January 2012

Environment-related cases in the Court's case law

Noise pollution

Airport noise :

Powell and Rayner v. United Kingdom (application no. 9310/81)

21.02.1990

The applicants, who lived in the vicinity of Heathrow airport, considered the authorised noise level there unacceptable and the measures pursued by the government to minimise the noise to be insufficient.

The European Court of Human Rights held that the operation of big airports for international air-traffic close to densely-populated residential areas was necessary for the economic well-being of countries. As Heathrow airport was one of the world's busiest, and was key for commerce, international communication and the UK economy, its operation was justified even if the negative consequences on the environment could not be entirely eliminated. No violation of Article 8 of the European Convention on Human Rights.

Hatton v. United Kingdom (application no. 36022/97)
Grand Chamber judgment

08.07.2003

The applicants, all of whom lived close to Heathrow airport, complained about the noise around their houses having increased as a result of a 1993 Government policy on night flights. They claimed their health suffered as a result of regular sleep interruptions caused by night-time planes.

While the Court could not reach a conclusion about whether the 1993 scheme had actually led to an increase in night noise, it found that there was an economic interest in maintaining a full service of night flights, that only a small percentage of people had suffered by the noise, that the housing prices had not dropped, and that the applicants could move elsewhere without financial loss. No violation of Article 8.

Neighbouring noise:

Moreno Gomez v. Spain (application no. 4143/02)

16.11.2004

The applicant complained from persistent noise at night caused by nightclubs near her home and of it having disturbed seriously her sleep on a prolonged basis.

The Court held that the applicant's right to respect for her home had been seriously infringed as a result of the authorities' failure to deal with the night-time disturbances. In view of the magnitude of the noise - at night and beyond permitted levels - and that it had continued over a number of years, the Court found a breach of Article 8.

DEÉS v. Hungary (application no. 2345/06)

09.11.2010

The applicant complained about suffering from serious noise, vibration and pollution nuisance as a result of unregulated heavy traffic in his street, in breach of Article 8.

The Court held that despite the authorities' efforts to limit and reorganise the traffic affecting the street in which Mr Deés lived, he had suffered direct and serious nuisance as a result of the excessive noise to which he had been exposed over a substantial period of time. Consequently, he had not been able to enjoy his home and private life, in violation of Article 8.

Mileva and Others v. Bulgaria (application nos. 43449/02 and 21475/04)

The applicants complained about suffering from excessive noise caused by an office, and electronic games club and a computer club operating from flats adjacent to theirs.

The Court found that the authorities had remained passive vis-à-vis the applicants' complaints. Although at some stage two prohibitions had been issued ordering the closing down of the clubs' activities, those decision had never been enforced. As a result, for a period of over four years, the applicants had endured noise and disturbance levels that had interfered with their private and family life, in violation of Article 8.

Dubetska and Others v. Ukraine (application no. 30499/03)

Relying on Article 8, the applicants complain about having suffered health problems and experienced damage to their house and living environment as a result of a coal mine and a factory operating near their house.

The Court found that the operation of the mine and factory had contributed to the applicants' health-related problems and damage to their houses, and that they had not had the resources to resettle on their own given that the value of their houses had dropped drastically because of the pollution in the area. The authorities had been aware of the adverse environmental effects of the mine and factory but had neither resettled the applicants, nor found a different solution to diminish the pollution to levels that were not harmful to people living in the vicinity of the industrial facilities. There had therefore been a violation of Article 8. The Court also held that by finding of a violation of Article 8 it established the Ukrainian Government's obligation to take appropriate measures to remedy the applicants' situation.

Zammit Maempel and Others v. Malta (application no. 24202/10)

22 November 2011

The case concerned the complaint by a family that the issuing of permits for firework displays, which took place twice a year, every year, in the vicinity of their house, breached their Article 8 rights and endangered their life and property.

The Court found no violation of Article 8. In particular, it noted that there had not been a real and immediate risk to the applicants' life or personal integrity, that the authorities had put in place a system for the protection of people and properties, and the actual letting off of fireworks had been monitored. Finally, the applicants had acquired their property while aware of the situation from which they had been complaining.

Pending cases:

Mirosława and Janusz PAWLAK v. Poland (application no. 29179/06)

The applicants complain, relying on Article 8, that they suffered noise, pollution and other nuisance as a result of the operating of a commercial centre built unlawfully close to their home.

Communicated to the Government in October 2009

Martinez Martinez and María Pino Manzano v. Spain (application no. 61654/08)

The applicants, who live in a house about 200 away from a quarry, complain about not having received any compensation for the noise and dust, coming from the quarry and

infiltrating their house, despite having obtained a judicial decision recognising that they had suffered from noise going beyond the acceptable limits in law. They rely on Article 8.
Communicated to the Government in March 2010

Industrial pollution

Danger to people's health

Öneryıldız v. Turkey (application no. 48939/99)
Grand Chamber judgment

30.11.2004

The applicant's dwelling was built without authorisation on land surrounding a rubbish tip used jointly by four district councils. A methane explosion occurred at the tip in April 1993 and the refuse erupting from the pile of waste engulfed more than ten houses situated below it, including the one belonging to the applicant who lost nine close relatives. The applicant complained that no measures had been taken to prevent an explosion despite an expert report having drawn the authorities' attention to the need to act preventively as such an explosion was not unlikely.
The Court found a violation of Article 2. The Government had not provided the slum inhabitants with information about the risks they ran by living there ; even if it had, it remained responsible as it had not taken the necessary practical measures to avoid the risks to people's lives. The regulatory framework had proved defective as the tip had been allowed to open and operate without a coherent supervisory system. The town-planning policy had likewise been inadequate and had undoubtedly played a part in the sequence of events leading to the accident.

Lopez Ostra v. Spain (application no. 16798/90)

09.012.1994

The applicant complained about pollution caused by a plant treating leather industrial waste, which released gas fumes, smells and contamination thus causing health problems to people living nearby. In particular, the applicant's daughter suffered from nausea, vomiting and anorexia which, according to the paediatrician, was the result of the pollution.
The Court found a violation of Article 8 in that Spain had not succeeded 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.

Fadeyeva v. Russia (application no. 55723/00)

09.06.2005

The applicant complained that the operation of a big steel plant in close proximity to her home endangered her health and well-being and, despite that, the authorities did not find her another dwelling away from the plant.
The Court noted that, although the situation around the plant called for special treatment of those living in its immediate proximity, the State had not offered the applicant any effective solution to help her move from the dangerous area. Although the plant had operated in breach of domestic environmental standards, the State had not designed nor applied effective measures capable of reducing the industrial pollution to acceptable levels. Violation of Article 8.

Giacomelli v. Italy (application no. 59909/00)

02.11.2006

The applicant complained of harmful emissions coming out of a plant for the treatment of "special, including hazardous, waste", which was situated about 30 metres away from his home. She claimed it carried risks for her health and home.

The State authorities had failed to comply with domestic legislation on environmental matters given that an environmental impact study was carried out seven years after the plant started to operate, despite the legal requirement that it be done prior to the start of the activity. Although the domestic courts had ordered the suspension of the plant's operations until their alignment with environmental protection regulations, the administrative authorities had not closed the facility. The Court found a violation of Article 8, given that for several years the applicant's right to respect for her home had been seriously impaired by the dangerous activities carried out at the plant.

Guerra and Others v. Italy (application no. 14967/89)

19.02.1998

The applicants lived about a kilometre away from a chemical factory producing fertilisers. Following accidents due to the factory's malfunctioning, on one occasion 150 people were admitted to hospital with acute arsenic poisoning due to the release in the environment of tonnes of substances containing toxic arsenic. The applicants complained that the lack of practical measures to reduce pollution levels and major-accident hazards arising out of the factory's operation infringed their right to respect for their lives and physical integrity.

The Court recalled that severe environmental pollution might affect adversely individuals' well-being and prevent them from enjoying their homes. The applicants had waited, right up until the production of fertilisers ceased in 1994, for essential information that would have enabled them to assess the risks they and their families might run if they continued to live in their town, which was particularly exposed to danger in the event of an accident at the factory. The Court held that Italy did not fulfil its obligation to secure the applicants' right to respect for their private and family life, in breach of Article 8.

Taşkın and Others v. Turkey (application no. 46117/99)

10.11.2004

The applicants asked for the setting aside of a mining permit which authorised the use of cyanide leaching process for gold extraction, citing the dangers of the cyanidation process used by the operating company, the health risks and the risks of pollution of the underlying aquifers and destruction of the local ecosystem.

The Court noted that the decision to issue an operating permit for the gold mine had been annulled by the Supreme Administrative Court which, after weighing the different competing interests, concluded that the permit did not serve the public interest. However, the gold mine had only been ordered to close ten months after the delivery of that judgment and four months after it had been served on the authorities. Therefore, the delay in complying with the judgment had rendered the judicial guarantees enjoyed by the applicants devoid of purpose, in breach of Article 8.

Other adverse effects on the environment

Tatar v. Romania (application no. 657021/01)

27.01.2009

A gold mine, using sodium cyanide in its extraction process, and situated in the vicinity of the applicants' home, released about 100,000 m^3 of cyanide-contaminated tailings water into the environment following an environmental accident in January 2000. The mine did not halt its operations after that. The applicants complained that the mining process was a health hazard for the people living near it, that it posed a threat to the environment and that it was aggravating their son's medical condition (asthma).

The Court found that the applicants had failed to prove the existence of a causal link between their son's exposure to sodium cyanide and his asthma. However, the mining company had continued its industrial operations after the accident, in breach of the precautionary principle, according to which the absence of certainty with regard to current scientific and technical knowledge could not justify any delay on the part of the

State in adopting effective and proportionate measures. The Court concluded that the Romanian authorities had failed in their duty to assess, to a satisfactory degree, the risks that the company's activity might entail, and to take suitable measures in order to protect people's right to private life and home, within the meaning of Article 8, and more generally their right to enjoy a healthy and protected environment. Violation of Article 8.

l'Erablière v. Belgium (application no. 49230/07)

24.02.2009

The applicant, a non-profit association campaigning for the protection of the environment in the Walloon Region, Luxembourg, complained against the granting of planning permission to expand a waste collection site. The claim was not allowed by the *Conseil d'État* on procedural grounds, as it found that that it did not include a statement of the facts explaining the background to the dispute.

The Court held that the applicant did not have access to court, in breach of Article 6 § 1. While accepting that the submission of a statement of the facts was a formal domestic law requirement for lodging an application for judicial review before the *Conseil d'État*, the Court observed that the *Conseil d'État* and the opposing party could have acquainted themselves with the facts even without this statement.

Mangouras v. Spain (application no. 12050/04)

Grand Chamber judgment

28.09.2010

Mr Mangouras was formerly the captain of a ship, the Prestige, which in November 2002, while sailing off the Spanish coast, released into the Atlantic Ocean the 70,000 tons of fuel oil it was carrying. A criminal investigation was opened and the applicant was remanded in custody with bail fixed at 3,000,000 euros (EUR). Mr Mangouras was detained for 83 days and released when his bail was paid by the *Prestige* owner's insurers. He complained that the amount of bail required was excessively high and had been fixed without regard for his personal situation.

The Court found that new realities had to be taken into consideration when interpreting the requirements of Article 5 § 3, namely the growing and legitimate concern both in Europe and internationally in relation to environmental offences and the tendency to use criminal law as a means of enforcing the environmental obligations imposed by European and international law. The Court concluded that, given the exceptional nature of the applicant's case and the huge environmental damage caused by the marine pollution, which had seldom been seen on such a scale, it was hardly surprising that the judicial authorities had adjusted the amount required by way of bail in line with the level of liability incurred, so as to ensure that those responsible had no incentive to evade justice. No violation of Article 5 § 3.

Di Sarno and Others v. Italy (application no. 30765/08)

10.01.2012

The case concerned the state of emergency (from 11 February 1994 to 31 December 2009) in relation to waste collection, treatment and disposal in the Campania region of Italy where the applicants lived and/or worked, including a period of five months in which rubbish piled up in the streets.

A violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights; No violation of Article 8 of the Convention concerning the Italian authorities' obligation to provide information on the potential risks facing the applicants; A violation of Article 13 (right to an effective remedy).

Deforestation and urban development

Hamer v. Belgium (application no. 21861/03)

27.11.2007

The applicant owned a house built by her parents on forest land where building was not permitted. Proceedings were brought against her for having a house built in breach of the relevant forest legislation and the courts found she had to restitute the land to its previous state. The house was forcefully demolished. The applicant complained that her right to private life had been breached.

The Court held for the first time that, while not explicitly protected in the Convention, the environment is a value in itself in which both society and the public authorities take keen interest. Economic considerations, and even the right to property, should not have priority in the face of environmental concerns, in particular when the State has legislated in the field. Public authorities had therefore a responsibility to act in order to protect the environment. No violation of Article 1 of Protocol No 1.

Kyrtatos v. Greece (application no. 41666/98)

22.05.2003

The applicants complained that urban development in the south-eastern part of the island of Tinos had led to the destruction of their physical environment and had negatively affected their private life. In particular, they claimed that the area had lost all of its scenic beauty and had changed profoundly in character from a natural habitat for wildlife to a tourist development.

The Court found no violation of Article 8 as the applicants had not been directly affected. Even assuming that the environment had been damaged by the urban development of the area, the applicants had not shown that the alleged damage to the birds and other protected species living in the swamp was of such a nature as to directly affect their own rights under Article 8. It might have been otherwise if the environmental deterioration complained of had consisted in the destruction of a forest area in the vicinity of the applicants' house, a situation which could have affected more directly their own well-being.

Passive smoking

Florea v. Romania (application no. 37186/03)

14.09.2010 not final

The applicant, suffering from chronic hepatitis and arterial hypertension, complained that – while in prison - he had to share, for approximately eight or nine months, a cell with 35 beds, with about 110 to 120 other prisoners. According to him, 90% of his cellmates were smokers. He was also surrounded by smokers during his three stays in the prison hospital, which were ordered because of his worsening health.

The Court noted that Mr Florea had never had an individual cell and had to put up with his fellow prisoners smoking even in the prison's infirmary and on the wards for chronically-ill patients of the prison hospital, against his doctor's advice. However, a law enacted in June 2002 prohibited smoking in hospitals and the Romanian courts had frequently held that smokers and non-smokers should be detained separately. Accordingly, the conditions of detention, including his passive smoking to which the applicant had been subjected, breached Article 3.

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