

The Intersection of the Right to Private and Family Life and Environmental Protection: A Comparative Analysis of Key Cases in Central and Eastern Europe

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ABSTRACT

The European Convention on Human Rights does not explicitly guarantee the right to a healthy environment. However, the European Court of Human Rights (ECtHR) has recognised in numerous cases that adverse environmental conditions can significantly affect individuals' well-being. Article 8, which protects the right to respect for private and family life, has been the primary provision the ECtHR has used to address environmental issues. Protection under Article 8 is invoked when individuals are significantly and directly affected by environmental nuisances, demonstrating a direct effect on their quality of life.

This chapter examines the intersection of environmental protection and the right to private and family life, analysing their relationship as reflected in ECtHR case law (Section 2). It demonstrates that Article 8 is relevant in environmental cases when the State either directly causes pollution or fails to regulate private sector activities adequately (Section 3). The chapter also discusses emerging climate change case law (Section 4) and emphasises the challenges of environmental protection in Central and Eastern European countries (Section 5).

This analysis highlights the changing role of Article 8 in protecting individual rights from environmental harm, reflecting the ECtHR's broader approach to human rights protection regarding environmental issues.

KEYWORDS

private life, family life, home, environment, climate change

1. Introduction

Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: European Convention or Convention) guarantees the right to respect for private and family life as follows:

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1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing 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.

Article 8 protects private life, family life, home, and correspondence. Although each right has distinct significance, these four domains of personal autonomy may sometimes overlap. For example, interference in family life can affect an individual's private life, and the reverse is also true.¹ The scope of Article 8 is broad, covering many rights even when they are not explicitly stated.²

Unlike the right to life (Article 2), which is an absolutely protected derogable right, and the right not to be tortured (Article 3), which is an absolutely protected non-derogable right, the right to respect for private and family life (Article 8) is a qualified Convention right.³ As Omejec explains, qualified Convention rights may be subject to intervention under specific conditions.⁴ First, the right is recognised, typically in the first paragraph. Then, limitations may be imposed if they are prescribed by domestic law and considered necessary to achieve the objectives set out in the Convention, usually specified in the second paragraph. These objectives generally relate to broad public interests defined by legal terms such as national security, public safety, and the protection of morals.⁵ These rights are often linked to a State's margin of appreciation, which allows national authorities a degree of discretion in addressing complex legal, economic, financial, social, ethical, and other societal challenges.⁶ In this context, domestic courts must balance the competing interests of individuals and the community, and sometimes those of private individuals, to achieve a fair balance between individual and collective interests.⁷

Determining a universal definition of the right to private life is challenging because legal, political, and cultural differences among nations make the issue complex.⁸ The term is broad, covering physical and psychological integrity, mental health, information about an individual's health, and information about health risks.⁹ The same applies to the concept of the 'right to family life'. Perry notes that, because

1 Omejec, 2014, p. 931.

2 For the scope of Article 8 see *Guide on Article 8 of the European Convention on Human Rights*, 2024.

3 Omejec, 2014, p. 930.

4 *Ibid.*, p. 852.

5 *Ibid.*

6 *Ibid.*, pp. 1267–1270.

7 *Ibid.*, p. 852.

8 Jonsson Cornell, 2017, para. 1.

9 *Guide on Article 8*, 2024, pp. 26–82.

‘the family’ is shaped by cultural traditions and concepts, this right is especially important in debates on universalism versus cultural relativism in human rights.¹⁰

A fundamental aspect of family life is the right to live together, which supports the development of familial relationships and enables family members to enjoy each other’s company.¹¹ The concept of family life is autonomous, with its existence determined by actual and close connections between individuals.¹² Although the scope of family life is not precisely defined, ECtHR case law indicates that it covers couples, parents, children, other family relationships, immigration and expulsion, material interests, and testimonial privilege.¹³ The notion of ‘home’ protected by Article 8 is also autonomous and does not rely on domestic legal definitions; whether a habitation qualifies as a home depends on the presence of sufficient and strong connections to that location.¹⁴

Although the Convention does not explicitly guarantee a right to a healthy environment, the ECtHR has ruled in numerous cases concerning environmental issues, recognising that adverse environmental conditions can affect individuals’ well-being.¹⁵ Article 8 has been the primary¹⁶ and most significant provision used by the ECtHR to protect individual rights infringed by adverse environmental interventions, and it remains central in this context.¹⁷ However, Article 8 protection applies only when individuals are significantly and directly affected by the nuisance and can demonstrate a direct effect on their quality of life.¹⁸ This chapter aims to examine the intersection of environmental protection and the right to privacy and family life, providing a detailed analysis of their relationship as reflected in ECtHR case law (Section 2). This chapter will show that Article 8 may be relevant in environmental cases, whether the State directly causes pollution or is responsible due to insufficient regulation of private sector activities (Section 3). It will also present emerging climate change case law (Section 4). The perspective of Central and Eastern European countries will receive particular attention, with a focus on the challenges of environmental protection in this region (Section 5). In cases involving hazardous activities, the ECtHR recognised that the obligations under Article 2 of the Convention (right to life) largely align with those in Article 8.¹⁹ Therefore, the principles established in the Court’s case law on environmental issues affecting private life and home can also apply to the protection of the right to life.²⁰ Determining whether a case before

10 Perry, 2019, p. 1.

11 Ibid., p. 82.

12 Ibid.

13 Ibid., pp. 82–112.

14 Ibid., pp. 113–115.

15 See Thematic Factsheet ‘Environment and the European Convention on Human Rights’ compiled by the Press Unit of the ECtHR (April 2024).

16 See *Powell and Rayner v. the United Kingdom* and *López Ostra v. Spain*.

17 Omejec, 2015, p. 71.

18 *Guide on Article 8*, 2024, p. 50.

19 Raisz and Krajnyák, 2022, p. 97.

20 *Budayeva and Others v. Russia*, p. 133.

the ECtHR should be categorised under Article 2 or Article 8 may be difficult.²¹ This chapter will address only the relevant aspects of Article 8 in environmental issues, as Article 2 will be discussed in a separate chapter.

2. General Framework for Environmental Protection Within the Scope of Private and Family Life

According to established ECtHR case law, three concepts are relevant for safeguarding Convention rights related to the environment and protecting the right to private and family life: the margin of appreciation doctrine, positive obligations, and the horizontal effect of Convention rights.²²

States have a wide margin of appreciation when implementing measures to protect private and family life, as well as the home, in relation to environmental interventions.²³ The margin of appreciation doctrine determines the extent of self-restraint exercised by the ECtHR, whereas the principle of evolutive interpretation allows for some judicial activism.²⁴ The concept of positive obligations requires that States not only avoid interfering with individuals' rights under their jurisdiction but also have a positive duty to protect those rights through effective measures.²⁵ Adverse environmental interventions may be conducted by State and public authorities, as well as private individuals. However, the Convention protects individuals only from State interventions. Omejec states that if the State fails to fulfil its positive obligation to ensure adequate environmental conditions or to prevent and address harmful environmental activities by private individuals, this may constitute a violation of Convention rights.²⁶ This is known as the horizontal effect of the Convention, which the ECtHR addressed in *Oluić v. Croatia*, where the applicant experienced nighttime disturbance due to noise from a bar operating in the same building:

48. The present case does not concern interference by public authorities with the right to respect for the home, but their alleged failure to take action to put a stop to third-party breaches of the right relied on by the applicant.

Article 8, like other Convention rights, contains both substantive and procedural elements related to States' specific positive obligations.²⁷ In cases where State decisions affect environmental issues, the ECtHR identifies two aspects of its analysis. First, the Court may assess the substantive merits of the government's decision to determine

21 Raisz and Krajnyák, 2022, p. 100.

22 See Omejec, 2015, p. 48.

23 Raisz and Krajnyák, 2022, p. 97.

24 Omejec, 2015, p. 48.

25 Ibid. See also Raisz and Krajnyák, 2022, p. 95.

26 Ibid.

27 Ibid., p. 49.

its compatibility with Article 8. Second, it may review the decision-making process to ensure that the individual's interests have been appropriately considered.²⁸

As previously noted, the Court determined that the State should have a broad margin of appreciation regarding substantive matters. However, when government policy affects particularly intimate aspects of an individual's private life, such as the ability to sleep, the State's margin of appreciation should be narrower. The ECtHR concluded that this divergence concerning the margin of appreciation can only be addressed by considering the specific context of each case.²⁹ For the procedural limb of the Court's review of environmental cases, the ECtHR must consider all procedural aspects, including the nature of the policy or decision, the extent to which individuals' views were considered during the decision-making process, and the available procedural safeguards.³⁰

It is important to note that the assessment of Article 8's applicability to environmental cases has relied on a 'severity test'.³¹ The severity threshold has been explicitly examined in relation to Article 8. In environmental cases, a claim under Article 8 may be valid when an environmental threat reaches a level of seriousness that significantly impairs an individual's ability to enjoy their home or private and family life. The Court has found that the evaluation of this minimum threshold is relative and depends on factors such as the intensity and duration of the disturbance, and its effect on the individual's physical and mental well-being.³²

It is also necessary to restate the fundamental premise that the Convention is not specifically intended to ensure general environmental protection. Furthermore, current national laws remain largely grounded in an anthropocentric value system that prioritises humans over the inherent rights of nature.³³ The European Court expressed this anthropocentric perspective in *Kyrtatos v. Greece*:

Yet the crucial element which must be present in determining whether, in the circumstances of a case, environmental pollution has adversely affected one of the rights safeguarded by paragraph 1 of Article 8 is the existence of a harmful effect on a person's private or family sphere and not simply the general deterioration of the environment. Neither Article 8 nor any of the other Articles of the Convention are specifically designed to provide general protection of the environment as such; to that effect, other international instruments and domestic legislation are more pertinent in dealing with this particular aspect.³⁴

28 *Hatton and Others v. the United Kingdom*, p. 99; *Flamenbaum and Others v. France*, pp. 136, 137.

29 *Ibid.*, pp. 100–103.

30 *Ibid.*, p. 104.

31 *Guide on Article 8*, 2024, p. 50.

32 *Denisov v. Ukraine*, p. 111.

33 Omejec, 2015, p. 46. Regarding the anthropocentric approach in international law, see Raisz and Krajnyák, 2022, p. 100.

34 *Kyrtatos v. Greece*, p. 52.

Finally, note that States retain discretion in addressing environmental issues and are not obligated to implement specific measures requested by individuals. Given the complexity of the issue, Article 8 does not require national authorities to ensure that every individual has housing meeting particular environmental standards.³⁵

3. Environmental Degradation and Its Impact on the Right to Private and Family Life: Selection of Major ECtHR Judgments

Despite the challenges in addressing cases involving negative environmental conditions, as discussed in the previous section, the ECtHR ruled in several cases that Article 8 had been breached. The most significant judgments are shown in Table 1.

JUDGMENT	DATE	SUBJECT MATTER
Lopez Ostra v. Spain	9 December 1994	Industrial pollution (nuisance caused by a waste-treatment plant)
Guerra and Others v. Italy	19 February 1998	Environmental risks and access to information (residing near a chemical factory)
Taşkın and Others v. Turkey	10 November 2004	Industrial pollution (residing near a goldmine using the cyanidation process)
Moreno Gómez v. Spain	16 November 2004	Noise pollution (neighbouring noise)
Fadeyeva v. Russia	9 June 2005	Industrial pollution (residing near a steel plant)
Roche v. the United Kingdom	19 October 2005	Environmental risks and access to information (exposure to nerve and chemical warfare agents)
Öçkan and Others v. Turkey	28 March 2006	Industrial pollution (residing near a goldmine using the cyanidation process)
Ledyayeva and Others v. Russia	26 October 2006	Industrial pollution (residing near a steel plant)
Giacomelli v. Italy	2 November 2006	Industrial pollution (residing near a hazardous waste treatment plant)
Lemke v. Turkey	5 June 2007	Industrial pollution (residing near a goldmine using the cyanidation process)
Tătar v. Romania	27 January 2009	Industrial pollution (residing near a goldmine using the cyanidation process)
Brânduse v. Romania	7 April 2009	Waste collection, management, treatment and disposal (residing near a tip)
Băcilă v. Romania	30 March 2010	Industrial pollution (residing near a lead and zinc plant)
Oluić v. Croatia	20 May 2010	Noise pollution (neighbouring noise)

35 *Grimkovskaya v. Ukraine*, p. 65.

JUDGMENT	DATE	SUBJECT MATTER
Deés v. Hungary	9 November 2010	Noise pollution (Road traffic noise)
Mileva and Others v. Bulgaria	25 November 2010	Noise pollution (neighbouring noise)
Dubetska and Others v. Ukraine	10 February 2011	Industrial pollution (residing near a coal mine)
Apanasewicz v. Poland	3 May 2011	Industrial pollution (residing near a concrete production plant)
Grimkovskaya v. Ukraine	21 July 2011	Noise pollution (road traffic noise)
Di Sarno and Others v. Italy	10 January 2012	Waste collection, management, treatment and disposal (Campania region)
Bor v. Hungary	18 June 2013	Noise pollution (rail traffic)
Vilnes and Others v. Norway	5 December 2013	Environmental risks and access to information (deep sea and test diving)
Brincat and Others v. Malta	24 July 2014	Environmental risks and access to information (exposure to asbestos)
Dzemyuk v. Ukraine	4 September 2014	Soil and water contamination
Cuenca Zarzoso v. Spain	16 January 2018	Noise pollution (neighbouring noise)
Cordella and Others v. Italy ³⁶	24 January 2019	Industrial pollution (residing near a steel plant)
Yevgeniy Dmitriyev v. Russia	1 December 2020	Noise pollution (neighbouring noise)
Kapa and Others v. Poland	14 October 2021	Noise pollution (road traffic noise)
Solyanik v. Russia	10 May 2022	Soil and water contamination
Kotov and Others v. Russia	11 October 2022	Waste collection, management, treatment and disposal (residing near a landfill)
Locascia and Others v. Italy	19 October 2023	Waste collection, management, treatment and disposal (Campania region)

As shown in Table 1, environmental cases involving violations of respect for private and family life, as well as the home, included issues such as environmental risks and access to information, industrial pollution, noise pollution, soil and water contamination, and waste collection, management, treatment, and disposal.³⁷ According to the previously mentioned severity test, the Court must assess whether a causal link exists between the activity and the harm to the individual, and whether the negative effects have reached a certain level of severity.³⁸ The minimum threshold is determined by

36 See also: *A.A. and Others v. Italy*, *Perelli and Others v. Italy*, *Ardimento and Others v. Italy*, and *Briganti and Others v. Italy*.

37 For a comprehensive analysis of ECtHR case law on the right to respect for private and family life and its environmental implications, see Raisz and Krajnyák, 2022, pp. 97–107; see also *Manual on Human Rights and the Environment*, 2022, pp. 33–50.

38 *Manual on Human Rights and the Environment*, 2022, p. 35.

the specific circumstances of each case. In its case law, the ECtHR found that severe pollution from sources such as an airport producing excessive noise, a waste treatment plant emitting fumes and odours, and a factory releasing toxic emissions can disrupt the peaceful enjoyment of one's home, even if the pollution does not present a major health risk:

Specifically, Article 8 of the Convention applies to severe environmental pollution which 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, even without seriously endangering their health.³⁹

On the other hand, the Court emphasised that Article 8 cannot be invoked unless the alleged harm exceeds the usual environmental risks found in urban life:

The Court refers to its well-established case-law that neither Article 8 nor any other provision of the Convention guarantees the right to preservation of the natural environment as such (see *Kyrtatos v. Greece*, no. 41666/98, § 52, ECHR 2003-VI). Likewise, no issue will arise if the detriment complained of is negligible in comparison to the environmental hazards inherent in life in every modern city.⁴⁰

In *Tătar v. Romania*, the Court emphasised the importance of the precautionary principle, first established in the Rio Declaration.⁴¹ The Court's case law states that States must apply the precautionary principle when there is credible evidence of a potential risk to human health that could cause serious harm.⁴² However, the precautionary principle does not extend to all possible harms.⁴³ In *Luginbühl v. Switzerland*, the applicant claimed that emissions from a mobile phone antenna could harm her health and violate Article 8 of the Convention. The Court observed that Swiss authorities had published a study on mobile phone effects, but no scientific evidence of harm was found. Therefore, the Court requires scientifically valid evidence to support claims of environmental or health risks.⁴⁴

If potential environmental damage is severe enough to likely affect individuals' well-being and enjoyment of their homes, the Court does not conduct a detailed analysis of the pollution's connection to the negative effect on the individual.⁴⁵ In this context, in *Di Sarno and Others v. Italy*, the Court interpreted the individual harm

³⁹ *Marchiş and Others v. Romania*, p. 28.

⁴⁰ *Dubetska and Others v. Ukraine*, p. 105.

⁴¹ *Tătar v. Romania*, p. 120.

⁴² *Manual on Human Rights and the Environment*, 2022, p. 116.

⁴³ *Ibid.*, p. 38.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

criteria flexibly.⁴⁶ The case concerned 13 individuals residing in, and five employed in, Somma Vesuviana (in Campania), which was experiencing a waste management crisis. Because a causal link between exposure to waste and increased disease risk was not established, the Court found that the case did not concern direct interference with the right to private and family life,⁴⁷ but rather the authorities' negligence in ensuring effective waste collection and disposal.⁴⁸ The Court held that waste collection, treatment, and disposal are dangerous activities, which require the State to protect individuals' rights to a safe and healthy environment. The prolonged failure of the Italian authorities to manage waste services violated the applicants' rights to respect for their homes and private lives under Article 8 of the Convention.

In contrast to *Di Sarno and Others*, in *Locascia and Others v. Italy*,⁴⁹ the applicants were not required to provide evidence of medical conditions related to waste exposure. The Court accepted multiple studies submitted by the applicants, which showed that pollution from the waste management crisis harmed health and increased vulnerability to illness.⁵⁰ The Court based its reasoning on these scientific studies and found a violation of Article 8 of the Convention for the period from 11 February 1994 to 31 December 2009. However, the ECtHR reached a different conclusion for the period after the state of emergency, noting that the applicants did not demonstrate how the shortcomings in waste management directly affected their home and private lives, and therefore found no violation of Article 8 during this time. The Court stated that, although the large quantities of ecobales indicated ongoing environmental degradation in Campania, this alone did not establish that the situation specifically affected the residents.⁵¹

In another significant case, *Cordella and Others v. Italy*,⁵² the Court found that, of 180 applicants who complained about the effects of toxic emissions from the Ilva steel plant, 161 resided in areas previously classified as high environmental risk.⁵³ All applicants in these areas had admissible claims because scientific evidence demonstrated that pollution increased disease vulnerability in high-risk areas, establishing a causal link between the pollution and each affected individual.⁵⁴

When public authorities make decisions affecting the environment that interfere with private or family life, they must comply with Article 8, paragraph 2. Such

46 *Ibid.*, pp. 38–39.

47 In a case concerning the waste crisis in the Campania region, the European Court of Justice reached a different conclusion from the ECtHR, stating that the large quantities of waste left on the streets posed a clear danger to citizens' health, violating Article 4(1) of Directive 2006/12 (C-297/08 *European Commission v. Italian Republic*, p. 111).

48 *Di Sarno and Others v. Italy*, p. 109. See also Raisz and Krajnyák, 2022, p. 107.

49 The judgment in this case was issued 13 years after the application was submitted (23 June 2010 to 13 October 2023). For an analysis of the case, see Iurascu, 2023.

50 *Locascia and Others v. Italy*, p. 127.

51 *Ibid.*, 136.

52 See Longo, 2019.

53 Raisz and Krajnyák, 2022, p. 101.

54 *Manual on Human Rights and the Environment*, 2022, pp. 40–41.

decisions must be based on law, pursue a legitimate aim (such as economic well-being or protecting others' rights), and be proportionate to that aim. Authorities have a wide margin of appreciation in balancing individual and community interests; however, the Court may review whether they acted with due diligence and considered all competing interests.⁵⁵ In most environmental cases where a violation of Article 8 was found, the breach resulted not from the absence of environmental protection laws, but from authorities' failure to uphold and enforce existing legislation.⁵⁶

To assess the proportionality of the measures taken, the Court determines whether a fair balance has been achieved between community interests and the rights of the individuals involved. As previously explained, States have a 'margin of appreciation' in selecting measures to address harmful environmental factors, and the Court considers this margin when reviewing whether a fair balance has been achieved between competing interests.⁵⁷ For instance, Raisz and Krajnyák note that claims related to heavy road traffic and railway noise pollution are often successful under Article 8.⁵⁸ In contrast, in cases involving air traffic and aircraft noise, the Court usually prioritises public (economic) interests because airports contribute significantly to a country's economy.⁵⁹ The Court has also held that when a heavy burden is placed on individuals for community welfare, the State must provide strong evidence to justify interference with individual rights for the benefit of the general public.⁶⁰

Lastly, note that, according to ECtHR case law, environmental conservation – particularly through planning policies – may justify certain limitations on an individual's right to privacy and home life. For instance, in *Chapman v. the United Kingdom*, the Court held that the authorities' refusal to permit a member of the Roma community to live in her caravan on her land, because of environmental preservation policies, constituted a legitimate and proportionate aim and did not violate Article 8 of the Convention.⁶¹

4. Emerging Trends in Climate Litigation Before the ECtHR

The consequences of climate change have increased awareness of environmental protection. In the current context, judicial proceedings at the intersection of human rights and climate change are highly significant. Climate change cases have appeared

55 Ibid., p. 46.

56 Ibid. For instance, in *López Ostra v. Spain*, the waste-treatment plant operated without the required licence. Similarly, in *Taskin v. Turkey* and *Fadeyeva v. Russia*, the Court found violations because of illegal industrial activities or breaches of national environmental standards.

57 *Manual on Human Rights and the Environment*, 2022, p. 47.

58 Raisz and Krajnyák, 2022, p. 106.

59 Ibid.

60 *Dubetska and others v. Ukraine*, p. 128; *Manual on Human Rights and the Environment*, 2022, p. 50.

61 *Chapman v. the United Kingdom*, pp. 90–91.

before human rights bodies, including the ECtHR.⁶² On 9 April 2024, the Grand Chamber of the ECtHR issued three separate rulings on climate change cases (see Table 2). The case *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* concerned four women and a Swiss association of older women concerned about the effects of global warming on their health and living conditions. They argued that Switzerland is not taking sufficient action to address the effects of climate change. In this case, the Court found that Switzerland violated the right to respect for private and family life (Article 8) and the right of access to court (Article 6 paragraph 1) of the European Convention by failing to implement adequate measures to address climate change. However, in two other climate change-related cases (*Duarte Agostinho and Others v. Portugal and 32 Others* and *Carême v. France*), the Court declared the applications inadmissible. The European Court of Human Rights has adjourned several other cases (see pending cases in Table 2), delaying examination until the Grand Chamber issued rulings on the above climate change cases on 9 April 2024.

Table 2 – ECtHR’s Climate Change Case Law (Article 8)⁶³

JUDGMENT	DATE	COURT’S FINDINGS
Verein KlimaSeniorinnen Schweiz and Others v. Switzerland	9 April 2024	Violation of Article 8 and violation of Article 6 § 1 with respect to the association Verein KlimaSeniorinnen Schweiz, and inadmissible with respect to four individual applicants
Carême v. France (decision)	9 April 2024	Inadmissible
Duarte Agostinho and Others v. Portugal and 32 Other States (decision)	9 April 2024	Inadmissible
Uricchiov v. Italy and 31 Other States	Pending	
De Conto v. Italy and 32 Other States	Pending	
Müllner v. Austria	Pending	
Greenpeace Nordic and Others v. Norway	Pending	
The Norwegian Grandparents’ Climate Campaign and Others v. Norway	Pending	

62 Raisz and Krajnyák, 2022, pp. 85–94. The topic of climate change and human rights has been widely covered in literature. See, for instance, Sindico and Mbengue, 2021; Kobylarz and Grant, 2022; Rodríguez-Garavito, 2022; Hartmann and Willers, 2022; Rocha and Sampaio, 2023; Hefti, 2024.

63 See Thematic Factsheet ‘Climate Change’ compiled by the Press Unit of the ECtHR (April 2024).

JUDGMENT	DATE	COURT'S FINDINGS
Soubeste and four other applications v. Austria and 11 Other States	Pending	
Engels v. Germany	Pending	
Humane Being and Others v. the United Kingdom (decision)	1 December 2022	Inadmissible
Plan B. Earth and Others v. the United Kingdom	1 December 2022	Inadmissible
Asociacion Instituto Metabody v. Spain	5 October 2023	Inadmissible

The case *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* is significant in several respects. First, it clarified the conditions under which individuals and associations may submit applications to the Court alleging a State's failure to implement adequate measures to protect individuals from the adverse effects of climate change on human life and health. The Court established three conditions that an association must meet:

(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.⁶⁴

At the same time, the Court recognised that meeting the criteria for individuals in the context of climate change is particularly challenging, as the applicant must be subject to '(a) high intensity of exposure of the applicant to the adverse effects of climate change; and (b) a pressing need to ensure the applicant's individual protection'.⁶⁵ The Court found that none of the four individual applicants met these criteria; however, it granted standing to the association *Verein KlimaSeniorinnen Schweiz*.

The Court determined that Article 8 grants individuals the right to effective protection by State authorities against the serious adverse effects of climate change on their life, health, well-being, and quality of life. It also requires States to fulfil their obligation to provide such protection. From this perspective, the State's primary

⁶⁴ *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, p. 502.

⁶⁵ *Ibid.*, p. 527.

responsibility is to establish and enforce laws and policies that reduce the current and future effects of climate change.⁶⁶ Regarding the margin of appreciation, the Court found that States have a limited margin concerning their commitment to addressing the need to combat climate change and its adverse effects, as well as in setting the necessary aims and objectives. However, States have a broad margin of appreciation in choosing the means to achieve these objectives, including the operational choices and policies adopted to meet internationally established targets and commitments, considering their priorities and resources.⁶⁷

In the context of positive obligations, the Court concluded that effective respect for human rights, particularly the right to private and family life and home under Article 8 of the Convention, requires each Contracting State to implement measures that substantially and progressively reduce greenhouse gas emissions, with the goal of achieving net neutrality within the next 30 years. Immediate action and the establishment of intermediate reduction targets are necessary to ensure feasibility and to avoid placing an undue burden on future generations. These measures should be incorporated into a binding national regulatory framework and properly implemented. The relevant targets and timelines must be included in the domestic regulatory framework, forming the basis for general and sectoral mitigation measures.⁶⁸

The Court further outlined the requirements that must be met by all branches of Government as follows:

550. When assessing whether a State has remained within its margin of appreciation (see paragraph 543 above), the Court will examine whether the competent domestic authorities, be it at the legislative, executive or judicial level, have had due regard to the need to:

(a) adopt general measures specifying a target timeline for achieving carbon neutrality and the overall remaining carbon budget for the same time frame, or another equivalent method of quantification of future GHG emissions, in line with the overarching goal for national and/or global climate-change mitigation commitments;

(b) set out intermediate GHG emissions reduction targets and pathways (by sector or other relevant methodologies) that are deemed capable, in principle, of meeting the overall national GHG reduction goals within the relevant time frames undertaken in national policies;

€ provide evidence showing whether they have duly complied, or are in the process of complying, with the relevant GHG reduction targets (see subparagraphs (a)-(b) above);

66 Ibid., p. 519, pp. 544–545.

67 Ibid., pp. 541–543; *Guide to the case-law of the European Court of Human Rights – Environment*, 2024, p. 68.

68 *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, pp. 545–549.

(d) keep the relevant GHG reduction targets updated with due diligence, and based on the best available evidence; and
 € act in good time and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures.

551. The Court's assessment of whether the above requirements have been met will, in principle, be of an overall nature, meaning that a shortcoming in one particular respect alone will not necessarily entail that the State would be considered to have overstepped its relevant margin of appreciation.⁶⁹

Moreover, the Court held that States should adopt adaptation measures to address the most severe or immediate effects of climate change. These measures should be implemented and enforced using the most reliable evidence and in accordance with each State's overall obligations in this area.⁷⁰

Regarding the decision-making process, the Court stated that public authorities must provide information essential for formulating and implementing climate change regulations and measures, particularly to those who may be affected. Procedural safeguards should ensure public access to relevant study findings, enabling risk assessment. Additionally, mechanisms must allow for the inclusion of public views, especially those of affected individuals, in the decision-making process.

Finally, regarding the State's decision-making process in the context of climate change, the Court stated the following procedural safeguards that must be considered:

(a) The information held by public authorities of importance for setting out and implementing the relevant regulations and measures to tackle climate change must be made available to the public, and in particular to those persons who may be affected by the regulations and measures in question or the absence thereof. In this connection, procedural safeguards must be available to ensure that the public can have access to the conclusions of the relevant studies, allowing them to assess the risk to which they are exposed.

(b) Procedures must be available through which the views of the public, and in particular the interests of those affected or at risk of being affected by the relevant regulations and measures or the absence thereof, can be taken into account in the decision-making process.⁷¹

Two other climate cases, namely *Duarte Agostinho and Others v. Portugal and 32 Others* and *Carême v. France*, were ruled inadmissible by the Court on 9 April 2024. In the *Carême v. France* case, the Court ruled that the applicant could not be considered a

69 Ibid., pp. 550–551.

70 Ibid., p. 552; *Guide to the case-law of the European Court of Human Rights – Environment*, 2024, p. 69.

71 *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, p. 554.

victim because he no longer lived in the affected geographical area.⁷² In the *Duarte Agostinho and others v. Portugal and 32 Other States*, the Court emphasized the failure to exhaust domestic legal remedies.⁷³ Additionally, the Court noted the absence of a legal foundation to justify expanding the extraterritorial jurisdiction of the other 32 respondent States.⁷⁴

As Tzevelekos and Dzehtsiarou note, in climate change cases, the EctHR is being asked to adapt its system – originally designed in a different era – into a mechanism for safeguarding against a global threat that exceeds the current international legal order’s capacity.⁷⁵ With the inclusion of climate change issues, EctHR case law could help establish clearer, more specific standards for environmental protection regarding certain aspects of climate change.⁷⁶ However, as Tzevelekos and Dzehtsiarou observe, it is unlikely that the EctHR will become a comprehensive climate change court,⁷⁷ particularly because of its strict rules on individual victim status and its lack of extraterritorial jurisdiction, as shown in adjudicated climate cases.

5. Comparative Analysis of Key Cases in Central and Eastern Europe

As shown in the previous section, from the 1990s to the present, the EctHR has issued numerous judgments concerning the protection of the right to respect for private and family life in relation to the environment. Analysis of the EctHR’s case law regarding Central and Eastern European countries indicates many relevant judgments and decisions (see Table 3).

Table 3 – EctHR’s Environmental Case Law: Central and Eastern European countries

JUDGMENT	DATE	COURT’S FINDINGS	SUBJECT MATTER
Bor v. Hungary	18 September 2013	Violation of Article 8	Noise disturbance caused by the operation of the railway station
Deés v. Hungary	9 November 2010	Violation of Article 8	Noise, vibration, pollution and odour disturbance caused by the heavy traffic
Apanasewicz v. Poland	3 May 2011	Violation of Article 8	Nuisance (including pollution, various health problems and inedible crops) from concrete production plant
Borsiewicz v. Poland	1 July 2008	Inadmissible	Nuisance arising from the operation of the workshop

72 *Carême v. France*, p. 83.

73 *Duarte Agostinho and others v. Portugal and 32 Other States*, pp. 226–227.

74 *Ibid.*, p. 214.

75 Tzevelekos and Dzehtsiarou, 2022, p. 6.

76 *Ibid.*

77 *Ibid.*

JUDGMENT	DATE	COURT'S FINDINGS	SUBJECT MATTER
Leon and Agnieszka Kania v. Poland	21 October 2009	Inadmissible	Noise and pollution from craftsmen's cooperative
Frankowski v. Poland (decision)	20 September 2011	Inadmissible	Nuisances of increased road traffic
Furlepa v. Poland (decision)	18 March 2008	Inadmissible	Nuisance arising from activities of illegally constructed car repair garage
Gronuś v. Poland (decision)	2 December 1999	Inadmissible	Pollution related to adjacent chimney of a heating plant
Kapa and others v. Poland	14 October 2021	Violation of Article 8	Nuisance and noise (exceeding domestic and international norms, vibrations and exhaust fumes) from motorway traffic
Płachta and Others v. Poland (decision)	25 November 2014	Inadmissible	Noise disturbance from air base
Wałkuska v. Poland (decision)	29 April 2008	Inadmissible	Environmental harm and nuisance from pig farm
Folkman and Others v. Czech Republic (decision)	10 July 2006	Inadmissible	Nuclear power plant
Sdružení Jihočeské Matky v. Czech Republic (decision)	10 July 2006	Inadmissible	Nuclear power plant
Zapletal v. Czech Republic (decision)	30 November 2010	Inadmissible	Noise disturbance from factory
Bacila v. Romania	30 March 2010	Violation of Article 8	Pollution caused by city's factories
Brândușe v. Romania	7 July 2009	Violation of Article 8	Nuisance from former household waste dump
Fieroiu and Others v. Romania (decision)	23 May 2017	Inadmissible	Construction of regional center for temporary storage of waste
Marchiș and Others v. Romania (decision)	28 June 2011	Inadmissible	Noxious smells and residues released by the distillery
Tătar v. Romania	6 July 2009	Violation of Article 8	Pollution caused by an environmental accident
Podelean v. Romania (decision)	26 February 2019	Inadmissible	Noise disturbance generated by the industrial activity
Hudorovič and others v. Slovenia	10 March 2020	No violation of Article 8	Access to drinking water and sanitation

JUDGMENT	DATE	COURT'S FINDINGS	SUBJECT MATTER
Mastelica and Others v. Serbia (decision)	17 November 2020	Inadmissible	Living near a high-voltage (400 kV) power line
Oluić v. Croatia	20 May 2010	Violation of Article 8	Excessive noise from the bar
Tolić and others v. Croatia (decision)	4 June 2019	Inadmissible	Greasy water with specific odour in a new residential building
Udovičić v. Croatia	24 July 2014	Violation of Article 8	Nuisance from a bar
Kožul and Others v. Bosnia and Herzegovina	22 October 2019	Inadmissible	Noise and dust disturbance
Dimitar Yordanov v. Bulgaria	6 December 2018	Inadmissible	Expropriation because of creation of opencast coalmine
Galev and Others v. Bulgaria (decision)	29 September 2009	Inadmissible	Noise disturbance and smell from dentist's surgery
Ivan Atanasov v. Bulgaria	11 April 2011	No violation of Article 8	Pollution from tailings pond
Mileva and Others v. Bulgaria	25 February 2011	Violation of Article 8	Nuisances from the computer club
Dubetska and Others v. Ukraine	10 February 2011	Violation of Article 8	Environmental effects, including flooding, polluted ground water and air and soil subsidence because of coalmining basin
Dzemyuk v. Ukraine	4 September 2014	Violation of Article 8	Contamination of the groundwater reservoir
Grimkovskaya v. Ukraine	21 July 2011	Violation of Article 8	Vibration and noise disturbance caused by traffic
Calancea and Others v. Republic of Moldova (decision)	6 February 2018	Inadmissible	Living in an exceeded electric field
Otgon v. Republic of Moldova	25 October 2016	Violation of Article 8	Contaminated water
Jugheli and Others v. Georgia	13 October 2017	Violation of Article 8	Nuisances from thermal power plant such as air, noise and electromagnetic pollution and water leakage

Graph 1 shows that most cases originated in Poland and Romania. Four countries – Albania, Montenegro, North Macedonia, and Slovakia – have not recorded cases

related to violations of Article 8 concerning environmental protection before the ECtHR. However, this does not indicate that these countries are not subject to proceedings before courts or other bodies. For example, in Albania in December 2016, three environmental organisations and 38 residents of Kutë village, which faced disappearance due to flooding, filed a lawsuit against the construction of the Poçem hydropower plant on the Vjosë river. This was the first environmental case heard by the Albanian Court, which concluded with the Court of Appeal dismissing the appeal and upholding the decision in favour of the plaintiffs.⁷⁸ In 2020, the Supreme Court of Montenegro rejected the revision as unfounded and upheld the Court of Appeal judgment in Podgorica. In this case, the plaintiff alleged exposure to excessive noise and requested the court to prohibit the organisation and holding of concerts in a stadium opposite her apartment. The claim was deemed inadmissible because the organisers had permission to hold concerts, and it was determined that noise levels did not exceed permitted limits.⁷⁹

Special mention should be given to the Compliance Committee of the Aarhus Convention, which considers compliance issues submitted by a Party to the Convention, the secretariat, members of the public, or on its own initiative. The Aarhus Convention requires Parties to ensure access to information, public participation in decision-making, and access to justice in environmental matters to protect the environment for current and future generations. From 2005 to the present, there have been three recommendations for Slovakia, one for Albania, and one for North Macedonia. For Slovakia, recommendations addressed the lack of public participation in the decision-making process for an additional construction permit for the Mochovce Nuclear Power Plant,⁸⁰ the absence of decision-making regarding the extension of reactors 3 and 4 at the same facility,⁸¹ and the failure to ensure public participation in the 2013 amendment of forestry legislation, as well as inadequate access to justice for enforcing regulations on public participation in drafting such legislation.⁸² Albania received recommendations in 2007 regarding public access to information and participation in decision-making for the construction of an industrial park and a thermal electric

78 Administrative Court of Appeal in Tirana, case no.: 31103-040003-86-2017, 27 June 2024; *The Court of Appeals confirms the verdict for the cancellation of Poçem Hydropower plant in Vjosa river*, 2024.

79 Supreme Court of Montenegro, Rev 436/2020, 15 July 2020.

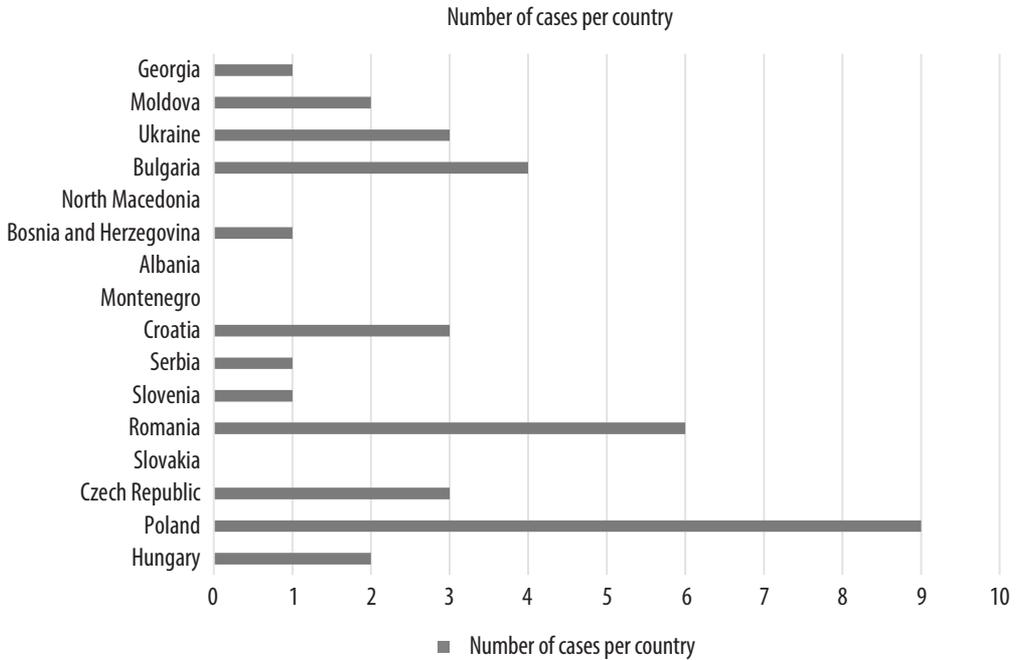
80 Compilation of findings of the Aarhus Convention Compliance Committee adopted 18 February 2005 to date (Version 14 August 2023), see: Findings and recommendations with regard to communication ACCC/C/2009/41 concerning compliance by Slovakia (adopted by the Compliance Committee on 17 December 2010).

81 *Ibid.*, see: Findings and recommendations with regard to communication ACCC/C/2013/89 concerning compliance by Slovakia, adopted by the Compliance Committee on 19 June 2017.

82 *Ibid.*, see: Findings and recommendations with regard to communication ACCC/C/2014/120 concerning compliance by Slovakia, adopted by the Compliance Committee on 24 July 2021.

power station.⁸³ North Macedonia was recommended to improve the timeliness of its national implementation reports, which are required to be submitted regularly.⁸⁴

Graph 1 – Number of ECtHR Cases per Central and Eastern European Country

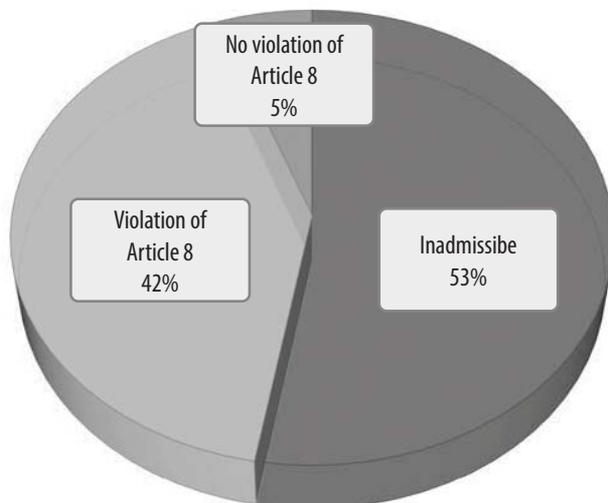


Out of 36 judgments or decisions, 15 were ruled with a violation of Article 8, 19 were ruled as inadmissible, and 2 were ruled with no violation of Article 8 (Graph 2).

83 Ibid., see: Findings and recommendations with regard to communication ACCC/C/2005/12 concerning compliance by Albania, adopted by the Compliance Committee on its sixteenth meeting (13–15 June 2007).

84 Ibid., see: Findings and recommendations with regard to request ACCC/M/2014/1 concerning compliance by the former Yugoslav Republic of Macedonia, adopted by the Compliance Committee on 4 May 2017.

Graph 2 – Judgments and Decisions of the ECtHR with Respect to Central and Eastern European Countries



5.1. Established Violations of Article 8

Case law in which Article 8 was found to have been violated involved issues such as noise disturbance, nuisance from industrial activities, pollution, and residence near nuclear or thermal power plants or high-voltage lines. The ECtHR considered excessive noise from bars, clubs, and traffic, as well as nuisance from factories, to constitute serious harm to the peaceful enjoyment of the right to private and family life. The following sections review relevant cases concerning environmental nuisance.

5.1.1. Excessive Noise

a) *Oluić v. Croatia*

In *Oluić v. Croatia*, the applicant experienced noise disturbance over several years. She and her family lived in a house where a bar operated in another section. Noise measurements taken on multiple occasions indicated that levels from the bar exceeded permitted limits. The applicant also provided medical documentation confirming health problems resulting from prolonged exposure to excessive noise. The ECtHR compared this case to others involving noise from nightclubs and found them similar. The ECtHR established general principles regarding excessive noise as follows:

44. Article 8 of the Convention protects the individual's right to respect for his private and family life, his home and his correspondence. A home will usually be a place, a physically defined area, where private and family life develops. The individual has a right to respect for his home, meaning not just the right to the actual physical area, but also to the quiet enjoyment of that area. Breaches of the right to respect of the home are not confined to concrete or physical

breaches, such as unauthorized entry into a person's home, but also include those that are not concrete or physical, such as noise, emissions, smells or other forms of interference. A serious breach may result in the breach of a person's right to respect for his home if it prevents him from enjoying the amenities of his home.

The ECtHR emphasised that when an individual is directly and seriously affected by nuisance, an issue may arise under Article 8. From the perspective of the State's positive obligations to protect the applicant's rights under Article 8, it was established that the State failed to implement adequate protective measures for the applicant and her family over an eight-year period. The measures taken, such as orders to reduce noise and to add sound insulation to the walls and inter-floor construction, were insufficient. Consequently, the violation of the applicants' rights was found unanimously.

b) *Bor v. Hungary*

In *Bor v. Hungary*, the ECtHR considered the claim of an applicant whose house was located across the street from the Railway Station, where noise from diesel engines disrupted his life. The ECtHR highlighted the need to maintain a fair balance between individual interests and the public interest, which in this case was the provision of rail transport.⁸⁵

It took approximately 16 years for domestic courts to issue an enforceable decision protecting the applicant from serious nuisance, which had prevented him from enjoying his home. This led the ECtHR to conclude that the State failed to fulfil its positive obligations to strike a fair balance. Article 8 was interpreted to require public authorities not only to protect individuals from arbitrary interference, but also to implement positive measures to preserve protected rights, such as the right to live in a quiet environment.⁸⁶ In addition, 'the existence of a sanction system is not enough if it is not applied in a timely and effective manner'.⁸⁷ Similar cases have also experienced delays in proceedings before national courts.

c) *Deés v. Hungary*

In *Deés v. Hungary*,⁸⁸ increased traffic on the applicant's street resulted from trucks avoiding a motorway toll. This led to higher levels of noise, vibrations, odour, and pollution affecting the applicant. He also alleged that the vibrations damaged his house's walls, collectively violating his right to respect for private life. Unlike *Bor v. Hungary*, the State, considering its positive obligations under Article 8, implemented measures to reduce and divert traffic. However, the ECtHR found these measures inadequately enforced and insufficient, which exposed the applicant to excessive nuisance.

⁸⁵ *Bor v. Hungary*, pp. 24–25. See also Raisz and Krajnyák, 2022, p. 104.

⁸⁶ *Manual on Human Rights and the Environment*, 2022, p. 41.

⁸⁷ *Bor v. Hungary*, p. 27.

⁸⁸ See Raisz and Krajnyák, 2022, pp. 104–105.

d) *Kapa and Others v. Poland*

Similar to the previous case, in *Kapa and Others v. Poland*,⁸⁹ the applicants experienced excessive noise, vibrations, and odour from traffic on an inadequately equipped road near their home. The ECtHR found that the authorities did not achieve a fair balance between the general interest in motorway development and residents' enjoyment of private and family life. Furthermore, the Court determined that the measures taken by public authorities were ineffective:

172. The Court observes that the authorities faced a difficult task of mitigating the problem of very heavy traffic resulting from the rerouting of the A2 motorway down Warszawska Street. They also had a very limited choice of possible adaptation measures. The Court therefore accepts that the authorities made considerable efforts to respond to the problem. This, however, does not change the fact that these efforts remained largely inconsequential, because the combination of the A2 motorway and the N14 road was, for many reasons, the preferred route for drivers. As a result, the State put vehicle users in a privileged position compared with the residents affected by the traffic.

The Court unanimously held that there was a violation of Article 8.

5.1.2. *Waste Deposit*a) *Brândușe v. Romania*

In *Brândușe v. Romania*, the applicant was detained on police premises located near a former household waste dump that operated without the required authorisations. He was exposed to stale air and persistent flies and insects entering his cell from the dump over several years, which posed a significant risk of serious infection. The ECtHR found that no environmental study had been conducted before the dump began operating, and when such a study was eventually carried out, it revealed a strong nuisance exceeding proposed standards, indicating that residents nearby experienced unbearable odour. The ECtHR concluded that the State failed to meet its positive obligations towards the applicant.

5.1.3. *Water Contamination*a) *Otgon v. Republic of Moldova*

In *Otgon v. Republic of Moldova*, the applicant and her daughter were hospitalised after drinking tap water at home. An outdated sewage pipe had leaked into the drinking water, resulting in the hospitalisation of five people. The Government did not dispute the water contamination or related health risks but denied the applicant victim status because she had received compensation from domestic courts. The ECtHR found that the higher domestic court had reduced the compensation to 324 EUR from 648 EUR

89 Ibid., p. 105.

without adequate justification, which was below the minimum awarded in comparable cases in the Republic of Moldova. Consequently, the Court concluded that victim status under Article 8 remained applicable.

b) *Dzemyuk v. Ukraine*

In *Dzemyuk v. Ukraine*, a cemetery was built 40 m from the applicant's house. The local village also used water from wells supplied by groundwater. The applicant alleged that his drinking and gardening water was contaminated, violating his right to normal private and family life. Although the national court ordered the cemetery's closure, the order was not enforced. The ECtHR found that the construction and use of the cemetery breached several environmental regulations, public authorities failed to address health risks, and they disregarded the conclusions of the environmental authorities, thereby violating the applicant's rights under Article 8.

5.1.4. Industrial Pollution

a) *Tătar v. Romania*

In *Tătar v. Romania*,⁹⁰ the applicants lived near a gold mine that used sodium cyanide for extraction. In early 2000, an accident released 100,000 m³ of cyanide-contaminated water into the river and surrounding environment due to a dam breach. The applicants initiated administrative and criminal proceedings in national courts, alleging that the company's activities endangered their health and the environment, but these actions were unsuccessful. Before the ECtHR, they invoked Article 2, the right to life, and argued that the State had failed to protect them. The ECtHR, however, assessed the complaints under Article 8 and found a violation. The Court determined that the State had not protected the applicants' rights and had breached the precautionary principle by failing to assess the risks of the gold extraction method before issuing an operating permit and by not taking adequate measures after the accident. Notably, the ECtHR found no causal link between the pollution and the applicants' health deterioration.

The significance of this case lies in the ECtHR's reference to the rights set out in the Aarhus Convention.⁹¹ The Court concluded that the State was required to ensure public access to information and the right to participate in decision-making processes concerning environmental matters. In this instance, citizens either lacked access to information or had only limited access before the permit was granted, and information was also insufficient following the accident. The ECtHR emphasised the importance of the public's right to information.

⁹⁰ Ibid., pp. 99–101.

⁹¹ Romania has ratified Aarhus Convention 11 July 2000.

b) *Băcilă v. Romania*

In *Băcilă v. Romania*, the applicant and her family left their city because of pollution from local factories. After several factories closed, they returned, expecting reduced pollution. The applicant then filed a complaint against the main factory producing lead and zinc, which released contaminated elements and heavy metal dust into the air. The ECtHR reviewed medical documents confirming health deterioration due to pollution, as well as multiple reports on the harmful effects of hazardous chemicals on humans and vegetation. The Court also found that public authorities had failed to reduce pollution levels for the welfare of citizens, stating that:

69. It is not for the Court to rule on the advisability of a possible cessation of the factory's activity so that it complies with environmental protection standards [...]. However, it must be noted that despite an increase in pollution after the privatization of the factory, recognized by the local authorities, it does not appear from the file that they took, before 2007, any measures against the company. The reluctance to sanction the company was motivated by the fact that short-term measures would be ineffective and would threaten a large part of the region's jobs

Even when considering the public interest in hosting a large employer factory, the ECtHR found that the State did not achieve a fair balance with citizens' rights to a safe and healthy environment.

c) *Dubetska and Others v. Ukraine*

In *Dubetska and Others v. Ukraine*, the applicants – two families – lived near a coal mine and a recently opened coal factory, where they were exposed to flooding, contaminated groundwater, and polluted air. A study confirmed an increased risk of cancer, as well as respiratory and kidney diseases, for individuals residing near active mines and factories. The applicants reported a lack of drinkable water, damage to their homes from mining activities, and the development of several health conditions, all supported by medical documentation. Although public authorities attempted to address the situation through various orders to the factory and a resettlement plan, these measures were not enforced. The ECtHR observed that the applicants were compelled to remain in the polluted area because they could not afford to relocate and were unable to sell their homes due to decreased property values. The Court also noted that, over a twelve-year period, public authorities failed to make progress in assisting the applicants, while the industrial facilities continued to operate in violation of national environmental regulations.⁹²

92 *Dubetska and Others v. Ukraine*, p. 155.

5.2. Cases with No Article 8 Violations

Two cases were ruled with no violations of Article 8.

In the first case, *Ivan Atanasov v. Bulgaria*, the ECtHR had the opportunity to recognise an interest in environmental protection but did not do so. The applicant claimed that public authorities had endangered his and his family's health because they lived near a decommissioned mine. The ECtHR unanimously found no violation of Article 8, stating that the Article does not apply in every instance of environmental deterioration, as the right to nature preservation is not among the Convention rights. The Court also held that fear of negative consequences alone cannot activate Article 8. Although the ECtHR acknowledged that living near the pond posed environmental and health risks, it ruled as it did because of factors such as the considerable distance between the applicant's home and the pollution source, the absence of an active production process, and the lack of concrete evidence of increased morbidity or health problems among residents.

The second case, *Hudorovič and Others v. Slovenia*, differs from the aforementioned judgments because it concerns respect for private life, with applicants from Roma communities complaining about inadequate conditions due to a lack of access to safe drinking water and sanitation. Although the case does not address environmental protection, access to safe drinking water is linked to the enjoyment of private and family life, bringing it within the scope of Article 8. The ECtHR found that public authorities had taken effective positive measures to improve living conditions for the Roma community and determined that the community itself had not made sufficient efforts to improve its own situation, leading to a finding of no violation of Article 8.

5.3. Inadmissible Cases under Article 8

For cases deemed inadmissible, applicants typically failed to provide the ECtHR with medical documentation demonstrating that their health had been affected by the negative effect of environmental nuisance (e.g. *Borysiewicz v. Poland*). In some instances, there was also an absence of environmental expert opinions regarding the damage caused by the nuisance, even before national courts (e.g. *Wałkuska v. Poland*).

In *Podelean v. Romania*, the ECtHR addressed the applicant's complaint regarding noise pollution from nearby industrial operations and the alleged failure of national public authorities to protect his right to private and family life. The ECtHR identified four factors that led to the case's inadmissibility: (1) first, the applicant voluntarily established his domicile near the industrial factory, fully aware of the nuisance it generated; (2) second, he complained only about one industrial factory, despite the presence of two other noise sources; (3) third, he benefited from procedural guarantees; and (4) fourth, public authorities attempted to reduce noise emissions by ordering the factory's modernisation and installing sound insulation.⁹³

In *Mastelica and Others v. Serbia*, the applicants complained about a high-voltage power line constructed near their homes, citing the effects of electric and magnetic

93 *Podelean v. Romania*, p. 42.

fields on their health and their exclusion from the decision-making process prior to approval. The ECtHR considered that the highest recorded frequency levels were below WHO standards and noted the applicants' lack of medical evidence. Regarding the involvement of certain public institutions, such as the Ombudsman, the Court offered an interesting perspective:

They had regard to the general aims of protecting the environment, which are quite different from the aims of Article 8 of the Convention, namely to provide a safeguard to those personally affected by violations of their fundamental human rights [...]. As already noted above, neither Article 8 nor any of the other provisions of the Convention or the Protocols thereto were specifically designed to provide protection of the environment; other international instruments and domestic legislation are better suited to address such issues.⁹⁴

Because the minimum severity threshold was not met, the case was declared inadmissible.

6. Conclusion

The European Convention was established at a time when environmental protection was not a central concern in international affairs. Since its entry into force in September 1953, additional Protocols have introduced new rights, but none have included environmental rights. Nevertheless, the ECtHR has developed an innovative approach to environmental protection. This 'evolutionary' interpretation by the Court has generally advanced the protection of rights and freedoms to support the development of a 'European public order'.⁹⁵ As shown in this research, Article 8 is essential for safeguarding individual rights violated by adverse environmental conditions. However, the ECtHR considers environmental cases only when individuals' well-being is at risk. According to the severity test, the Court must assess whether there is a causal link between the activity that significantly affects the environment and the harm suffered by the individual, and whether the adverse effects have reached a certain level of seriousness.⁹⁶ The determination of this minimum threshold depends on the specific circumstances of each case. The study found that medical documentation and scientific evidence are crucial for establishing a violation of Article 8. Consequently, the environment remains unprotected unless individuals' rights are affected, regardless of the extent of environmental damage.

⁹⁴ *Mastelica and Others v. Serbia*, p. 49.

⁹⁵ *Hatton and Others v. United Kingdom*, Joint dissenting opinion of Judges Costa, Ress, Türmen, Zupančič and Steiner, p. 2.

⁹⁶ *Manual on Human Rights and the Environment*, 2022, p. 35.

There has been a marked increase in environmental protection cases before the Court, including a rising number of climate litigation cases, which highlights the importance of this issue. In *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, the ECtHR held that Article 8 grants individuals the right to effective protection by State authorities against the serious adverse effects of climate change on their life, health, well-being, and quality of life, and obliges States to ensure such protection. Thus, the State's primary responsibility is to establish and enforce laws and policies that mitigate the current and future effects of climate change.⁹⁷

The analysis of cases from Central and Eastern Europe shows that these cases help interpret key concepts of Conventional rights, particularly the positive obligations of public authorities towards individuals. According to the data in Section 5, of 36 judgments or decisions, 15 involved violations of Article 8, 19 were deemed inadmissible, and 2 found no violation of Article 8. This indicates that, although many cases are inadmissible, a considerable proportion of admissible cases involve Article 8 violations. The study found that most infringements of the right to privacy and family life in Central and Eastern Europe arose from issues such as excessive noise, improper waste disposal, water pollution, and industrial contamination. In most environmental cases where Article 8 was breached, the cause was not a lack of environmental laws, but the States' failure to enforce existing regulations.⁹⁸ No cases from Central and Eastern Europe have directly addressed climate change to date.

As the Court states in its case law, neither Article 8 nor any other provisions of the Convention on Human Rights or its Protocols were explicitly designed to protect environmental interests. Other international treaties and national laws are more suitable for addressing environmental protection.⁹⁹ Environmental protection is often cited as a global challenge that individual countries cannot address effectively without international cooperation and coordination.¹⁰⁰ Adopting a new protocol to the Convention, as recommended by the Parliamentary Assembly in Resolution 2396 (2021), could significantly strengthen the protection of the right to private and family life in environmental cases by specifically addressing the right to a safe, clean, healthy, and sustainable environment.

97 *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, p. 519, pp. 544–545.

98 *Manual on Human Rights and the Environment*, 2022, p. 46.

99 *Mastelica and Others v. Serbia*, p. 49.

100 *Bifulco and Nato*, 2020, p. 108.

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