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**Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment**

**Individual Report on the European Convention on Human Rights and the European Union**

Report No. 14

Prepared for the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, and Sustainable Environment[[1]](#footnote-1)

December 2013

# INTRODUCTION

1. The following report reviews case law of two regional courts in Europe – the European Court of Human Rights (ECrtHR) and the European Court of Justice of the European Union (CJUE) -- regarding the relationship between human rights and the environment, including the application of European Union (EU) environmental law related to human rights.
2. This report is one of a series of reports that examine human rights obligations related to the environment, as they have been described by various sources of international law. Other reports in the series examine obligations as they have been elaborated under the United Nations’ core human rights treaties; other regional human rights systems; the Special Rapporteur on the rights of indigenous peoples; and multilateral environmental agreements and non-binding international environmental instruments.
3. This mapping exercise supports the work of the United Nations Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. Human Rights Council resolution 19/10 requests the Independent Expert, *inter alia*, to study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, and to identify and promote best practices on the use of human rights obligations and commitments to inform, support and strengthen environmental policy making.
4. The Independent Expert is undertaking this mapping exercise to provide greater conceptual clarity to the application of human rights obligations related to the environment. The goal is to provide a strong evidentiary basis, grounded primarily in existing international human rights law, for the clarification of the human rights norms relevant to the environmentThese reports all synthesize and draw from a representative sample of primary materials associated with each area of research.

## Summary of the Research Process

1. The ECrtHR, based in Strasbourg, was established in 1959 with the mandate to rule on individual or State applications alleging violations of the civil and political rights set out in the Convention for the protection of Human Rights and fundamental Freedoms (entry into force in 1953). Since 1998, individuals can apply to the Court directly.[[2]](#footnote-2) The Court and the Convention are an essential part of the European human rights system framed by the 47 Member States of the Council of Europe.
2. The ECrtHR has been described as a dynamic and creative court.[[3]](#footnote-3) It favors a teleological interpretation of the Convention and it has referred to the Convention as a “living instrument”.[[4]](#footnote-4)
3. According to the ECrtHR, *“*it is of crucial importance that the Convention is interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory. A failure by the Court to maintain a dynamic and evolutive approach would indeed risk rendering it a bar to reform or improvement”.[[5]](#footnote-5)
4. Furthermore, the Court considers *“*its jurisdiction “extend[s] to all cases concerning the interpretation and application of [the] Convention which are referred to it in accordance with Article 48 […] and that in the event of dispute as to whether the Court has jurisdiction, the matter [is] settled by the decision of the Court”.[[6]](#footnote-6)
5. This report relies upon several academic articles and the Manual on Human Rights and the Environment[[7]](#footnote-7) published by the Council of Europe in 2012 to review ECrtHR case law. Abstracts from case law have been accessed from HUDOC (Human Rights Documentation online Database). The European Union legislation presented in the report has been researched on EUR-LEX online database. Both primary and secondary legislation are available on the website. Decisions from the European Court of Justice were accessed on the Court’s website curia.europa.eu and the search terms “environment” “healthy”, “sustainable”, "Article 191", "Article 6", "Article 11" and "Article 37" were used to find relevant decisions.

## Overview of the Report

1. ECrtHR case law and EU law do not expressly recognize a right to a healthy environment. However, a meaningful corpus of jurisprudence and legislation has been elaborated to protect the individual from the risk of a dangerous environment. This law is generally not about protecting the environment for its own sake, but rather protecting individuals and their interests, including their privacy, home and well-being. A healthy environment can be perceived as a prerequisite for the enjoyment of the rights protected by the European Convention on Human Rights. The EU’s high environmental standards also contribute to guaranteeing a healthy environment for the enjoyment of human rights.
2. The remainder of this report is divided in two main parts. The first part examines States’ human rights obligations related to the enjoyment of a healthy environment as they have been developed in the ECrtHR. The second part synthesizes the EU legislation and case law on environmental protection that is relevant to human rights, including the implementation of the Aarhus Convention.[[8]](#footnote-8)

# Human Rights threatened by Environmental Harm in case law of the European Court of Human Rights

## Right to a Healthy Environment

1. Although the European Court of Human Rights has recognized the importance of environmental matters, it has not recognized a freestanding right to a healthy environment. The Court states in *Kyrtatos v. Greece* that “[n]either Article 8 (protection of private and family life) nor any 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”.[[9]](#footnote-9)
2. However, the Court has accepted an indirect recognition of environmental issues when protecting fundamental rights.[[10]](#footnote-10) Accordingly, the Court has found that a range of environmental factors can affect and threaten individuals and their rights under the Convention.[[11]](#footnote-11) Specifically, ECrtHR case law has addressed environmental issues as components of Articles 2 (“right to life”) and 8 (“right to respect of private and family life”) of the Convention, as well as Article 10 and Article 1 of Protocol no. 1 of the Convention and procedural rights like the right to an effective remedy (Articles 6.1 and 13).
3. The ECrtHR has also taken into account international and European instruments for the protection of the environment, such as the Aarhus Convention, resolutions from the Committee of Ministers of the Council of Europe, the Lugano Convention, EU legislation, and international instruments such as the Rio Declaration.[[12]](#footnote-12) For example, in *Demir and Baykara v. Turkey*, the Court stated that it

built on its case-law concerning Article 8 of the Convention in matters of environmental protection (an aspect regarded as forming part of the individual’s private life) largely on the basis of principles enshrined in the United Nations Economic Commission for Europe’s Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.[[13]](#footnote-13)

## “Right to Life”: Article 2

1. The ECrtHR considers Article 2 as determinant for the realisation of others’ rights in the Convention. The Court is restrictive, however, in considering Article 2 for environmental issues. There are only a few cases where the Court has found a violation of Article 2 in this context, namely where applicants have been exposed to dangerous activities or natural disasters.
2. *L.C.B. v. United Kingdom*[[14]](#footnote-14) is the starting point for the recognition of a link between environment and the right to life. However, in this case the Court concluded there was no breach of Article 2 as no causal link was established between the exposure of a father to radiation (while serving the army during nuclear tests) and leukemia suffered by a child subsequently conceived. In another case, a causal link was established between the serious administrative flaws and the applicants’ death.[[15]](#footnote-15)
3. In *Öneryildiz v. Turkey*, “[t]he Chamber emphasized that the protection of the right to life, as required by Article 2 of the Convention, could be relied on in connection with the operation of waste‑collection sites, on account of the potential risks inherent in that activity”.[[16]](#footnote-16)
4. This position of the Court was confirmed in *Budayeva and others v. Russia*, in which a breach of Article 2 was recognized in a mudslide that according to official reports killed 8 people, with an additional 19 people missing according to the applicants. The case arose in the town of Tyrnauz, which is under permanent threat from mudslides because of its geographical position. In summer 2000, a succession of mudslides hit the town that resulted in many deaths and extensive property damage.. It appeared that the public authorities did not take appropriate measures to mitigate the risks of mudslides, notably in restoring the dam (seriously damaged by a mudslide a year previously). The Court noted “that although only one of the present applications, brought by Ms Budayeva, concerns the death of a family member, the circumstances of the case in respect of the other applicants leave no doubt as to the existence of the threat to their physical integrity. […] This brings their complaints within the ambit of Article 2 of the Convention”.[[17]](#footnote-17)
5. In *Kolyadenko and others v. Russia*[[18]](#footnote-18), a heavy rainfall reaching 189 millimetres fell within two hours, which resulted in the release of water from the reservoir. The water release flooded a large area around the reservoir, seriously damaging the applicants’ homes and furniture. There, the Court considered that the causal link established between the negligence attributable to the State and the endangering of the lives of those living in the vicinity of a water reservoir, also applied to the damages caused by a flooding to the applicants’ homes.

## “Right to Respect for Private and Family Life”: Article 8[[19]](#footnote-19)

1. Article 8 is the principal instrument used by the ECrtHR for the protection of the environment and the Court has developed an important environmental jurisprudence based on that Article. According to the *Moreno Gomez v. Spain* case, “there is no explicit right in the Convention to a clean and quiet environment, but where an individual is directly and seriously affected by noise or other pollution, an issue may arise under Article 8”.[[20]](#footnote-20)
2. In the *McGinley and Egan v. United Kingdom* case, M. McGinley was a plant operator at Christmas Island for the UK army when atmospheric tests of nuclear weapons were carried out in the Pacific Ocean. During the tests, service personnel were ordered to line up in the open and to face away from the explosions. M. Egan was serving as a stoker on a ship positioned off Christmas Island during the detonations. After the exposure, the applicants complained about a succession of health problems, which they came to attribute to radiation exposure. “In the absence of any individual monitoring, they were left in doubt as to whether or not they had been exposed to radiation at levels engendering risk to their health. The Court considers that […] the issue of access to information which could either have allayed the applicants’ fears in this respect, or enable them to assess the danger to which they had been exposed, was sufficiently closely linked to their private and family lives within the meaning of Article 8 as to raise an issue under that provision”. The Court concluded however that there was no violation of Article 8 because of the failure of the applicants to request documents, but the Court scrutinized nevertheless the radioactive impact on the area where the soldiers were stationed.[[21]](#footnote-21)
3. In *Lopez Ostra v. Spain*, the Court admitted a breach of Article 8 in a situation of pollution from a waste treatment plant situated a few meters from the applicant’s home. Based on medical reports and experts’ opinions, it appeared that hydrogen sulphide emissions from the plant exceeded the permitted limits, and could endanger the health of person living nearby. The court considered that “severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health”.[[22]](#footnote-22)
4. In the noteworthy *Bacila v. Romania* case, the Court recognized a breach of Article 8 as the applicant showed a causal link between the plant pollution (by emitting noxious emissions) and her health deterioration (lead poisoning). [[23]](#footnote-23)
5. In the *Brânduşe v. Romania* case, a prisoner was complaining about olfactory nuisances exuding from a close garbage dump, during his detention in jail. First, the Court considered cell as a the unique “life space” the prisoner could dispose of, and consequently accepted to examine his complaint under Article 8. Furthermore, the Court observed that another prisoner and several environmental impact studies confirmed the allegations about air pollution, which led to application of Article 8 even without degradation of the applicant’s health during the detention. Due to the failure of public authorities to take appropriate measures to reduce olfactory nuisances, the Court concluded to a breach of Article 8.[[24]](#footnote-24)
6. In the *Taskin v. Turkey* case, a mining permit authorized the use of cyanide leaching process for gold extraction, with a risk for health and the environment according to the applicants. A domestic judgment by the Supreme Administrative Court led to the invalidation of such a permit. Therefore, the European Court found that in this case the delay of compliance with the domestic judgment rendered the judicial guarantees enjoyed by the applicants devoid of purpose in breach to Article 8 of the Convention.[[25]](#footnote-25)
7. *Tatar v. Romania* concerned a father and his son living in the area surrounding the site of a gold mine. The applicant argued that the extraction process, storing and using sodium cyanide, constituted a genuine risk to human health. Furthermore, he alleged that the bronchial asthma contracted by his son was a result of the pollution generated by the company extracting the gold. The Court found that the State had failed in its obligation to guarantee the rights under Article 8 of the Convention since the applicant failed to obtain any official document from the authorities confirming that the gold extraction plant’s activities were dangerous. Nonetheless, on the basis of environmental impact studies of the spilling submitted by the respondent State, the Court concluded that a serious and substantial threat to the applicant’s well-being existed. [[26]](#footnote-26)

## Situations Covered by Articles 2 and 8

1. The Court clarified the scope of article 2 by stating that “[a]rticle 2 of the Convention does not solely concern deaths resulting from the use of force by agents of the State but also, in the first sentence of its first paragraph, lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction”.[[27]](#footnote-27) The threat to life thus can emanate also from natural phenomena or human activities. The Court explained further that “this Article, read as a whole, covers not only situations where certain action or omission on the part of the State led to a death complained of, but also situations where, although an applicant survived, there clearly existed a risk to his or her life”.[[28]](#footnote-28)
2. In comparison, the Court has interpreted the scope of article 8 less restrictively than article 2. The Court has accepted a variety of sources of infringements. As such, article 8 can cover all **types of pollutions in a wide extent**: e.g., noise[[29]](#footnote-29), air pollution[[30]](#footnote-30), use of cyanide for gold mine[[31]](#footnote-31), nuclear impact[[32]](#footnote-32), accumulation of waste on the public road[[33]](#footnote-33), or use of pyrotechnics[[34]](#footnote-34).
3. The jurisprudence of the Court emphasizes the **respect for the “quality of life” and importance of the concept of “home”** relating to consideration of a violation of article 8. Since the *Moreno Gomez v. Spain* case, “home” is the key notion for the development of the jurisprudence to protect environment: “According to the Court, the right to respect for the home does not only include the right to the actual physical area, but also to the quiet enjoyment of this area within reasonable limits”. A “home”, according to the Court’s rather broad notion, is “the place, i.e. physically defined area, where private and family life develops”.[[35]](#footnote-35) Furthermore, “[a]rticle 8 protection was restricted to the home and could not apply when the subject matter of the complaint was a nuisance outside the home”.[[36]](#footnote-36) “Home” can refer to the notion of “private sphere”.[[37]](#footnote-37) Even when a person is imprisoned, his or her cell, which is not “home”, must be protected as his or her “living space”.[[38]](#footnote-38)
4. In the assessment of a violation of article 8, the Court requires that the applicant is **“directly and seriously affected”**: “Severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, **without, however, seriously endangering their health**”.[[39]](#footnote-39) The Court assesses a second criterion: the minimum threshold of harm attained.[[40]](#footnote-40) The Court does not require evidence of an actual impact on the health of the applicant to find Article 8 applicable.[[41]](#footnote-41) However, to reach the threshold of seriousness the consequences must be intense, repeated.[[42]](#footnote-42)
5. For the Convention to be applicable, it is necessary to establish a link between the environmental infringement and the respect for private and family life: the **causal link**.[[43]](#footnote-43) A general degradation of the environment is not sufficient.[[44]](#footnote-44) The probability of risks must be demonstrated otherwise the status of victim is lacking.[[45]](#footnote-45)

# States’ obligations under the Convention

## Procedural obligations

### Duty of the State to inform the public and provide access to the information[[46]](#footnote-46)

1. The State has an **obligation to inform the public about potential environmental risks** deriving from natural phenomena or human activities that could potentially affect the right to private life and home (Article 8) and to the right to life (Article 2). This State's duty is not stemming from the freedom to receive information as this freedom cannot be interpreted as imposing a general obligation to collect and disseminate information on domestic authorities. Rather, this obligation represents a particular aspect of Articles 2 and 8 of the Convention. In this sense, the Court declared in the *Öneryildiz v. Turkey* case that in the particular context of dangerous activities falling within the responsibility of the State, special emphasis should be placed on the public’s right to information. In this case, the State knew about potentially life threatening gas emanations from a waste-disposal site next to the homes of the applicants and failed to inform those people affected by this risk:

Particular emphasis should be placed on the public's right to information, as established in the case-law of the Convention institutions. The relevant regulations must also provide for appropriate procedures, taking into account the technical aspects of the activity in question, for identifying shortcomings in the processes concerned and any errors committed by those responsible at different levels.[[47]](#footnote-47)

1. In the *Tatar v. Romania* case, the Court declared that the failure to make available to the public risk assessment documents in case of a serious and substantial threat to an environmental accident constituted a breach of the State’s obligations under article 8. The authorities had prolonged the operating permit of a gold mine that did not fulfil all required health and environmental standards, and the Court examined whether the national authorities had adequately informed the villagers of nearby settlements about potential health risks and environmental impact.
2. In the *McGinley and Egan v. United Kingdom* case, the Court stressed that “where a Government engages in hazardous activities […], which might have hidden adverse consequences on the health of those involved in such activities, respect for private and family life under Article 8 requires that an **effective and accessible procedure be established which enables such persons to seek all relevant and appropriate information**”.[[48]](#footnote-48) (emphasis added)

### Duty of the State to realize environmental impact assessment

1. States are under the duty to take into account the interests of individuals who may be affected. It is important that the public is able to make representations to the public authorities.[[49]](#footnote-49) The Court may scrutinize the decision-making procedure to verify that all procedural safeguards were taken regarding to the interests of individual and also that a remedy is available if these interests and representations had not been properly considered by national authorities.[[50]](#footnote-50)
2. In *Tatar v. Romania* the Court indicated that it is possible to bring an action in front of a court against an unfair decision-making process in environmental matters that do not afford due respect to the interests of individuals concerned.[[51]](#footnote-51) The Court made a reference to international environmental standards: Aarhus Convention and the Europe's Parliamentary Resolution Information 1430 (2005). The ECrtHR poses obligations on States to inform the public in case of ecological incident[[52]](#footnote-52) meaning the State has to set up an effective procedure for the interested individuals to have access to relevant documentation.[[53]](#footnote-53) The access for individuals can be however limited in case of the need for protection of confidentiality.
3. In the Court’s opinion, “where a State must determine complex issues of environmental and economic policy, the decision-making process must firstly involve appropriate investigations and studies in order to allow them to predict and evaluate in advance the effects of those activities”.[[54]](#footnote-54) Thus, article 8 can be applicable “where the dangerous effects of an activity to which the individuals concerned are likely to be exposed have been determined as part of an environmental impact assessment procedure in such a way as to establish a sufficiently close link with private and family life”.[[55]](#footnote-55) The Court considers that if such an environmental impact assessment has not been completed, “the positive obligation on the State to take reasonable and appropriate measures to secure the applicant’s rights under paragraph 1 of Article 8 would be set at naught”.[[56]](#footnote-56)

### Duty of the State to respect the right to receive and to disseminate information

1. Article 10 protects the right of the public to receive information and the rights of environmental organizations to disseminate ideas and information on matters of general public interest, such as health and environment.[[57]](#footnote-57) As such, it can contribute to the protection of a safe, clean, healthy and sustainable environment. Public authorities cannot restrict a person's right from receiving information on environmental risks and damages from associations that wish to disseminate it to the public.[[58]](#footnote-58)
2. However, this right is not absolute: restrictions by State's authorities are possible as long as they follow a legitimate aim. The ECrtHR strikes a balance between different interests: national measures interfering with the Convention's individual rights must be proportionate and necessary to the legitimate aim pursued (a “pressing social need”[[59]](#footnote-59)). The Court strikes again a balance between the interest of individual and the interest of the community as a whole.
3. Article 10 does not impose a general obligation laying on national authorities to collect and disseminate information relating to the environment of their own motion.[[60]](#footnote-60) As we explained beforehand this State's duty is not stemming from freedom to receive information, as this freedom cannot be interpreted as imposing a general obligations to collect and disseminate information on domestic authorities. This information's obligation represents a particular aspect of Articles 2 and 8 of the Convention. For instance, the failure of authorities to inform the public about the hazards of the factory and about the procedures to be followed in case of a major event does not infringe Article 10. Indeed, the duty to inform in situation of “real and imminent dangers” either to the applicant's sphere of private life (under Article 8) or the sphere of their physical identity (under Article 2) derives directly from the relevant articles.[[61]](#footnote-61) Namely, under article 2, the States are under the duty to “adequately inform the public about any life threatening emergencies, including natural disasters”.[[62]](#footnote-62)

### Duty of the State to respect the right to access to a court and/or to an effective remedy

1. Individuals should be able to have access to a “court” under Article 6 that “secures to everyone the right to have any claim related to his civil rights and obligations brought before a court or tribunal”.[[63]](#footnote-63) The Court has interpreted “civil rights and obligations” to cover administrative disputes between individuals and the State.[[64]](#footnote-64) The dispute must be genuine and serious; mere remote connections are not sufficient.[[65]](#footnote-65)
2. Individuals may invoke their right to have their physical integrity and the enjoyment of the property adequately protected in case of environmental pollution. As well, the threshold of gravity must be met: in case of a serious and imminent environmental risk, Article 6 may be invoked if the outcome of the proceedings are decisive for the rights of individuals concerned. With regard to the *personal scope* of the Convention, the Court held that environmental associations may bring proceedings when they are defending economic and personal interests of their members, in the case of *Gorraiz Lizarraga and Others v. Spain*.[[66]](#footnote-66) One of the applicants in this case was an association, which had brought proceedings against plans to build a dam in Itoiz, a village of the province of Navarre, which would result in three nature reserves and a number of small villages being flooded. The Court determined that *class-actions,* meaning the defence of a public general interest, are not comprised in the right of access to a court.[[67]](#footnote-67)
3. The Court has also held that a State must comply with judgements from its national courts. In the *Taskin and others v. Turkey* case, the Court established that the failure of authorities to comply within a reasonable time limit with an administrative court judgement, later confirmed by the Supreme Administrative Court, annulling a mining permit on grounds of its adverse effects on the environment and human health is a violation of Article 6.1.[[68]](#footnote-68) Similarly, in the *Kyrtatos v. Greec*e case the Court found a violation of Article 6.1 for failing for more than seven years to comply with two final court decisions annulling building permits on the ground of their detrimental consequences for the environment.[[69]](#footnote-69)
4. The State should ensure an **effective remedy** against public decisions, which affect environment protection pursuant to Article 13 of the ECHR, which requires the State to provide an effective remedy for alleged human rights violations in front of a national authority.[[70]](#footnote-70) The protection extends to any individual invoking an “arguable claim” even if a violation of its rights under Articles 2, 8 or 1 of Protocol no. 1 has not been established.[[71]](#footnote-71) The “state authority” should be composed of members who are independent and impartial.[[72]](#footnote-72) In case of a violation of Article 2, the Court established higher obligations for the State to carry out an effective investigation.[[73]](#footnote-73) State's authorities may justify arrest and detention and imposition of substantive amount of bail in light of Article 5 for cases of substantive maritime environmental damages.[[74]](#footnote-74) However, the Convention does not guarantee to applicants the right to secure the prosecution and conviction of those responsible[[75]](#footnote-75) for violations of Articles 2 or 8. Even if a criminal procedure is not guaranteed under Articles 2 and 8, individuals can seek for civil compensations in civil actions for the economic and non-economic loss[[76]](#footnote-76) relating to environmental harm suffered under Articles 2 or 8. The Court had therefore to determine whether the conditions to find liability of the State are met, meaning if the outcome of the proceedings in question had been directly decisive for the rights asserted by the applicants, whether the link between the public authorities’ decisions and the applicants’ rights to life, physical integrity and protection of property was sufficiently close to bring Article 6 into play. Moreover the Court has inferred procedural obligations from Article 2 and 8 and Article 1 of Protocol no. 1.[[77]](#footnote-77)

## Substantive Obligations on the State

1. The Court has set out various positive obligations[[78]](#footnote-78) related to protecting rights under articles 2 and 8 from environmental harm. In the *Öneryildiz v. Turkey* case, the Court “held that the positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction, for the purposes of Article 2” to situations where potential risks to life are inherent to the activity in question.
2. In the *Lopez Ostra v. Spain* case, the Court imposed that the State has “to take reasonable and appropriate measures to secure the applicant’s rights” in relation to article 8.
3. In the *Budayeva and others v. Russia* case, the Court confirmed the linkage between the jurisprudence of article 2 (right to life) and article 8 (right to private life and home), as established first in *Öneryildiz v. Turkey* case[[79]](#footnote-79), stating that

“it has been recognized that in the context of dangerous activities the scope of the positive obligations under Article 2 of the Convention largely overlaps with those under Article 8 (…). Consequently, the principles developed in the Court's case-law relating to planning and environmental matters affecting private life and home may also be relied on for the protection of the right to life”.[[80]](#footnote-80)

1. The measures imposed on the State take varying forms, and are exposed throughout the case law of the court.
2. In the *L.C.B. v. United Kingdom[[81]](#footnote-81)* “in the event that there was information available to the authorities which should have given them cause to fear that the applicant’s father had been exposed to radiation”, the Court admitted that the public authorities “could reasonably have been expected, during the period in question, to **provide advice** to her parents and to **monitor her health**”.[[82]](#footnote-82)
3. The **likelihood of the risk to health** determines to which extent the State needs to **act *proprio motu****.* In this case, the Court considered that the State could have been “[required of its own motion to take these steps in relation to the applicant] if it had appeared likely at that time that any such exposure of her father to radiation might have engendered a real risk to her health”.[[83]](#footnote-83)
4. In the *Öneryildiz v. Turkey* case, the Court takes into consideration the **level of seriousness of dangerous activities**, and explains that the positive obligations:

[…] must be construed as applying in the context of any activity, whether public or not, in which the right to life may be at stake, and a fortiori in the case of industrial activities, which by their very nature are dangerous, such as the operation of waste-collection sites. […] The harmfulness of the phenomena inherent in the activity in question, the contingency of the risk to which the applicant was exposed by reason of any life-endangering circumstances, the status of those involved in bringing about such circumstances, and whether the acts or omissions attributable to them were deliberate are merely factors among others that must be taken into account in the examination of the merits of a particular case, with a view to determining the responsibility the State may bear under Article 2.[[84]](#footnote-84)

1. In the *Budayeva and others v. Russia* case, the Court determined that the obligations on States that stem articles 2 and 8 relating to the environment depend on factors like the **capacity to anticipate infringements to the right to life**, through the establishment of proper legislative and administrative framework.[[85]](#footnote-85) In this case, a series of foreseeable mudslides negatively affected the applicants by sustained injuries or death of relatives and of the loss of their homes. Despite continuous awareness of the “foreseeable risk to the lives of its residents”, “serious administrative flaws […] prevented the implementation of [land-planning and emergency relief] policies”, and “there had been no justification for the authorities’ omissions in implementation of [those] policies”. The authorities had a positive obligation to “establish a legislative and administrative framework with which to provide effective deterrence against a threat to the right to life, in violation of Article 2”.[[86]](#footnote-86)
2. In the *Öneryildiz v. Turkey* case, the Court analysed the link between industrial activities and the State’s obligations. It found that the State has **the duty to adopt preventive measures to effectively regulate any dangerous activity, whether public or not**.[[87]](#footnote-87) This has been confirmed in the *Tatar v. Romania* case, where the public authorities failed to adopt sufficient measures to protect the right to private life and home of people living next to a gold mine operating even after a severe industrial accident.[[88]](#footnote-88) Consequently, the State was under a positive obligation to adopt reasonable and sufficient measures to protect the rights of the interested parties to respect for their private lives and their home and, more generally, a healthy, protected environment. In this case, the Court emphasized the importance of the precautionary principle, whose purpose was to secure a high level of protection for the health and safety of consumers and the environment in all the activities of the Community.[[89]](#footnote-89) In the *Fadeyeva v. Russia* case, the lack of regulation of the private sector[[90]](#footnote-90) entailed equally the responsibility of the State. In this case, the State failed to enact and to enforce effective regulations to the industrial activities (steel plant) close to the applicant’s home, and thus violated article 8.
3. The nature of these obligations includes that the State must adopt legislation in order to limit or stop the infringements to environment that would otherwise endanger the right to a home and the right to life.[[91]](#footnote-91) In the *Lopez Ostra v. Spain* case, the Court considered that the public authorities failed to regulate effectively the activity of the waste-treatment plant and admitted a breach of Article 8 “despite the margin of appreciation left to the respondent State”.[[92]](#footnote-92) In the *Deés v. Hungary* case, the Court found that the State did not regulate sufficiently the car traffic over a substantial lapse of time, which led to the infringement of the right to private life and home of the applicant.[[93]](#footnote-93) Finally, the Court underlined in the *Moreno Gomez v. Spain* case that “regulations to protect guaranteed rights serve little purpose if they are not duly enforced”, and thus public authorities must make sure that adopted measures are implemented so as to guarantee rights protection.[[94]](#footnote-94)

### Article 1 of Protocol no. 1 of the Convention

1. The Court protects the right to property under Article 1 of Protocol no. 1 as the right to protection of one's possessions that needs to be “practical and effective”. Member States are also under positive obligations to take measures as to ensure the effective protection of this right. In the environmental context, this obligation has raised issues mainly in respect of dangerous activities and to a lesser extent natural disasters.[[95]](#footnote-95) Similar to the other rights, the applicant has to prove the causal link between the State's actions and the effective enjoyment of his possessions.[[96]](#footnote-96) The right is not absolute and thus State's authorities enjoy also a margin of appreciation and are entitled to restrict the use of property if matters of general interest require it.[[97]](#footnote-97)
2. For instance, in *Budayeva and others v. Russia* case, in the light “the damage in its entirety could not be unequivocally attributed to State negligence, and the alleged negligence was no more than an aggravating factor contributing to the damage caused by natural forces, the Court considered “the positive obligation on the State to protect private property from natural disaster cannot be construed as binding the State to compensate the full market value of destroyed property”.[[98]](#footnote-98)
3. Any deprivation of one's property should respect the proportionality test: any decision of public authorities must be justified as being based on the “law”, carried out in the “public interest” and a fair balance must be struck between the individual's interest and the public interest.[[99]](#footnote-99) Moreover, the Court established strict criteria in assessing the fulfillment of State's obligations: when public authorities plan dangerous activities, which involve risks to health, it should be established an effective and accessible procedure to enable individuals to get proper information.[[100]](#footnote-100)
4. The ECrtHR can assess whether adequate compensation is paid to individuals concerned. In cases relating to environmental conservation, the Court has held that the community's general interest is prominent and confers on the State a margin of appreciation that is greater than when exclusively civil rights are at stake.[[101]](#footnote-101)
5. Member States should take positive measures for individual to ensure effective enjoyment of one's possessions. The obligations of the State in this context are not as extensive as the obligations arisen under Article 2 of the ECHR, such as the obligation to protect lives.

### Limits of the rights’ protection under the Convention

1. An “interference by a public authority” might be justifiable for the State if “the competing interests of the individual and of the community as a whole” have been taken into consideration.[[102]](#footnote-102) The Court explains that it must **strike a fair balance between the general interest of the community and the individual interest** when evaluating particular actions that allegedly harm individuals. “In determining whether or not a positive obligation exists, regard must also be had to the fair balance that has to be struck between the general interest of the community and the interests of the individual, the search for which balance is inherent in the whole of the Convention”.[[103]](#footnote-103)
2. In the *Lopez Ostra v. Spain* case, the Court considered “that the State did not succeed in striking a fair balance between the interest of the town’s economic well-being - that of having a waste-treatment plant - and the applicant’s effective enjoyment of her right to respect for her home and her private and family life”.[[104]](#footnote-104) In the *Hatton and others v. United Kingdom* case, the Court accepted the “fair balance” struck by the authorities between the economic interests of the operation of Heathrow airport by night and the impact on the right to private life and home of the applicants suffering from the noise.[[105]](#footnote-105) In the *Bacila v. Rumania* case, the Court stated that the economic interest to maintain opened the plant in order to guarantee employment had no prevalence on the individual right to enjoy a healthy and sustainable environment.[[106]](#footnote-106)
3. The Court sets limits to its ability to adjudicate on national actions.
4. The Court has highlighted the **subsidiarity** role of the Convention as regard to States action. In the *Hatton v. United Kingdom*, the Court explains that, “[t]he national authorities have direct democratic legitimation and are, as the Court has held on many occasions, in principle better placed than an international court to evaluate local needs and conditions”.[[107]](#footnote-107)
5. The Court has also held that it will compare the applicant’s situation to other people in the same situation.[[108]](#footnote-108)
6. The Court has held that it **will grant deference to States in matters of environmental policy**.[[109]](#footnote-109) In *Hatton v. United Kingdom*, the Court states that:

Article 8 may apply in environmental cases whether the pollution is directly caused by the State or whether State responsibility arises from the failure to regulate private industry properly. Whether the case is analyzed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicants' rights under paragraph 1 of Article 8 or in terms of interference by a public authority to be justified in accordance with paragraph 2, the applicable principles are broadly similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; **and in both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention**.[[110]](#footnote-110)

1. Thus, the Court considers that sometimes environment interests will need to be balanced against other societal interests.[[111]](#footnote-111)

# European Union law on human rights and a healthy environment

1. The European Union (EU) is a unique and complex regional system of integration composed of 28 European countries. With the objective to foster cooperation between the Member States and cooperation across the countries, European institutions are responsible for creating common principles and instruments. As stated in Article 5 of the Treaty on European Union (TEU):

“the limits of Union competences are governed by the conferral principle.[…] Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States”.[[112]](#footnote-112)

1. Environment is a shared competence between the EU institutions and the Member States.[[113]](#footnote-113) Originally focused on economic integration, more importance was given to economic provisions than to environmental protection in EU Treaties until 1986, when specific environmental provisions had been introduced into primary EU law. Since the entry into force of the Lisbon modification in 2009, primary law is currently composed of the European Treaties: Treaty on European Union (TEU) and Treaty of the Functioning of the European Union (TFEU) and the Charter of fundamental rights.
2. The principle of direct effect is a fundamental principle of EU law that means that certain EU law provisions that are sufficiently clear, precise and unconditional are immediately applicable and can be invoked by individuals before a national or a EU court. A second fundamental principle in EU law is the primacy principle, namely the obligation for national authorities to give primacy to EU law over conflicting domestic provisions. However, there is no direct effect of the provisions of Articles 191 – 193 of the Treaty of the Functioning of the European Union (TFEU) (positive obligations), unlike Articles 34, 35, 101 and 107 TFEU (negative obligations) that enjoy direct effect. In addition, human rights as such were not recognized in the first steps of the European integration. This gap in the judicial protection of individual has been filled by the innovative case law of the Court of Justice of the European Union (hereinafter, CJEU, the Court or the Court of Luxembourg) according to which human rights are protected in EU law, as they are based on the common constitutional values of the Member States.[[114]](#footnote-114) The Court's case-law has been codified in article 6 of the TEU:

“Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law”.[[115]](#footnote-115)

1. In addition, under the 2009 Lisbon Treaty, the accession of the EU to the European Convention on Human Rights (ECHR) became a legal obligation.[[116]](#footnote-116) The 47 Member States of the Council of Europe and the EU finalized a draft accession document on 5th April 2013. The CJEU's position on the text is still pending. The EU accession to the Convention would offer a great potential for development of the relationship between human rights and the environment. Indeed, the ECrtHR could refer easily to EU environmental instruments promoting a high level of protection and conferring obligations for EU institutions and States when implementing the EU law. This implies that the EU institutions would pay major attention when drafting the environmental law with regards to individual rights protected by the Convention and Article 11 TFEU on the integration principle, in a more integrated system.

## Environmental Principles in EU Primary Law

1. Several national constitutions of European countries enshrine a constitutional right to the protection of the environment.[[117]](#footnote-117) For example, the Portuguese Constitution of 25 April 1976 stipulates in Article 66: “Everyone shall possess the right to a healthy and ecologically balanced human living environment and the duty to defend it”. However, such a mention of a right to a healthy environment does not exist in EU primary law.
2. EU law does offer a wide range of environmental legal instruments. Article 3 of the TEU and Articles 6, 11, and 191 – 193 of the TFEU set a series of principles and criteria, which have to be respected by the institutions in defining and implementing the environmental policy. This report will focus on the principle of integration of Article 11 (TFEU) and the objective of a high level of protection of the environment (Articles 191 – 193 TFEU).
3. Principle of integration

Article 11 TFEU states:

Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development.

1. The principle of integration points out that the environmental dimension of all EU policies must be taken in the drafting of the EU legislation. This means that EU institutions should integrate environmental considerations into their decision-making process that translate into procedural standards such as the introduction of Environmental Impact Assessment (EIA)[[118]](#footnote-118) and of Strategic Environmental Assessment (SEA)[[119]](#footnote-119). EU institutions publish annual reports on the application of the integration principle.[[120]](#footnote-120) Thus the concept of sustainable development has been widened and reinforced following the introduction of the integration principle.

### Objective of a high level of protection of the environment

1. Article 191 § 2 of the TFEU states:

Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union.

1. This objective is reiterated in Articles 3 § 3 TEU (common provisions) and 114 § 3 TFEU (approximation of laws). EU institutions are thus developing high environmental standards, which could have an impact outside European borders.[[121]](#footnote-121) The promotion of a high level of environmental protection means, for the EU Institutions, to refer to the precautionary principle. The EU has developed its own concept of precaution, which has had to be defended against its critics, notably within the WTO.[[122]](#footnote-122)
2. The principle of precaution is designed autonomously by the European Union in view to establish a high level of protection of environment and human health. The European Commission published in 2000 a Communication on the precautionary principle, stating that

Decision-makers are constantly faced with the dilemma of balancing the freedom and rights of individuals, industry and organizations with the need to reduce the risk of adverse effects to the environment, human, animal or plant health. Therefore, finding the correct balance so that the proportionate, non-discriminatory, transparent and coherent actions can be taken, requires a structured decision-making process with detailed scientific and other objective information.[[123]](#footnote-123)

### The Charter does not state that environmental protection constitutes a human right

1. Article 37 of the Charter of fundamental rights of the European Union states:

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.[[124]](#footnote-124)

1. The Charter confirms or repeats EU treaty provisions on environmental protection. This article does not formulate any individual right related to environment in opposition to other provisions of the Charter that formulate individual rights.[[125]](#footnote-125) There are no individual beneficiaries, just obligations for Member States.[[126]](#footnote-126) In the line with a teleological interpretation of the Charter, the right to a healthy environment might be deduced from article 37 combined with article 1 on the right to human dignity, article 2.1 on the right to life, article 3.1 on the right to the physical integrity of the person, article 6 on the right to liberty and security and article 7 on the right to respect for private and family life.

## Secondary Law

1. EU institutions have adopted an impressive range of EU instruments and procedures to ensure a high level of protection of the environment. Since the entry into force of the Single European Act in 1987, the EU institutions have had a legal basis to draft and adopt acts and to draw an environmental policy. Today more than 300 instruments have been dedicated to the protection of the environment.[[127]](#footnote-127)
2. As protection of the environment is a shared competence, EU institutions have relied on the use of Directives rather than Regulations. According to Article 288 of the TFEU, a “directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods,” whereas “a regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States”.[[128]](#footnote-128)
3. EU allows an explicit recognition of the margin of appreciation for Member States in the protection of environment, according to the subsidiarity principle. Furthermore, Directives fix objectives to Member States and allow more flexibility to national diversity approaches in their implementation. Such diversity in the implementation of EU law might alter the principle of unity of European law. Thus, the Court of Justice provides with a diversity of legal remedies, such the action for infringement against the State, notably in case of wrongful or lack of Directive's transposition by the State.

### Substantive obligations

1. With respect to EU's objective to achieve a high environmental protection, EU law covers a wide area of environmental issues, including air, chemicals, water, noise, soil, waste, land use, biodiversity, and marine and coastal issues.[[129]](#footnote-129)
2. The Directive 2008/99/EC on the protection of the environment through criminal law aims at imposing criminal penalties on certain behaviour, which is seriously detrimental to the environment. For instance:

unlawful operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used, and which causes or is likely to cause death or serious injury to any person or substantial damage to the environment” or “the unlawful manufacture, treatment, storage, use, transport, import or export or disposal of nuclear materials or other hazardous radioactive substances which causes or is likely to cause death or serious injury to any person or substantial damage to the environment.[[130]](#footnote-130)

1. The Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control[[131]](#footnote-131) codified the Council Directive 96/61/EC of 24 September 1996[[132]](#footnote-132) concerning integrated pollution prevention and control that has been substantially amended several times. Member States should take the necessary steps in order to ensure that the operator of the industrial activities referred to in this Directive is complying with the general principles of certain basic obligations. For that purpose, competent authorities shall take all necessary measures in the authorisation procedures in order to attain a high level of protection of environment.

### Procedural obligations

1. The environmental EU procedural protections for individuals have notably been strengthened by the accession of the EU to the Aarhus Convention, approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005.[[133]](#footnote-133) European institutions adopted legislation in accordance with principles set by the Aarhus Convention: Regulation 1367/2006[[134]](#footnote-134), Directive 2003/35/EC of 23 May 2003 on public participation[[135]](#footnote-135) and Directive 2003/4/EC of 28 January 2003 on access to environmental information[[136]](#footnote-136). Directive 2008/50 also imposes positive obligations on EU institutions and Member states with regard to drawing up actions plan in order to prevent pollution.[[137]](#footnote-137)
2. According to Directive 2001/42/EC,[[138]](#footnote-138) all plans and programs which are prepared for a number of sectors and which set a framework for future development consent of projects listed in Annexes I and II to Council Directive 85/337/EEC[[139]](#footnote-139) of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, and all plans and programmes which have been determined to require assessment pursuant to Council Directive 92/43/EEC[[140]](#footnote-140) of 21 May 1992 on the conservation of natural habitats and of wild flora and fauna are likely to have significant effects on the environment, and should as a rule be made subject to systematic environmental assessment. This Directive is of a procedural nature, and its requirements should either be integrated into existing procedures in Member States or incorporated in specifically established procedures.
3. Further, the Council Directive 85/337 of 27th June 1985, known as the “EIA” (environmental impact assessment) Directive, requires an assessment to be carried out by the competent national authority for certain projects which have a physical effect on the environment. It explains what the right of public access means. The developer (the person who applied for development consent or the public authority which initiated the project) must provide specific information to the authority responsible for the approval of the projects. This information must be made available to interested parties, such as the competent environmental authorities likely to be consulted on the authorization of the project early in the decision-making process. It includes the possibility of public participation in the approval procedures, by the appropriate means (including electronically) at the same time as information (in particular) on the procedure for approving the project, details of the authority responsible for approving or rejecting the project.
4. The revision of the EIA Directive by the Directive 2003/4/EC[[141]](#footnote-141) made it possible to incorporate certain provisions of the Aarhus Convention on access to information, public participation and access to justice in environmental matters. The amending act of EIA is the Directive 2003/35/EC of 23 May 2003, called the “Public Participation Directive”[[142]](#footnote-142) and Directive 2003/4/EC of 28 January 2003,[[143]](#footnote-143) which extended rights for the public at all levels of Aarhus convention. Both Directives 2003/4/EC and 2003/35/EC contain provisions on access to justice. Directive 2003/35/EC introduced definitions for the terms “public” and “public concerned” with the rights, and corresponding procedural aspects, for public participation from the Aarhus Convention. The question related to an explicit Directive on access to justice is still pending (COM(2003)62), that means that the full transposition of the Aarhus convention's terms in EU legal order is not yet achieved.
5. The Regulation 1367/2006/EC applies the provisions of the Aarhus Convention to EU institutions and bodies, offices or agencies established by the EU Treaty. According to it, environmental NGOs who fulfill certain conditions may bring an action to the Court for acts of EU institutions and other bodies. However, the EU legal order still lacks a comprehensive legislation imposing an overarching right to access to justice in environmental matters. According to the data collected by the Commission, provisions related to the first pillar (access to information) were implemented and used much more effectively than those belonging to the other two pillars (public participation in decision-making and access to justice).[[144]](#footnote-144) Studies show disparity between the transposition of Aarhus Convention in Member States and disparity in the eligibility criteria determining public participation in decision-making procedures and criteria for access to justice.[[145]](#footnote-145)
6. The Directive 2004/35 on environmental liability establishes a framework based on the polluter pays principle to prevent and remedy environmental damage. It has been adopted in 2004 in order to offer NGOs access before the court to bring environmental interests:

This Directive should apply, as far as environmental damage is concerned, to occupational activities which present a risk for human health or the environment. Those activities should be identified, in principle, by reference to the relevant Community legislation, which provides for regulatory requirements in relation to certain activities or practices considered as posing a potential or actual risk for human health or the environment. […] This Directive should also apply to damage to protected species and natural habitats, to any occupational activities other than those already directly or indirectly identified by reference to Community legislation as posing an actual or potential risk for human health or the environment. In such cases the operator should only be liable under this Directive whenever he is at fault or negligent.[[146]](#footnote-146)

## The CJEU Case-law on the Objective to Ensure the Highest Level of Protection of the Environment

### Substantive obligations

1. Protection of the environment constitutes one of the objectives of the European Union and as such, can justify certain limitations of the principle of freedom of goods, as underlined by the CJEU in the *Procureur de la République v. ADBHU* case in 1985:

In the first place it should be observed that the principle of **freedom of trade is not to be viewed in absolute terms but is subject to certain limits justified by the objectives of general interest** pursued by the community provided that the rights in question are not substantively impaired. […] The directive must be seen in the perspective of **environmental protection, which is one of the community's essential objectives**. [I]t is also evident from the provisions of the directive as a whole that care has been taken to ensure that the principles of proportionality and non-discrimination will be observed if certain restrictions should prove necessary*.*[[147]](#footnote-147)

1. This case law has been confirmed in *Commission v. Denmark*, in 1988.[[148]](#footnote-148) Likewise, restrictions on property can be justified by the general interest in a high level of protection, which is an objective of the European Union:

the right to property is not an absolute right and must be viewed in relation to its social function. […] Established case‑law shows that protection of the environment is one of those objectives and is therefore capable of justifying a restriction on the use of the right to property.[[149]](#footnote-149)

1. According to Dieter Janecek v. Freistaat Bayern case:

It follows from the foregoing that the **natural or legal persons directly concerned by a risk that the limit values or alert thresholds may be exceeded** must be in a position to require the competent authorities to draw up an action plan where such a risk exists, if necessary by bringing an action before the competent courts. [[150]](#footnote-150)

1. In a recent case concerning Italy’s obligations under Waste Framework Directive 2006/12/EC, the CJEU concluded that there was a breach by Italian authorities of Article 4 § 1 and Article 5 of the Directive. Article 2 of the preamble of the Directive states that, “the essential objective of all provisions relating to waste management should be to protection of human health and the Environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste”.[[151]](#footnote-151)
2. In a previous case, the CJEU considered that

the [m]ember State concerned has necessarily failed (…) **to take the requisite measures to ensure that waste is disposed of without endangering human health and without harming the environment**. However, if that situation persists and, in particular, if it leads to a significant deterioration in the environment over a protracted period without any action being taken by the competent authorities, this may be an indication that the Member States have exceeded the discretion conferred on them by that provision.[[152]](#footnote-152)

### Procedural obligations

1. In the a 2011 judgment[[153]](#footnote-153), Court stated that since the Aarhus Convention is an integral part of the EU legal order, it belongs to the Court the competence to interpret the Convention's provisions and to decide which ones might enjoy direct effect in national legal orders. A provision of the Convention should be sufficiently “clear” and “precise” as to the obligations of a Party in order to be applied directly and be invoked by individuals. The Court considered precisely that the provision of Article 9(3) of the Aarhus Convention does not contain any clear and precise obligation capable of directly regulating the legal position of individuals. However, it is for the national court that referred the preliminary question to interpret, to the fullest extent possible, the procedural rules relating to the conditions to be met in order to bring administrative or judicial proceedings in accordance with the objectives of Article 9(3) of that convention and the objective of effective judicial protection of the rights conferred by EU law, in order to enable an environmental protection organization to challenge before a court a decision taken following administrative proceedings liable to be contrary to EU environmental law.
2. In *David Edwards and Lilian Pallikaropoulos v. Environment Agency and others*[[154]](#footnote-154) case, the CJEU interpreted the meaning of “judicial proceedings should not be prohibitively expensive” under Article 10a of Directive 85/337/EEC[[155]](#footnote-155) and Article 15a of Directive 96/61/EC[[156]](#footnote-156) in light of the objective of ensuring effective judicial protection without excessive cost in the field of environmental law. Previously, the Court stated that the requirement that judicial proceedings should not be prohibitively expensive does not prevent the national courts from making an order for costs.[[157]](#footnote-157) The Court of Justice of the EU also stated that the domestic court may also take into account the situation of the parties concerned, whether the claimant has a reasonable prospect of success, the importance of what is at stake for the claimant and for the protection of the environment, the complexity of the relevant law and procedure and the potentially frivolous nature of the claim at its various stages.[[158]](#footnote-158) The Court interpretedthat the persons covered by those Directives' provisions should not be prevented from seeking, or pursuing a claim for, a review by the courts that falls within the scope of those articles by reason of the financial burden that might arise as a result.
1. This report was drafted by Dr. Déborah Lassalle, Ph.D. candidate Francis Maquil, and Dr. Ioana Raducu Pelin of the Global Studies Institute of the University of Geneva. [↑](#footnote-ref-1)
2. See the ECrtHR website : http://www.echr.coe.int/. [↑](#footnote-ref-2)
3. Laurent Fonbaustier, “Le droit à l’information environnementale” in Loïc Robert (dir.), *L’environnement et la Convention européenne des droits de l’homme,* Cahiers de droit international, Bruxelles, Bruylant, 2013, p. 53. See also Michèle De Salvia, “Principes généraux du droit de l’Homme à un environnement sain, selon la Convention européenne des droits de l’Homme”, AIDH, vol. I/2006, pp. 57 – 69. [↑](#footnote-ref-3)
4. Manual on Human Rights and the Environment, Council of Europe publishing, Strasbourg, 2012, p. 31. [↑](#footnote-ref-4)
5. ECrtHR, Christine Goodwin v. United Kingdom, 11 July 2002, 28957/95, § 74. [↑](#footnote-ref-5)
6. ECrtHR, Guerra and others v. Italy, 19 February 1998, 14967/89, § 43. [↑](#footnote-ref-6)
7. Manual on Human Rights and the Environment, Council of Europe publishing, Strasbourg, 2012. [↑](#footnote-ref-7)
8. Convention on access to information, public participation in decision-making and access to justice in Environmental matters, Aarhus, Denmark on 25 June 1998, http://www.unece.org/fileadmin/DAM/env/pp/ documents/cep43e.pdf. A separate mapping report reviews jurisprudence from the Aarhus Convention’s Compliance Committee. [↑](#footnote-ref-8)
9. ECrtHR, *Kyrtatos v. Greece*, 22 May 2003, 41666/98, § 52. In that case, the Court has not concluded to a breach of Article 8 of the Convention. [↑](#footnote-ref-9)
10. J.-P. Marguénaud, “Droit de l’homme à l’environnement et Cour européenne des droits de l’homme”, *R.J.E., 2003, special issue* ;Vincent Martenet, “Le droit à un environnement sain : de la Convention européenne des droits de l’Homme à la Constitution fédérale ?” in Alain Papaux (ed.), *Biosphère et droits fondamentaux*, Quid iuris ? Schulthess, Genève, 2011, pp. 137 – 156; Frédéric Sudre, Droit européen et international des droits de l’homme, 10th ed., Paris, 2011, pp. 531 – 532, n° 309. [↑](#footnote-ref-10)
11. Malgosia Fitzmaurice, “Environmental degradation” in Daniel Moeckli, Sangeeta Shah & Sandesh Sivakumaran, *International Human Rights Law*, 2010, pp. 622 – 642. [↑](#footnote-ref-11)
12. ECrtHR, *Brânduşe v. Romania*, 7 April 2009, 6586/03. [↑](#footnote-ref-12)
13. ECrtHR, *Demir and Baykara v. Turkey*, 12 November 2008, 34503/97, § 82. [↑](#footnote-ref-13)
14. ECrtHR, *L.C.B. v. The United Kingdom*, 9 June 1998, 23413/94. [↑](#footnote-ref-14)
15. See ECrtHR, *Murillo Saldias and others v. Spain*, 28 November 2006, 76973/01, “In the specific context of establishing State liability for the damage caused by a natural disaster, [the Court] has previously found that successful administrative proceedings were sufficient to deprive the applicant of his victim status” (our translation). [↑](#footnote-ref-15)
16. ECrtHR, *Öneryildiz v. Turkey,* 30 November 2004, 48939/99, § 65. [↑](#footnote-ref-16)
17. ECrtHR, *Budayeva and others v. Russia,* 20 March 2008, 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02. [↑](#footnote-ref-17)
18. ECrtHR, *Kolyadenko and others v. Russia*, 28 February 2012, 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05. [↑](#footnote-ref-18)
19. Frédéric Sudre, “Le droit à un environnement sain et le droit au respect de la vie privée”, AIDH, vol. I/2006, pp. 201 – 217, 210 – 211. [↑](#footnote-ref-19)
20. ECrtHR, *Moreno Gomez v. Spain*, 16 November 2004, 4143/02; ECrtHR, Borysiewicz v. Poland, 1 July 2008, § 48; ECrtHR, Giacomelli v. Italy, 2 November 2006, § 76; ECrtHR, Hatton and Others v. the United Kingdom, 8 July 2003, 360022/97, § 96. [↑](#footnote-ref-20)
21. ECrtHR, *McGinley and Egan v. United Kingdom*, 9 June 1998, 21825/93 and 23414/94. [↑](#footnote-ref-21)
22. ECrtHR, *Lopez Ostra v. Spain*, 9 December 1994, 16798/90, § 51. This has notably been confirmed in ECrtHR, Taskin and others, v. Turkey, 10 November 2004, 46117/99. [↑](#footnote-ref-22)
23. ECrtHR, *Bacila v. Romania*, 30 March 2010, 19234/04, §§ 64 – 76. [↑](#footnote-ref-23)
24. ECrtHR, *Brânduşe v. Romania*, 7 April 2009, 6586/03, §§ 63, 67. [↑](#footnote-ref-24)
25. ECrtHR, *Taskin and others, v. Turkey*, 10 November 2004, 46117/99. [↑](#footnote-ref-25)
26. ECrtHR, *Tatar v. Romania*, 27 January 2009, 67021/01. [↑](#footnote-ref-26)
27. ECrtHR, *Kolyadenko and others v. Russia*, 28 February 2012, 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05. [↑](#footnote-ref-27)
28. *Ibid*. *See* case ECrtHR, *Makaratzis v. Greece*,20 December 2004, 50385/99 on the breach of Article 2 even though loss of life has not occurred but lethal force was used inappropriately. *See* Manual on Human Rights and the Environment, Council of Europe publishing, Strasbourg, 2012, p. 35. [↑](#footnote-ref-28)
29. ECrtHR, *Deés v. Hungary*, 9 November 2010, 2345/06; ECrtHR, Moreno Gomez, v. Spain, 16 November 2004, 4143/02; ECrtHR, Hatton and others v. United Kingdom, 8 July 2003, 360022/97. [↑](#footnote-ref-29)
30. ECrtHR, *Surugiu v. Romania*, 20 April 2004, 48995/99; ECrtHR, *Öneryildiz v. Turkey*, 30 November 2004, 48939/99; ECrtHR, *Brânduşe v. Romania*, 7 April 2009, 6586/03; ECrtHR, Guerra and others v. Italy, 19 February 1998, 14967/89; ECrtHR, *Fadeyeva v. Russia*, 9 June 2005, 55723/00; ECrtHR, *Giacomelli v. Italy*, 2 November 2006, 59909/00; ECrtHR, *Bacila v. Romania*, 30 March 2010, 19234/04; ECrtHR, *Dubetska and others v. Ukraine*, 10 February 2011, 30499/03. [↑](#footnote-ref-30)
31. ECrtHR, *Taskin and others, v. Turkey*, 10 November 2004, 46117/99; ECrtHR, *Öçkan and others. v. Turkey*, 28 March 2006, 46771/99; ECrtHR, *Lemke v. Turkey*, 5 June 2007, 17381/02; ECrtHR, *Tatar v. Romania*, 27 January 2009, 67021/01. [↑](#footnote-ref-31)
32. ECrtHR, *McGinley and Egan v. United Kingdom*, 9 June 1998, 21825/93 & 23414/94; ECrtHR, Tatar v. Romania, 27 January 2009, 67021/01. [↑](#footnote-ref-32)
33. ECrtHR, *Di Sarno v. Italy*, 10 January 2012, 30765/08. [↑](#footnote-ref-33)
34. ECrtHR, *Zammit Maempel v. Malta*, 22 November 2011, 24202/10. [↑](#footnote-ref-34)
35. ECrtHR, *Moreno Gomez, v. Spain*, 16 November 2004, 4143/02, § 53. [↑](#footnote-ref-35)
36. *Ibid*. [↑](#footnote-ref-36)
37. ECrtHR, *Fadeyeva v. Russia*, 9 June 2005,55723/00. [↑](#footnote-ref-37)
38. ECrtHR, *Brânduşe v. Romania*, 7 April 2009, 6586/03. [↑](#footnote-ref-38)
39. ECrtHR, *Lopez Ostra v. Spain*, 9 December 1994, 16798/90, § 51 [↑](#footnote-ref-39)
40. ECrtHR, *Fadeyeva v. Russia*, 9 June 2005, 55723/00; ECrtHR, *Hatton and others v. United Kingdom*, 8 July 2003, 360022/97 ; ECrtHR, *Lopez Ostra v. Spain*, 9 December 1994, 16798/90; ECrtHR, *Guerra and others v. Italy*, 19 February 1998, 14967/89 ; ECrtHR, *Bacila v. Romania*, 30 March 2010, 19234/04 ; ECrtHR, *Ledyayeva and others v. Russia*, 26 October 2006, 53157/99, 53247/99, 53695/00 and 56850/00; ECrtHR, *Taskin and others, v. Turkey*, 10 November 2004, 46117/99; ECrtHR, *Ioan Marchis and others v. Romania*, 28 June 2011, 38197/03; ECrtHR, *Grimkovskaya v. Ukraine*, 21 July 2011, 38182/03, § 58 and 62. [↑](#footnote-ref-40)
41. ECrtHR*, Brânduşe v. Romania*, 7 April 2009, 6586/03, *see* Manual on Human Rights and the Environment, Council of Europe publishing, Strasbourg, 2012, p. 47. [↑](#footnote-ref-41)
42. See ECrtHR, *Vearncombe and others v. United Kingdom and France*, 18 January 1989, 12816/87: no infringement to Article 8. ECrtHR, *Fägerskiöld v. Sweden*, 26 February 2008, 37664/04: the noise of wind power plant does not reach the threshold of article 8. [↑](#footnote-ref-42)
43. In Tatar case (ECrtHR, *Tatar v. Romania*, 27 January 2009, 67021/01), the Court found that the applicant had failed to demonstrate a sufficient causal link, however on the basis of environmental assessment made by the State, the Court concluded to the existence of a serious threat to the applicant’s well-being. [↑](#footnote-ref-43)
44. ECrtHR, *Ivan Atanasov v. Bulgaria*, 2 December 2010, 12853/03, §§ 66, 75 – 76; ECrtHR, *Kyrtatos v. Greece*, 22 May 2003, 41666/98, § 52; ECrtHR, *Fadeyeva v. Russia*, 9 June 2005, 55723/00; ECrtHR, *Dubetska and others* v. Ukraine, 10 February 2011, 30499/03. [↑](#footnote-ref-44)
45. See ECrtHR, *Asselbourg and others v. Luxemburg*, 29 June 1999, 29121/95. [↑](#footnote-ref-45)
46. Jesse Ribot, “Exigences d’information et de participation du public en matière d’environnement: perfectionnements des procédures de mise en œuvre”, BDEI, 07/2006, pp. 46 – 48. [↑](#footnote-ref-46)
47. ECrtHR, *Öneryildiz v. Turkey,* 30 November 2004, 48939/99. [↑](#footnote-ref-47)
48. ECrtHR, *McGinley and Egan v. United Kingdom*, 9 June 1998, 21825/93 and 23414/94, § 101. [↑](#footnote-ref-48)
49. ECrtHR, *Taskin and others, v. Turkey*, 10 November 2004, 46117/99; this has been confirmed in ECrtHR, *Brânduşe v. Romania*, 7 April 2009, 6586/03*.*  [↑](#footnote-ref-49)
50. ECrtHR, *Taskin and others, v. Turkey*, 10 November 2004, 46117/99;ECrtHR, *Brânduşe v. Romania*, 7 April 2009, 6586/03; ECrtHR, *Tatar v. Romania*, 27 January 2009, 67021/01*.*  [↑](#footnote-ref-50)
51. The decision-making process comprised individual scientific studies requested by the public authorities that have not been made publicly, ECrtHR, *Tatar v. Romania*, 27 January 2009, 67021/01, §§ 113,116 – 117, 119. *See also*, ECrtHR, *Hatton and others v. United Kingdom*, 8 July 2003, 360022/97*;* ECrtHR, *Taskin and others, v. Turkey*, 10 November 2004, 46117/99*,* § 119. [↑](#footnote-ref-51)
52. ECrtHR, *Guerra and others v. Italy*, 19 February 1998, 14967/89; ECrtHR, *Brânduşe v. Romania*, 7 April 2009, 6586/03, § 63. The State must establish an effective procedure to enable individuals to have access to information by which risks to which their health is exposed can be assessed. [↑](#footnote-ref-52)
53. ECrtHR, *McGinley and Egan v. United Kingdom*, 9 June 1998, 21825/93 and 23414/94; ECrtHR, *Tatar v. Romania*, 27 January 2009, 67021/01; ECrtHR, *Hatton and others v. United Kingdom*, 8 July 2003, 360022/97 have been consistently applied throughout the Court’s case-law, ECrtHR, Giacomelli v. Italy, 2 November 2006, 59909/00, *ECrtHR, Lemke v. Turkey*, 5 June 2007, 17381/02; ECrtHR, *Dubetska and others v. Ukraine*, 10 February 2011, 30499/03; ECrtHR, *Grimkovskaya v. Ukraine*, 21 July 2011, 38182/03. [↑](#footnote-ref-53)
54. ECrtHR, *Taskin and others*, v. Turkey, 10 November 2004, 46117/99, § 119. [↑](#footnote-ref-54)
55. *Ibid*. § 113. [↑](#footnote-ref-55)
56. *Ibid*. [↑](#footnote-ref-56)
57. ECrtHR, *Steel and Morris v. the United Kingdom*, 15 February 2005, 68416/01, § 89; involved an environmental campaign against McDonalds. In the defamation proceedings against the campaigners, the State was infringing the right to inform under article 10 by not granting legal aid to applicants. Thus, the UK has not guaranteed fairness in the proceedings. [↑](#footnote-ref-57)
58. ECrtHR, *Vides Aizsardzibas Klubs v. Latvia*, 27 May 2004, 57829/00, § 40. The association has been trying to draw attention on a pressing issue, building works that caused environmental damage to the coastline and Article 10 was not requiring to prove accuracy of the statements. The restrictions imposed on freedom of expression violated Article 10 of the ECHR. [↑](#footnote-ref-58)
59. ECrtHR, *The Observer and Guardian v. the United Kingdom*, 26 November 1991, 13585/88, § 59. In ECrtHR, *Verein gegen Tierfabriken v. Switzerland*, 28 June 2001, 24699/94, the Court considered that national authorities’ refusal to register an advertisement of an animal protection association is disproportionate as the advertisement pertained to the general interest on the protection of animals. The margin of appreciation for prohibiting the right to disseminate information of the State was thus reduced under article 10. [↑](#footnote-ref-59)
60. ECrtHR, *Guerra and others v. Italy*, 19 February 1998, 14967/89. [↑](#footnote-ref-60)
61. ECrtHR, *Guerra and others v. Italy*, 19 February 1998, 14967/89. [↑](#footnote-ref-61)
62. ECrtHR, *Budayeva and others v. Russia*, 22 March 2008, 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02. [↑](#footnote-ref-62)
63. ECrtHR, *Golder v. UK,* 21 February 1975, 4451/70, § 36. [↑](#footnote-ref-63)
64. ECrtHR, *Balmer-Schafroth and others v. Switzerland*, 26 August 1997, 22110/93, § 33 ; ECrtHR, *Taskin and others, v. Turkey*, 10 November 2004, 46117/99, § 90. The right to live in a healthy and balanced environment is a “civil right” within the scope of Art. 6.1 ECHR. [↑](#footnote-ref-64)
65. In ECrtHR, *Athanassoglou and others v. Switzerland* 6 April 2000, 27644/95, the outcome of the procedure before the Federal Council was decisive for the general danger represented by all nuclear power plants but not for the rights to life, physical integrity and protection of property of that particular applicants, so Article 6 was not applicable to the case. [↑](#footnote-ref-65)
66. ECrtHR, *Gorraiz Lizarraga and others v. Spain*, 27 April 2004, 62543/00. [↑](#footnote-ref-66)
67. *Ibid*. §§ 46 and 47. The impossibility for the association to present observations on the merits of constitutionality of the law in front of the Constitutional Court is linked to Art 6.1 as the dispute concerned also a concrete and direct threat to the personal possessions and the way of life of its members. However, the Court did not find a violation of Article 6.1. [↑](#footnote-ref-67)
68. ECrtHR, *Taskin and others, v. Turkey*, 10 November 2004, 46117/99. [↑](#footnote-ref-68)
69. ECrtHR, *Kyrtatos v. Greece*, 22 May 2003, 41666/98. [↑](#footnote-ref-69)
70. ECrtHR, *Leander v. Sweden*, 26 March 1987, 9248/81, § 77. [↑](#footnote-ref-70)
71. ECrtHR, *Klass and others v. Germany*, 6 September 1978, 5029/71, § 64; ECrtHR, *Silver and others v. United Kingdom*, 25 March 1983, 5947/72 and others, § 113. [↑](#footnote-ref-71)
72. EcrtHR, *Golder v. the United Kingdom*, 21 February 1975, § 36. [↑](#footnote-ref-72)
73. ECrtHR, *Öneryildiz v. Turkey,* 30 November 2004, 48939/99, § 149, *Budayeva and others v. Russia,* 20 March 2008, 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, § 140. [↑](#footnote-ref-73)
74. ECrtHR, *Mangouras v. Spain*, 28 September 2010, 12050/04. [↑](#footnote-ref-74)
75. ECrtHR, *Öneryildiz v. Turkey,* 30 November 2004, 48939/99, § 147. The Court examined the adequacy of criminal and administrative investigations that have been carried out following a methane-gas explosion on a waste-collection site. The municipalities were convicted to very low fines and the Court found a violation of Article 13 in combination with Article 1 of Protocol no. 1 and Article 2 of the Convention because the remedies did not allowed for a compensation of the damages suffered by the individuals concerned. As regards the complaint under Article 1 of Protocol no. 1, the decision on compensation had been unduly delayed and the amount awarded in respect of the destruction of household goods never paid. In the case of ECrtHR, *Budayeva and others v. Russia,* 20 March 2008, 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, the applicants complained of the lack of any effective remedy through which to make their claims, as required by Article 13 of the Convention. The Court found that the principles developed in relation to the judicial response to accidents resulting from dangerous activities also applied in the area of disaster relief. [↑](#footnote-ref-75)
76. ECrtHR, *Öneryildiz v. Turkey,* 30 November 2004, 48939/99, § 147. [↑](#footnote-ref-76)
77. ECrtHR, *Öneryildiz v. Turkey,* 30 November 2004, 48939/99, §§ 89 – 96 and ECrtHR, *Hatton and others v. United Kingdom*, 8 July 2003, 360022/97, § 98. [↑](#footnote-ref-77)
78. Jean-François Akandji-Kombe, Les obligations positives en vertu de la Convention européenne des droits de l’homme, Ed. du Conseil de l’Europe, coll. Précis sur les droits de l’homme n°7, Strasbourg 2006, pp. 49 – 50. [↑](#footnote-ref-78)
79. ECrtHR, *Öneryildiz v. Turkey*, 30 November 2004, 48939/99, §§ 90 and 160. [↑](#footnote-ref-79)
80. ECrtHR, *Budayeva and others v. Russia,* 20 March 2008, 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, § 133; ECrtHR, *Fadeyeva v. Russia*, 9 June 2005, 55723/00. [↑](#footnote-ref-80)
81. ECrtHR, *L.C.B. v. The United Kingdom*, 9 June 1998, 23413/94. [↑](#footnote-ref-81)
82. *Ibid*. §§ 38 –39 (emphasis added). [↑](#footnote-ref-82)
83. *Ibid*. 23413/94, §§ 38 – 39. [↑](#footnote-ref-83)
84. ECrtHR, *Öneryildiz v. Turkey*, 30 November 2004, 48939/99, § 73. [↑](#footnote-ref-84)
85. ECrtHR, *Budayeva and others v. Russia,* 20 March 2008, 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02. [↑](#footnote-ref-85)
86. *Ibid*. [↑](#footnote-ref-86)
87. ECrtHR, *Öneryildiz v. Turkey*, 30 November 2004, 48939/99, § 90. [↑](#footnote-ref-87)
88. ECrtHR, *Tatar v. Romania*, 27 January 2009, 67021/01 § 87. [↑](#footnote-ref-88)
89. *Ibid*. *See* Manual on Human Rights and the Environment, Council of Europe publishing, Strasbourg, 2012, p. 50. [↑](#footnote-ref-89)
90. ECrtHR, *Fadeyeva v. Russia*, 9 June 2005, 55723/00, §§ 69, 88 – 89. [↑](#footnote-ref-90)
91. ECrtHR, *Moreno Gomez, v. Spain*, 16 November 2004, 4143/02 [↑](#footnote-ref-91)
92. ECrtHR, *Lopez Ostra v. Spain*, 9 December 1994, 16798/90. [↑](#footnote-ref-92)
93. ECrtHR, *Deés v. Hungary*, 9 November 2010, 2345/06, § 21. [↑](#footnote-ref-93)
94. ECrtHR, *Moreno Gomez, v. Spain*, 16 November 2004, 4143/02, § 61. [↑](#footnote-ref-94)
95. ECrtHR, *Öneryildiz v. Turkey*, 30 November 2004, 48939/99, §§ 134 and 135; ECrtHR *Budayeva and others v. Russia,* 20 March 2008, 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, §§ 172 – 182. “The positive obligation on the State to protect private property from natural disaster cannot be construed as binding the State to compensate the full market value of destroyed property”. [↑](#footnote-ref-95)
96. ECrtHR, *Pine Valley Developments Ltd and Others v. Ireland*, 29 November 1991, § 57 and in ECrtHR, Kapsalis and Nima-Kapsali v Greece, 23 September 2004, 29037/03, the Court concerned the withdrawal of permissions to build on land purchased for construction ; ECrtHR, *Hamer v. Belgium*, 27 November 2007, 21861/03; ECrtHR, *Taskin and others, v. Turkey*, 29 January 2004, 46117/99; ECrtHR, *Turgut and others v. Turkey*, 8 July 2008, 1411/03. The failure to compensate rendered the deprivation of property an excessive infringement. [↑](#footnote-ref-96)
97. ECrtHR, *Fredin v. Sweden* (no. 1), 18 February 1991, 12033/86, § 41. A restriction of the use of property is justified on the basis of the protection of environnement. [↑](#footnote-ref-97)
98. ECrtHR, *Budayeva and others v. Russia,* 20 March 2008, 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, § 182. [↑](#footnote-ref-98)
99. ECrtHR, *Chapman v. the United Kingdom*, 11 July 2002, 25680/94, § 120; ECrtHR, *Brosset-Triboulet and others v. France*, 29 March 2010, 34078/02, § 86; ECrtHR, *Depalle v. France*, 29 March 2010, 34044/02, § 83. [↑](#footnote-ref-99)
100. ECrtHR, *Brânduşe v. Romania*, 7 April 2009, 6586/03. [↑](#footnote-ref-100)
101. ECrtHR, *Depalle v. France*, 29 March 2010, 34044/02*.*  [↑](#footnote-ref-101)
102. ECrtHR, *Lopez Ostra v. Spain*, 9 December 1994, 16798/90, § 51. [↑](#footnote-ref-102)
103. ECrtHR, *Christine Goodwin v. United Kingdom,* 11 July 2002, 28957/95; ECrtHR, *Cossey v. the United Kingdom*, 27 September 1990, 10843/84. [↑](#footnote-ref-103)
104. ECrtHR, *Lopez Ostra v. Spain*, 9 December 1994, 16798/90, § 58. [↑](#footnote-ref-104)
105. ECrtHR, *Hatton and others v. United Kingdom*, 8 July 2003, 360022/97 § 98. [↑](#footnote-ref-105)
106. ECrtHR, *Bacila v. Romania*, 30 March 2010, 19234/04, §§ 70 – 71: “Certes, la Cour ne méconnaît pas l'intérêt que peuvent avoir les autorités internes à maintenir l'activité économique du plus grand employeur d'une ville déjà fragilisée par la fermeture d'autres industries. Cependant, la Cour estime que **cet intérêt ne saurait l'emporter sur le droit des personnes concernées à jouir d'un environnement équilibré et respectueux de la santé**. L'existence de conséquences graves et avérées pour la santé de la requérante et des autres habitants de Copşa Mică, faisait peser sur l'Etat l'obligation positive d'adopter et de mettre en œuvre des mesures raisonnables et adéquates capables de protéger leur bien-être”. [↑](#footnote-ref-106)
107. ECrtHR, *Hatton and others v. United Kingdom*, 8 July 2003, 360022/97; *see e.g.* ECrtHR, *Handyside v. the United Kingdom*, 7 December 1976, 5493/72. [↑](#footnote-ref-107)
108. ECrtHR, *Fadeyeva v. Russia*, 9 June 2005, 55723/00. [↑](#footnote-ref-108)
109. ECrtHR, *Giacomelli v. Italy*, 2 November 2006, 59909/00; *see also ECrtHR, Luginbühl v. Switzerland*, 17 January 2006, 42756/02 [↑](#footnote-ref-109)
110. ECrtHR, *Hatton and others v. United Kingdom*, 8 July 2003, 360022/97 (emphasis added). [↑](#footnote-ref-110)
111. ECrtHR, *Powell and Rayner v. United Kingdom*, 21 February 1990, 9310/81. [↑](#footnote-ref-111)
112. Article 5 TUE, OJ C 326, 26 January 2012. [↑](#footnote-ref-112)
113. Article 4 § 2 e) TFEU, OJ C 326, 26 January 2012 [↑](#footnote-ref-113)
114. CJEU, *Stauder v. City of Ulm*, 12 November 1969, 29/69; CJEU, *International Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle Getreide und Futtermittel*, 17 December 1970, 11/70: “Respect for fundamental rights form an integral part of the general principles of law protected by the Court of Justice. The protection of such rights, whilst inspired by the constitutional traditions common to the member states, must be ensured within the framework of the structure and objectives of the Community”. [↑](#footnote-ref-114)
115. Article 6 TEU. [↑](#footnote-ref-115)
116. Article 6 TEU: “The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties. […]”. [↑](#footnote-ref-116)
117. *See e.g.* Article 20a of the German Constitution, Article 45 of the Spanish Constitution; Article 21 of the Dutch Constitution or Article 2 of the Swedish Constitution. [↑](#footnote-ref-117)
118. Directive (85/337/EEC) entered into force since 1985 and applies to both public and private projects. All projects listed in Annex I are considered of having significant effects on the environment and require an EIA. For examples: motorways and express roads, airports, installation for the disposal of hazardous waste, waste water treatment plant. Annex II lists projects where Member States have a discretion margin to decide whether an EIA is needed. See: http://ec.europa.eu/environment/eia/eia-legalcontext.htm. [↑](#footnote-ref-118)
119. SEA Directive (2001/42/EC) in force since 2001, applies to public plans and programmes (for examples: land use, energy, agriculture) and does not refer to policies. See: http://ec.europa.eu/environment/eia/sea-legalcontext.htm. [↑](#footnote-ref-119)
120. Integrating environmental considerations into other policy areas – a stocktaking of the Cardiff process, COM/2004/0394 final, “While this stocktaking has shown the positive results of the Cardiff process, both in terms of raising the profile of environmental integration and in terms of concrete improvements in some sectors, it also points to a number of weaknesses in implementation. […] While sustainable development involves dealing with economic, social and environmental policies in a mutually reinforcing way, environmental integration needs increased visibility and political support at the highest level”. [↑](#footnote-ref-120)
121. For instance, the adoption of the European chemical legislation called REACH has spread various reactions in the world because of its impacts on trade and markets: Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, OJ L 396, 30 December 2006, p. 1 – 849. [↑](#footnote-ref-121)
122. WTO, Panel reports WT/DS291/R, WT/DS292/R, WT/DS293/R, European Communities – Measures Affecting the Approval and Marketing of Biotech products, 29 September 2009. [↑](#footnote-ref-122)
123. Communication on the precautionary principle, COM (2000)1 final, p. 7. [↑](#footnote-ref-123)
124. Charter of fundamental rights of the European Union (OJ C 326, 26 January 2012). Since the 1st December 2009, the Charter has the same legal value as the Treaties, according to Articles 6 and 9 TEU. [↑](#footnote-ref-124)
125. H. Smets, Une Charte des droits fondamentaux sans droits à l’environnement, §, 4/2001, p. 386. [↑](#footnote-ref-125)
126. Nicolas de Sadeleer, « Les droits fondamentaux au secours de la protection de l’environnement : examen du droit de l’UE et de la CEDH », in Loïc Robert (dir.) *L’environnement et la Convention européenne des droits de l’homme*, Cahiers de droit international, Bruylant, Bruxelles, 2013, (pp. 105 – 130), p .109. [↑](#footnote-ref-126)
127. Ludwig Krämer, “Thirty years of EC environmental law: perspectives et prospectives”, *Yb. Eur. Env. Law*, 2002 vol. 2, p. 160. [↑](#footnote-ref-127)
128. Article 288 TFEU. [↑](#footnote-ref-128)
129. *See e.g.* Directive 2008/50/EC of the European Parliament and the Council of 21 May 2008 on ambient air quality and cleaner air for Europe*,* OJ L 152, 11 June 2008, pp. 1 – 44; Directive 2000/60/EC of the European Parliament and the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ L 327, 22 December 2000, pp. 1 – 73; **Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise - Declaration by the Commission in the Conciliation Committee on the Directive relating to the assessment and management of environmental noise,**OJ L 189, 18 July 2002, pp. 12 – 25. [↑](#footnote-ref-129)
130. Directive 2008/99/EC of the European Parliament and of the Council of the 19 November 2008 on the protection of the environment through criminal law, OJ L 328, 6 December 2008, pp. 28 – 38. [↑](#footnote-ref-130)
131. OJ L 24, 9 January 2008, pp. 8 – 29. [↑](#footnote-ref-131)
132. OJ L 257, 10 October 1996, pp. 26 – 40. [↑](#footnote-ref-132)
133. OJ L 124, 17 May 2005, pp. 1 – 20. [↑](#footnote-ref-133)
134. Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, OJ L 264, 25 September 2006, pp. 13 – 19. [↑](#footnote-ref-134)
135. Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programs relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, OJ L 156, 25 June 2003, pp. 17 – 25. [↑](#footnote-ref-135)
136. Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, OJ L 41, 14 February 2003, pp. 26 – 32. [↑](#footnote-ref-136)
137. Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, OJ L 152, 11 June 2008, pp. 1 – 44: “there are positive obligations to the Member States to draw-up short action plans when there is a risk that the levels of pollutants will exceed the alert thresholds specified in the EU Directive”. [↑](#footnote-ref-137)
138. Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programs on the environment OJ L 197, 21st July 2001 pp. 30 – 37. [↑](#footnote-ref-138)
139. OJ L 175, 5 July 1985, pp. 40 – 48. [↑](#footnote-ref-139)
140. OJ L 206, 22 July 1992, pp. 7 – 50. [↑](#footnote-ref-140)
141. Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, OJ L 41, 14.2.2003, p. 26–32 [↑](#footnote-ref-141)
142. Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programs relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, OJ L 156, 25 June 2003, pp. 17 – 25. [↑](#footnote-ref-142)
143. Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, OJ L 41, 14 February 2003, pp. 26 – 32. [↑](#footnote-ref-143)
144. <http://ec.europa.eu/environment/aarhus/legislation.htm>. [↑](#footnote-ref-144)
145. Marc Pallemaerts (ed.), The Aarhus Convention at Ten: Interactions and Tensions between Conventional International Law and EU Environmental Law, Europa Law Publishing, Groningen, 2011. [↑](#footnote-ref-145)
146. Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on Environmental Liability with regard to the prevention and the remedying to environmental damages, OJ L 143, 30 April 2004, pp. 56 – 75. [↑](#footnote-ref-146)
147. CJEU, *Procureur de la République v. Association de défense des brûleurs d'huiles usagées (ADBHU)*, 7 February 1985, C-240/83, §§ 12 – 13. [↑](#footnote-ref-147)
148. CJEU, *Commission v. Danemark*, 20 September 1988, C-302/86, § 8. [↑](#footnote-ref-148)
149. *See e.g.* the opinion of Advocate general Kokot (19 April 2012) and the judgement in CJUE, *Jozef Križan and others v. Slovenská inšpekcia životného prostredia*, 15 January 2013, C-416/10. [↑](#footnote-ref-149)
150. CJEU, *Dieter Janecek v. Freistaat Bayern*, 25 July 2008, C- 237/07, §§ 39 – 40. [↑](#footnote-ref-150)
151. Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste, OJ L 114, 27 April 2006, pp. 9 – 21. [↑](#footnote-ref-151)
152. *See* CJEU, *Commission v. Italy*, 9 November 1999, C‑365/97, § 68, and CJEU, *Commission v. Greece*, 18 November 2004, C‑420/02, § 22 (emphasis added). [↑](#footnote-ref-152)
153. CJEU, *Lesoochranárske zoskupenie VLK v. Ministerstvo životného prostredia Slovenskej republiky*, 8 March 2011, C-240/09. [↑](#footnote-ref-153)
154. CJEU, *David Edwards and Lilian Pallikaropoulos v. Environment Agency, First Secretary of State, Secretary of State for Environment and Food and Rural Affairs*, 11 April 2013, C-260/11. [↑](#footnote-ref-154)
155. OJ L 175, 5 July 1985, pp. 40 – 48. [↑](#footnote-ref-155)
156. OJ L 257, 10 October 1996, pp. 26 – 40. [↑](#footnote-ref-156)
157. CJEU, *Commission v. Ireland*, 16 July 2009, C‑427/07, § 92. [↑](#footnote-ref-157)
158. *See*, *by analogy*, CJUE, *Deutsche Energiehandels-und Beratungsgesellschaft mbH v. Bundesrepublik Deutschland*, 22 December 2010, C‑279/09, § 61. [↑](#footnote-ref-158)