

The Right to a Healthy Environment in the Case-law of the European Court of Human Rights

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Environment in ECtHR Case-law

- Indirect protection “par ricochet”
- Innovative approach of the Court
- The environmental protection right was especially related to:
 - Article 2 (the right to life)
 - Article 8 (the right to privacy)but also, occasionally, to Article 6 (unfair proceedings, non-execution of internal judgments)

Environment in ECtHR Case-law

- Environmental protection => special value
=> Used by the Court to justify limitations brought by States to other rights

or

- => Used by the Court to create new positive obligations upon States

Cases related to pollution

- Different types of pollution, especially:
 - Noise pollution *Powell and Rainer v. UK, Hatton v. UK, Moreno Gomez v. Spain, Bor v. Hungary, Zammit Maepel v. Malta*
 - Chemical pollution *Lopez Ostra v. Spain, Oneryildiz v. Turkey, Guerra v. Italy, Tătar v. Romania*
 - Industrial
 - Nuclear
 - Waste collection-related
 - Water supply pollution
 - Other types of chemical pollution (passive smoking)

Cases related to deficiencies in decision-making

- Environmental damages caused by natural disasters *Ozel a.o. v. Turkey*
- Environmental damages caused by improper action of local authorities regarding waste collection and water supplies *Branduse v. Romania, Dzemyuk v. Ukraine*

Conclusions

- States have a wide margin of appreciation in establishing the measures to be taken to protect the “environmental aspect” of private life.

Conclusions

- States have special **positive obligations** = appropriate measures able to protect the individuals against the adverse effects on their rights of environmental pollution of different kinds :
 - creating a comprehensive legislative and administrative framework on environmental protection
 - procedural positive obligation to investigate properly any damage caused by pollution (especially life losses) and punish those responsible

- A special positive obligation:
 - = > ensuring the “horizontal effect” of the Convention (protection against any violation by private individuals or companies): “the state has the positive obligation to adopt reasonable and adequate measures capable to protect the rights of the concerned persons to the respect of their private life and home and, **more generally, to enjoy a healthy and protected environment**” (*Tătar v. Romania*, 2009).

Conclusions

- The authorities have the responsibility to take positive measures to **intervene** in order to ensure that the environmental protection legislation is applied (*Hamer v. Belgium*).
- This duty to actually implement the enacted legislation is crucial in both Article 2 and Article 8 cases.

Conclusions

- One of the most important positive obligations in this respect is **to inform** the public about the risks of serious pollution caused by industrial or other activities, dangerous to the environment.

Conclusions

- States must **ensure a fair balance** between the economic interests and welfare of the community as a whole (secured by polluting activities) and the individual rights and interests (menaced by the same activities). Whenever this balance is broken, Articles 2 and 8 are breached.

Environment protection as a special value

- Public authorities must assume a responsibility which should in practice result in their intervention at the appropriate time in order to ensure that the statutory provisions enacted to protect the environment are not entirely ineffective.
- Ex. *Pine Valley Developments v. Ireland*, *Valico v. Italy*, *Mangouras v. Spain*, ***Hamer v. Belgium***

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- *Why is this extremely important? Because here, the Court not only imposes **the right to a healthy environment** as a result of positive obligations to protect other rights, but also **positive obligations** to protect this right to environment.*

Right to a healthy environment in Romania

- Article 35 Constitution of Romania
- “(1) The state recognizes the right of every person to a healthy and ecologically balanced environment.
- (2) The state ensures the legislative framework to allow the exercise of this right.
- (3) The natural and legal persons have the duty to protect and improve the environment.”

Controversial Issues on Environmental Protection in Romania

- The „Rosia Montana” case (cyanide pollution, destruction of homes and destruction of an entire historic site by gold mining industry).
- Massive illegal deforestations
- Insufficient protection of wildlife
- Potential case: widespread nosocomial infections in public hospitals