increased noise from a railway station, which prevented applicants from enjoying their homes.<sup>80</sup>

In all these cases, the ECtHR found a violation of Article 6 § 1 of the Convention.<sup>81</sup> However, the Court did not refer more extensively to the civil nature of protected rights or explain why such rights were at issue.

In *L'erablière A.S.B.L. v. Belgium*, a non-profit-making association complained against the Conseil d'Etat's decision declaring inadmissible its application for judicial review of planning permission to expand technical-landfill site. The ruling found the application defective for lacking a statement of facts, allegedly violating Article 6 § 1 ECHR.<sup>82</sup> It is worth noting that all founding members and administrators of the applicants lived in municipalities directly affected by the landfill expansion plans. In the Court's view, increasing the landfill capacity would significantly impact their private lives by generating nuisance and decreasing the market value of their properties.<sup>83</sup> The ECtHR unanimously concluded that there had been a violation of Article 6 § 1 of the Convention.

In *Ivan Atanasov v. Bulgaria*, the applicant alleged that the Supreme Administrative Court violated Article 6 § 1 ECHR in recognising his complaint against a licence allowing ET Marin Blagiev to carry and lay sludge from the Plovdiv treatment plant near his farm.<sup>84</sup> The ECtHR found that Bulgarian law conferred on the applicant right to a "healthy and favourable environment", a "civil" right for the purposes of Article 6 § 1.<sup>85</sup> However, the outcome of the proceedings was not "decisive" for determining any such civil right under Bulgarian law. Accordingly, Article 6 § 1 ECHR did not apply and therefore was not violated.<sup>86</sup>

77 *Leon and Agnieszka Kania v. Poland*, para. 73.

78 *Leon and Agnieszka Kania v. Poland*, paras. 5, 93.

79 *Deés v. Hungary*, para. 3.

80 *Bor v. Hungary*, para. 26.

81 *Kyrtatos v. Greece*, para. 43; *Borysiewicz v. Poland*, paras. 69–70; *Leon and Agnieszka Kania v. Poland*, para. 84; *Deés v. Hungary*, para. 27; *Bor v. Hungary*, para. 31.

82 *L'erablière A.S.B.L. v. Belgium*, para. 20.

83 *L'erablière A.S.B.L. v. Belgium*, para. 28.

84 *Ivan Atanasov v. Bulgaria*, para. 85, paras. 20–30.

85 *Ivan Atanasov v. Bulgaria*, para. 91.

86 *Ivan Atanasov v. Bulgaria*, paras. 95–96.

In *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, the applicants unsuccessfully requested government authorities to take formal decision on “real acts” (based on federal public law that affect rights and obligations, but do not arise from formal rulings) to remedy alleged climate protection omissions.<sup>87</sup> Their complaints were dismissed by the Federal Administrative and Supreme Courts.<sup>88</sup> The applicants (the *Verein KlimaSeniorinnen Schweiz* association and four Swiss citizens) then turned to the ECtHR, arguing that they had no access to a court regarding the State’s failure to adapt measures addressing the negative effects of climate change.<sup>89</sup> The Court referred to the applicants’ “civil right” to life under the Swiss Constitution, which also derives the right to the protection of physical integrity.<sup>90</sup> It found a violation of Article 6 § 1 ECHR insofar as the authorities were obliged to implement climate change mitigation measures already required under domestic law.<sup>91</sup>(excluding issues pertaining to the democratic legislative process, which fall outside this provision<sup>92</sup>).

Interestingly, the ECtHR noted that to the extent that public participation and access to information in environmental matters (as widely recognised in international environmental law) are rights recognised in domestic law, this may lead the conclusion that there is a “civil” right within the meaning of Article 6 of the Convention.<sup>93</sup>

In environmental cases, Article 6 § 1 ECHR has been rarely applied in its “criminal limb”. An example is *European Air Transport Leipzig GmbH v. Belgium*, which concerned fines (between 12 593 and 122 062,70 euros) imposed on the applicant company for violating air traffic noise regulations in the Brussels-Capital Region. The fines were imposed by the Brussels Institute for Environmental Management and unsuccessfully appealed to the Environmental Board and the *Conseil d’État*. The company argued that judicial review before the *Conseil d’État* did not form a remedy before a judicial body with full jurisdiction.<sup>94</sup> Nevertheless, the Court held that the *Conseil* review was sufficiently far-reaching under Article 6 § 1 ECHR, finding no violation.<sup>95</sup>

#### 4. Environmental Association as a Subject of “Civil Rights”

A critical issue in the ECtHR’s jurisprudence on environmental cases concerns whether environmental associations can be subjects of “civil rights” under Article 6 § 1 of the Convention. This question is relevant because such organisations typically

87 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 22.

88 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 34, para. 52.

89 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 575.

90 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 617.

91 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, paras. 634, 638, 640.

92 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 633.

93 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 610.

94 *European Air Transport Leipzig GmbH v. Belgium*, para. 1, paras. 4–5, paras. 7–8, paras. 11, 38, 41; European Court of Human Rights, 2023, pp. 1–2; Council of Europe and European Court of Human Rights, 2024, p. 30.

95 *European Air Transport Leipzig GmbH v. Belgium*, paras. 72–73.

appear in legal (judicial) proceedings to protect a general or public interest, which *prima facie* excludes both a “civil right” and a “directly decisive” outcome for the applicant’s rights, which condition the applicability of Article 6 § 1 ECHR.<sup>96</sup> The question of who qualifies as a rights holder under this provision is also linked to the ‘victim’ status under Article 34 ECHR, which excludes *actio popularis* from the Convention’s protective mechanism. Associations may thus only invoke those Convention rights to which they are entitled before the ECtHR. When interpreting the notion of a “victim of a violation” under Article 34 ECHR in environmental cases, reference must be made to other Articles defining particular Convention rights,<sup>97</sup> especially regarding their subjects. An application may be lodged by an organisation that is a direct victim or that acts on behalf of its members as an “indirect victim”.<sup>98</sup> The question of such associations’ legal standing is particularly important in environmental matters, given their role in protecting the environment.<sup>99</sup>

This issue was analysed in several cases cited in the third subsection of this study.

In *Gorraiz Lizarraga and Others v. Spain* (concerning the halting of the construction of the Itoiz Dam), one applicant was the Coordinadora de Itoiz Association, and the others were its members.<sup>100</sup> Association’s aim was ‘to coordinate its members’ efforts to oppose the construction of the Itoiz dam (...), to represent and defend the area affected by the dam, and this area’s interests before all official bodies at all levels (...)’.<sup>101</sup> The ECtHR held that the association had “victim of a violation” status because it was a party to the proceedings defending its members’ interests.<sup>102</sup> In that case, the Court further held that these proceedings concerned a “civil right” within the meaning of Article 6 § 1 ECHR. The respondent government argued that the proceedings dealt only with collective environmental interests, not private economic rights.<sup>103</sup> In the ECtHR’s view, however, a sufficient premise for a ruling on the merits was that, besides public interest, the national proceedings also concerned specific interests (civil rights), namely, the members’ way of life and properties in the valley that would be flooded by the dam.<sup>104</sup>

An even more flexible approach was adopted by the Court in *Collectif national d’information et d’opposition à l’usine Melox – Collectif stop Melox et Mox v. France*, where the Court held that Article 6 § 1 applied to proceedings brought by associations aimed at protecting the environment. The domestic proceedings concerned an administrative decision authorising the expansion of the Melox nuclear plant. The association acted in its own name, invoking its statutory aim of protecting the environment and the

96 *Lerablière A.S.B.L. v. Belgium*, para. 25; *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, paras. 620–621.

97 Pogodziński, 2011, p. 30.

98 Pogodziński, 2011, p. 36.

99 Kwiędacz-Palosz, 2020, p. 31.

100 *Gorraiz Lizarraga and Others v. Spain*, para. 8.

101 *Gorraiz Lizarraga and Others v. Spain*, para. 10.

102 *Gorraiz Lizarraga and Others v. Spain*, para. 34.

103 *Gorraiz Lizarraga and Others v. Spain*, paras. 40, 44.

104 *Gorraiz Lizarraga and Others v. Spain*, paras. 45, 47.

public good against national handling of nuclear fuel and waste politics. The ECtHR stressed that organisations can also invoke violations of their rights under Article 6 ECHR when they seek to protect the rights and interests of their members, or even specific rights that they could invoke as legal persons, such as the right to information and active participation in environmental decision-making recognised by domestic law (i.e., French law). Given that the national legal proceedings had been initiated to protect the general interests of the society, the dispute had to be considered genuine and related to an unlawful interference with one of the rights of a civil nature provided for in the national legal system. During domestic proceedings, the scope of the association's rights was resolved in a concrete and binding manner, and the ECtHR assumed that Article 6 ECHR should be applied.<sup>105</sup>

In *L'erablière A.S.B.L. v. Belgium* (relating to a planning permission to expand technical landfill site), the applicant association sought to 'protect the environment in the region of Marche-Nassogne'.<sup>106</sup> The respondent Government claimed that the complaint was incompatible *ratione materiae* with Article 6 § 1 ECHR because the association had not claimed any economic damage and acted only to advance its general purpose.<sup>107</sup> The ECtHR, however, noted that the association's aim was spatially and substantively limited. Its founding members all lived in the Marche-Nassogne region and could, therefore, be regarded as local residents directly affected by the landfill's expansion.<sup>108</sup> On that basis, the Court found that the "dispute" raised had a sufficient connection with a "right" which it could claim as a legal person, bringing the case within Article 6.<sup>109</sup>

More recently, the question of the legal standing of environmental associations was examined in *Verein Klimasenioren Schweiz and Others v. Switzerland* concerning authorities' omissions in climate-change mitigation. The applicants were a nonprofit association and four Swiss nationals, all members of that association. The association promoted effective climate protection on behalf of women, most over 70 living in Switzerland.<sup>110</sup> In this case, the ECtHR adopted a notably broad interpretation of environmental associations' standing. The premise was that climate change disputes often involve complex legal and factual issues requiring significant financial and logistical resources, and coordination, with outcomes affecting many people. Associations regularly act as complainants or key interveners in the case.<sup>111</sup> The Court held that the global nature of climate change as a common concern of humanity justifies recognising associations' standing before the ECtHR. This interpretive direction reflects the urgent need to combat the adverse effects of climate change, including the serious

105 Pogodziński, 2011, pp. 37–38; *Collectif national d'information et d'opposition à l'usine Melox – Collectif stop Melox et Mox v. France*, para. 4.

106 *L'erablière A.S.B.L. v. Belgium*, para. 5.

107 *L'erablière A.S.B.L. v. Belgium*, para. 21.

108 *L'erablière A.S.B.L. v. Belgium*, para. 28.

109 *L'erablière A.S.B.L. v. Belgium*, para. 30.

110 *Verein Klimasenioren Schweiz and Others v. Switzerland*, paras. 1, 10.

111 *Verein Klimasenioren Schweiz and Others v. Switzerland*, para. 497.

risk of irreversibility, which requires protection not only of the convention rights of those affected but also those whose rights may be seriously and irreversibly affected in the future.<sup>112</sup> However, to exclude *actio popularis*, certain conditions must exist to allow associations to apply to court.<sup>113</sup> Thus: ‘In order to be recognised as having *locus standi* to lodge an application under Article 34 of the Convention on account of the alleged failure of a Contracting State to take adequate measures to protect individuals against the adverse effects of climate change on human lives and health, the association in question must be: (a) lawfully established in the jurisdiction concerned or have standing to act there; (b) able to demonstrate that it pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members or other affected individuals within the jurisdiction concerned, whether limited to or including collective action for the protection of those rights against the threats arising from climate change; and (c) able to demonstrate that it can be regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention.

In this connection, the Court will have regard to such factors as the purpose for which the association was established, that it is of non-profit character, the nature and extent of its activities within the relevant jurisdiction, its membership and representativeness, its principles and transparency of governance, and whether on the whole, in the particular circumstances of a case, the grant of such standing is in the interests of the proper administration of justice.’<sup>114</sup>

Finally, the Court pointed that an association’s standing to act on behalf of members or affected persons does not require showing that those individuals would each qualify as individual victim under Article 34 in climate change cases.<sup>115</sup> As a result of the above findings, the ECtHR also concluded that Article 6 § 1 applied to the complaint of the applicant association which could be considered a “victim” under that provision regarding its allegation of lack of access to a court.<sup>116</sup> The association demonstrated a sufficiently close connection to the subject matter and to individuals seeking protection from the negative effects of climate change. In other words, the applicant association sought to defend its members’ specific civil rights against the negative effects of climate change.<sup>117</sup>

112 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 499.

113 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 500.

114 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 502.

115 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 502.

116 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 623.

117 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 621.

## 5. Result of the Proceedings That is “Directly Decisive” for Civil Rights Relating to the Environment

A further element of the specific nature of environmental cases in ECtHR’s jurisprudence is the difficulty of proving the premise for applying Article 6 § 1 ECHR - i.e., that the outcome of domestic proceedings was “directly decisive” for the civil right in question. The difficulty arises because, first, the Convention does not explicitly establish an individual’s right to an adequate environment and, second, applications to the ECtHR often concern administrative proceedings assumed to be directly decisive for individual rights or obligations under substantive administrative rather than civil law (in the domestic sense).

An example is *Athanassoglou and Others v. Switzerland* (cited in the third subsection), which addressed whether the outcome of proceedings on renewing a licence to operate a nuclear power plant was directly decisive for the domestic civil rights of applicants.<sup>118</sup> The ECtHR underlined that the applicants did not claim a specific or direct threat to themselves, but rather a general environmental threat posed by all nuclear power plants. Only in response to the Court’s questions did they allege that ‘every nuclear power plant releases radiation during normal operation and thus endangers people’s health’.<sup>119</sup> The Court found that this statement was only the basis for concluding that the outcome of the procedure before the domestic authority was decisive for the general question whether the operating licence of the power plant should be renewed, but not for the determination of any civil rights. Therefore, Article 6 § 1 ECHR was deemed inapplicable.<sup>120</sup>

In *Sdružení Jihočeské Matky v. Czech Republic*, the applicant association, founded by residents living near the Temelín nuclear power plant, alleged a violation of Article 6 § 1 ECHR because it was excluded from certain administrative proceedings and thus unable to defend its substantive rights.<sup>121</sup> The Court held the provision inapplicable, as the outcome of the proceedings before the supervisory authority was not directly decisive for civil rights such as the right to life, health, a healthy environment, and property, which the Czech legal order granted to the applicant association or its members.<sup>122</sup> Partial changes to the plant’s technology or completion dates could not have had an impact on the environment and thus on the applicant’s rights. Neither the Ministry of the Environment’s opinion nor expert reports established a serious, concrete, and direct threat to the environment or to the members’ life, health, or property. In the Court’s view, the applicant association had failed to prove a direct

118 *Athanassoglou and Others v. Switzerland*, para. 46.

119 *Athanassoglou and Others v. Switzerland*, para. 52.

120 *Athanassoglou and Others v. Switzerland*, para. 55.

121 *Sdružení Jihočeské Matky v. Czech Republic*, para. 8.

122 *Sdružení Jihočeské Matky v. Czech Republic*, para. 17.

link between the power plant's operating conditions and any foreseeable harm to its members' rights.<sup>123</sup>

The criterion analysed was also considered in *Ivan Atanasov v. Bulgaria*<sup>124</sup> (cited in the third subsection), which concerned a licence allowing the transport and stacking of sludge from a treatment plant to a tailings pond. Again, the ECtHR ruled that Article 6 § 1 of the Convention did not apply.<sup>125</sup> It observed that the applicant had not alleged any specific risks to his health or well-being, but only of hypothetical consequences for the environment and public health. Therefore the link between the proceedings, focused solely on the legality of the sludge permit for the transportation and placement, and the right invoked by the applicant was too tenuous.<sup>126</sup> By contrast, in *Zander v. Sweden*, applicants challenged a licence permitting waste dumping near their property. The outcome of the proceedings was decisive for the applicants' entitlement to protection against pollution because the dump contaminated their only drinking-water wells. Thus, the adverse effects on their health were immediate and certain, unlike in *Ivan Atanasov v. Bulgaria*.

## 6. Application of Article 6 § 1 ECHR to General Environmental Acts (Including Policy Acts)

Another issue specific to environmental cases before the ECtHR concerns whether the right to a fair trial extends to general acts, including normative acts of administrative bodies and policy (planning) instruments such as spatial plans. These instruments play a special role in environmental protection because of their broad regulatory scope in both the European Union and individual Member States.

In *Posti and Rahko v. Finland* (cited in the third subsection), Article 6 § 1 ECHR was referred to in decrees of the Finnish Ministry of Agriculture and Forestry restricting fishing, which directly affected the complainants, who were fishermen.<sup>127</sup> The ECtHR recalled that the Convention does not guarantee the right of access to a court with power to invalidate or override laws enacted by the legislature.<sup>128</sup> However, it stressed that the Convention protects the rights that are “practical and effective”, not “theoretical” or “illusory”. Thus, if a decree or other act, although not formally addressed to an individual, actually affects that person's civil rights or obligations due to specific characteristics or circumstances distinguishing them from others, Article 6 § 1 ECHR may require access to a “tribunal” to challenge the act's provision.<sup>129</sup>

123 *Sdružení Jihočeské Matky v. Czech Republic*, paras. 15–16.

124 *Ivan Atanasov v. Bulgaria*, para. 91.

125 *Ivan Atanasov v. Bulgaria*, para. 96.

126 *Ivan Atanasov v. Bulgaria*, para. 92.

127 *Posti and Rahko v. Finland*, paras. 8–11.

128 *Posti and Rahko v. Finland*, para. 52.

129 *Posti and Rahko v. Finland*, para. 53. Similarly: *Alatulkkila and Others v. Finland*, para. 50.

In *Crash 2000 OOD and Others v. Bulgaria*, the court examined an order by the Bulgarian Minister for Environment and Water declaring Strandzha National Park a protected territory, which included part of the Tsarevo municipality (however, the order did not specify the exact borders of the park).<sup>130</sup> The applicants were two Bulgarian citizens and a company called “Crash 2000” OOD which they own and manage, and seventy foreign nationals with preliminary purchase contracts for apartments, claimed that the order prevented construction on their purchases land.<sup>131</sup> For their construction, the company bought agricultural land from private third parties in the municipality of Tsarevo.<sup>132</sup> The acquired land was part of the Strandzha National Park.<sup>133</sup> Although proceedings were initiated before the Supreme Administrative Court, they were terminated following an amendment to the Protected Territories Act (1998), leaving the ministerial order valid.<sup>134</sup> The applicants argued before the ECtHR that the amendment deprived them of access to a court to protect their property rights.<sup>135</sup> The Court held that the ministerial order declaring Strandzha National Park a protected area concerned a general policy issue in the public interest of environmental protection.<sup>136</sup> The Convention does not guarantee access to courts to challenge policy decisions *per se*. Article 6 § 1 ECHR requires access to a court only where a specific and established individual civil right has arguably been unlawfully interfered with. In this case, the applicants had no established right or legitimate expectation to build on the territory at any time, and the ministerial order issued a decade before their acquisition did not interfere with such a right. The legislative amendment was a general policy measure pursuing an essential environmental goal and did not adversely affect any right existing prior to its enactment.<sup>137</sup> Thus, the Court found the complaint to be manifestly unfounded and dismissed it.<sup>138</sup>

In *Vecbaštika and Others v. Latvia*, the Court again addressed whether Article 6 § 1 ECHR applied to general acts, assessing this question in the context of the premise of the “directly decisive” outcome of the domestic proceedings for the applicants’ civil rights (the fifth subsection of this paper). The applicants, land and house owners, and residents of Dunika parish in western Latvia,<sup>139</sup> alleged a violation of their right of access to the courts when challenging spatial plans authorising the construction of wind farms. Their only recourse was the Constitutional Court, which they argued was not a “tribunal” within the meaning of Article 6 § 1 of the Convention.<sup>140</sup> The ECtHR found that the applicants failed to demonstrate that the adoption of the plans exposed

130 *Crash 2000 OOD and Others v. Bulgaria*, para. 4.

131 *Crash 2000 OOD and Others v. Bulgaria*, para. 1.

132 *Crash 2000 OOD and Others v. Bulgaria*, para. 7.

133 *Crash 2000 OOD and Others v. Bulgaria*, para. 9.

134 *Crash 2000 OOD and Others v. Bulgaria*, paras. 8–28.

135 *Crash 2000 OOD and Others v. Bulgaria*, para. 81.

136 *Crash 2000 OOD and Others v. Bulgaria*, para. 82.

137 *Crash 2000 OOD and Others v. Bulgaria*, para. 84.

138 *Crash 2000 OOD and Others v. Bulgaria*, para. 89.

139 *Vecbaštika and Others v. Latvia*, para. 4.

140 *Vecbaštika and Others v. Latvia*, para. 57.

them to serious and concrete harm or that the Constitutional Court proceedings were directly decisive for their civil rights.<sup>141</sup> It noted that the operation of wind turbines is not associated with hazardous emissions and that any possible negative effects occur only within relatively short distances, while the precise turbines locations had yet to be specified in detailed spatial plans. Only the first applicant had challenged a detailed spatial plan, and her property lay outside the designed protection zone. The Court further noted that wind turbine operation is prohibited if noise exceeds legal limits.<sup>142</sup> Consequently, the applicants did not establish a probable or direct effect on their rights, and Article 6 § 1 ECHR was therefore inapplicable.<sup>143</sup>

## 7. Application of Article 13 ECHR to Environmental Matters

The ECtHR's jurisprudential principles on the right to an effective remedy apply to environmental cases in a standard manner.<sup>144</sup> On this ground, applicants most often allege a violation of Article 13 in conjunction with Article 6 § 1 of the Convention (which is *lex specialis* to the former provision). This was evident in *Powell and Rayner v. the United Kingdom*, one of the cases marking the 'real breakthrough for "greening" of the Convention'.<sup>145</sup> In that case, the applicants complained of excessive noise caused by Heathrow Airport operations, pointing out, *inter alia*, that 'in respect of their claims under Articles 6 § 1 and 8 (...) of the Convention there was no domestic remedy as required by Article 13'.<sup>146</sup> The ECtHR assessed this allegation in parallel with a complaint under Article 6 § 1 ECHR, finding that: 'there is no "civil right" recognised under domestic law to attract the application of Article 6 § 1 (...). In any event, Article 13 (...) does not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before a national authority (...). Accordingly, there was no violation of Article 13 (...) in respect of the applicants' claims under Article 6 § 1'.<sup>147</sup>

Similar parallel adjudication of claims under Articles 6 and 13 occurred in other cases.<sup>148</sup> Conversely, there are instances in which, having resolved an allegation under Article 6 § 1 ECHR, the Court found it unnecessary to analyse the violation of Article 13 ECHR<sup>149</sup> (exceptionally in *Öneryıldız v. Türkiye*, it was the other way around, i.e. the ECtHR stated 'having regard (...) to the reasoning which led the Court to find a violation of Article 13 of the Convention taken together with Article 1 of Protocol No.

141 *Vecbaštika and Others v. Latvia*, para. 70.

142 *Vecbaštika and Others v. Latvia*, para. 69.

143 *Vecbaštika and Others v. Latvia*, para. 71.

144 Council of Europe, European Court of Human Rights, 2024, p. 81.

145 Raisz and Krajnyák, 2022, p. 77.

146 *Powell and Rayner v. the United Kingdom*, paras. 25, 30.

147 *Powell and Rayner v. the United Kingdom*, para. 36.

148 E.g. *Leon and Agnieszka Kania v. Poland*; *Ivan Atanasov v. Bulgaria*.

149 E.g. *Posti and Rahko v. Finland*; *Taşkin and Others v. Türkiye*; *Apanasewicz v. Poland*; *Verein Klimasenioren Schweiz and Others v. Switzerland*.

1 (...), the Court considers that it is not necessary to examine the case under Article 6 § 1<sup>150</sup>).

Environmental cases alleging a violation of Article 13 alone, without a simultaneous complaint under Article 6 § 1 of the Convention, should be singled out as exceptional.<sup>151</sup> In *Hatton and Others v. the United Kingdom*, the applicants, British citizens living near Heathrow Airport, alleged that the government's 1993 policy on night flights and the resulting increase in noise violated their rights under Article 8 and that no effective domestic remedy existed for this complaint, contrary to Article 13 of the Convention.<sup>152</sup> The ECtHR found a violation of the latter, because the scope of the domestic judicial review was limited to classic English public law concepts such as 'irrationality, unlawfulness, and patent unreasonableness'. Therefore, the courts failed to assess whether the increase in night flights formed a justifiable limitation on the right to respect for private and family life or homes of those living near Heathrow Airport. Thus, the scope of review by domestic courts is insufficient to follow Article 13 of the Convention.<sup>153</sup> At the same time, in that case, the ECtHR included an act of government policy (i.e. the Secretary of the State's decision to introduce the 1993 Scheme) within the scope of the right to an effective remedy. Indeed, as the Court reiterated that Article 13 ECHR does not guarantee a remedy for challenging a State's legislation or a general policy. The exception arises when an applicant has a legitimate claim of a convention violation. In such cases, the national system must ensure an effective remedy even for acts of a general nature.<sup>154</sup>

As noted previously, Article 13 ECHR is non-self-contained, as it guarantees the protection of other clauses of the Convention and must therefore be invoked in conjunction with them. These "other" provisions pointed out in environmental cases are: Articles 2<sup>155</sup>, 6 § 1<sup>156</sup> and 8<sup>157</sup> ECHR as well as Article 1 of Protocol No. 1 to the Convention.<sup>158</sup>

## 8. Conclusions

An analysis of the ECtHR jurisprudence relating to the application of Articles 6 § 1 and 13 ECHR in environmental cases leads to the following conclusions:

150 *Öneryıldız v. Türkiye*, para. 160.

151 E.g. *Hatton and Others v. the United Kingdom*; *Kotov and Others v. Russia*.

152 *Hatton and Others v. the United Kingdom*, paras. 3, 84, 131.

153 *Hatton and Others v. the United Kingdom*., paras. 141–142.

154 *Hatton and Others v. the United Kingdom*, para. 138.

155 E.g. *Taşkin and Others v. Türkiye*; *Öneryıldız v. Türkiye*.

156 E.g. *Powell and Rayner v. the United Kingdom*; *Leon and Agnieszka Kania v. Poland*.

157 E.g. *Powell and Rayner v. the United Kingdom*; *Hatton and Others v. the United Kingdom*; *Ivan Atanasov v. Bulgaria*; *Apanasewicz v. Poland*; *Bor v. Hungary*; *Kotov and Others v. Russia*; *Verein Klimasenioren Schweiz and Others v. Switzerland*.

158 E.g. *Posti and Rahko v. Finland*; *Öneryıldız v. Türkiye*; *Ivan Atanasov v. Bulgaria*; *Bor v. Hungary*; *Crash 2000 OOD and Others v. Bulgaria*; *Vecbaštika and Others v. Latvia*.

- 1) The protection of the environment under the above-mentioned provisions rests mainly on Article 6 § 1 of the Convention in its civil limb.
- 2) The Court recognises, in particular, the following “environmental” civil rights: right to life, right to physical integrity, property rights, right to fish to a certain extent, right to compensation for environmental damage, right to live in and enjoy the home, right to healthy and favourable environment, right to public participation, and access to information in environmental matters.
- 3) Only in some cases does the ECtHR clearly justify its finding of a “civil right” under Article 6 § 1 ECHR. In other cases, such reasoning is absent, making it difficult to verify the premise for the application of this provision and reconstruct the characteristics of “civil right” based on administrative cases, which are mostly referred to in the Court’s “environmental” case law.
- 4) The Court’s evolutionary interpretation leads to conclude that the conditions for environmental associations to qualify as holders of “civil right” are not strict, thereby bringing such applications closer to an *actio popularis* filed to protect the public interest (cf. *Collectif national d’information et d’opposition à l’usine Melox – Collectif stop Melox et Mox v. France* and *Verein Klimasenioreninnen Schweiz and Others v. Switzerland*).
- 5) Determining whether domestic proceedings are “directly decisive” for the applicant’s “civil right” is often complicated because “environmental cases” before national authorities typically involve administrative (public law) matters focused on the common good, in which the legal interest of someone other than the applicant, is directly protected (e.g. a company operating a landfill site).
- 6) In the context of “environmental cases”, the Court accepts that general acts – which in principle do not fall within the scope of Article 6 § 1 ECHR – may be subject to the guarantees of that provision if they directly interfere with a specific or established civil right.
- 7) As a rule, Article 13 of the Convention does not apply to legislative or policy acts. However, an exception may arise in environmental cases where the applicant presents a legitimate claim of violating a convention right.
- 8) Despite the general declaration in ECtHR case law that Article 6 § 1 is a *lex specialis* absorbing Article 13, in environmental cases this relationship can be more complex. The ECtHR may assess alleged violations of both provisions in parallel or find it unnecessary to rule on one after addressing the other, even when the first finding relates to Article 13 of the Convention.

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