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EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS AND THE RIGHT TO A HEALTHY ENVIRONMENT**

ABSTRACT: The right to a healthy environment is not explicitly mentioned in the European Convention for the Protection of Human Rights and Fundamental Freedoms from 1950. The mentioned right is more recent and belongs to human rights of the third generation. In the final Declaration of the United Nations conference on the human environment held in Stockholm in 1972, the basic human right to freedom, equality and adequate living conditions in an environment that allows an individual to live in dignity and well-being is mentioned for the first time. Although the right to a healthy environment is not mentioned in the European Convention for the Protection of Human Rights and Fundamental Freedoms, it is still given importance through the judgments of the European Court of Human Rights, which is responsible for considering violations of

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the said Convention. The protection of that right is linked to other rights guaranteed by the Convention, such as, for example, the right to life, right to private and family life, etc. The aim of the research in this paper is to indicate the importance of establishing a guarantee of the right to a healthy environment, as well as the increasing importance of its protection as a prerequisite for the enjoyment of some other basic human rights. The paper uses the method of content analysis. In addition to the analysis of the Draft Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, we also analyze the content of the verdicts of the European Court of Human Rights.

Keywords: European Convention for the Protection of Human Rights, right to a healthy environment, right to life, improvement of protection

INTRODUCTION

Under Chapter 19 of the Treaty on the European Community, it is stipulated that the goal of the European Union is to work on balanced economic growth and price stability, a highly competitive social market economy with the aim of full employment and social progress and a high level of protection and improvement of the quality of the environment. In addition, one of the goals is to promote measures at the international level to solve regional or global environmental problems, and especially to combat climate change.¹

The European Convention for the Protection of Human Rights and Fundamental Freedoms does not explicitly guarantee the right to a healthy environment.² This right is more recent, while the Convention was adopted in 1950. However, bearing in mind that the Convention is often said to be a “living instrument”, in the previous period there were several initiatives to adopt a protocol that would include the said right in the human rights provided for in the Convention.

The Final Declaration of the United Nations Conference on the Human Environment, which was held in Stockholm in 1972, for the first time mentions the fundamental right of man to freedom, equality and adequate living conditions in an environment that allows an individual to live in dignity and

¹ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, December 13, 2007. Retrieved on November 10, 2023, from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2007:306:FULL>

² Đajić, S. (2012). Pravo na zdravu životnu sredinu i Evropski sud za ljudska prava, *Pravni život*, no. 12, 277.

well-being. Principle 1 of the Declaration states that an individual has the basic right to freedom, equality and adequate living conditions in an environment that enables dignity and well-being. In addition, it is an individual's responsibility to protect and improve the environment for current and future generations.³ States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources in accordance with their own environmental policy, and the responsibility to ensure that activities under their jurisdiction or control do not cause damage to the environment of other states or areas beyond the borders of national jurisdiction.⁴ However, it seems that today at the international level there is no general consensus regarding the content of the right to a healthy environment. It mainly depends on the solutions found in national constitutions, because the said right is not yet protected by international treaties on human rights.⁵

Although the European Convention for the Protection of Human Rights and Fundamental Freedoms does not explicitly prescribe the right to environmental protection, it is still protected through the verdicts of the European Court of Human Rights, which refer to the protection of existing rights guaranteed by the said Convention. Bearing in mind that the verdicts of the court are binding and that in the case of a violation of the petitioner's rights being proven, the obligation to compensate the petitioner is imposed, it seems that they have a significant impact on the practice of national authorities with regard to the prevention of the same or similar violations. However, over time, the idea of the need to define the right to a healthy environment through the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms grew stronger. According to Recommendation 1614 (2003) on the environment and human rights, a healthy, sustainable and decent environment is of utmost importance. It recommended that the Committee of Ministers draft an additional protocol to the European Convention on Human Rights that would define the right to environmental protection. The Recommendation states that member states should ensure adequate protection of life, health, family and private life, physical integrity and private property of persons in accordance with Articles 2, 3 and 8 of the European Convention on Human Rights and Article 1 of the Additional Protocol so that special

³ Principle 2 of the Declaration on the Human Environment, adopted at the conference on the human environment at Stockholm on June 16, 1972. Retrieved on November 10, 2023, from <https://wedocs.unep.org/bitstream/handle/20.500.11822/29567/ELGP-1StockD.pdf>

⁴ Principle 21 of the Declaration on the Human Environment.

⁵ Mladenov, M., Serotila, I. (2022). Human Right's Approach to Environmental Protection – Practice of the Human Rights Committee. *Pravo, teorija i praksa*, no. 2, 53.

attention is paid to the need for environmental protection.⁶ In addition, the human right to a healthy, sustainable and decent environment should be recognized at the national level, which implies the obligation of states to protect the environment in national laws, and preferably at the constitutional level. At the national level, according to the Recommendation, it is also necessary to protect individual, procedural rights to access to information, public participation in decision-making and access to justice in environmental matters established by the Aarhus Convention.⁷

Of particular importance for the development of the right to a healthy environment was the recommendation number 10, according to which it was recommended to the Committee of Ministers to draft an additional protocol to the European Convention on Human Rights that refers to the recognition of individual procedural rights in order to improve environmental protection with the goal to provide individual protection against environmental degradation, with the adoption at the national level of the individual's right to participate in environmental decision-making.

DRAFT PROTOCOL TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The practice of the European Court of Human Rights provides for the direct protection of the right to the environment by reviewing the existence of violations of other human rights already recognized by the European Convention on Human Rights. The authors state that the European Convention on the Protection of Human Rights is the first “open-textured” regional legislative treaty on human rights.⁸ The adoption of the additional protocol would establish the basis for making a decision of the Court in relation to the violation of human rights resulting from harmful effects on the environment on human health, dignity and life.

Recently, the global vision of the need to protect human rights has been improved, so the concept of sustainable development has become part of policies around the world. Today, understanding the environment appears to be seen as a key factor for development, and therefore represents a significant

⁶ Point 9.1. of the Recommendation 1614 (2003), Environment and Human Rights. Retrieved on November 10, 2023, from <https://pace.coe.int/en/files/17131/html>

⁷ Points 9.2–9.4. of the Recommendation.

⁸ Etinski, R. (2018). The interrelationship between the European Convention on Human Rights and the Aarhus Convention. *Collection of Papers of the Faculty of Law in Novi Sad*, no. 1, 8.

legal challenge at the global and regional level. Nowadays, it is necessary to improve activities at the national level in order to prevent the degradation of the environment due to the commercial exploitation of nature. However, it seems that the current exploitation of the environment contributes to the violation of fundamental rights, which also affects a large number of legal disputes.⁹ That is why the idea of improving the European vision of modern protection of human rights seems to have matured enough to act on it. Until now, protection was limited to civil and political rights contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols, as well as socio-economic rights recognized in the European Social Charter. The European Convention on Human Rights does not explicitly mention the protection of the environment, and therefore the European Court of Human Rights cannot effectively deal with the protection of that human right. The Committee of Ministers did not follow the earlier call to the Assembly of the Council of Europe contained in Recommendation 1885(2009) on the need to draft an additional protocol to the European Convention on Human Rights. Many years later, in 2021, the Parliamentary Assembly of the Council of Europe proposed the adoption of a new additional protocol to the European Convention on Human Rights that would recognize the right to a safe, clean, healthy and sustainable environment within the system of the Council of Europe. That document should provide the European Court of Human Rights with a basis for making decisions regarding human rights violations resulting from adverse impacts on the environment, dignity and life of people.¹⁰ The current practice of the European Court of Human Rights provides indirect protection of the right to a healthy environment. Violation of the right to a healthy environment is determined by determining the violation of other human rights recognized by the European Convention. If the protocol to the mentioned convention were to be adopted, it would not be necessary to determine the violation of other rights in order to provide protection for the right to a healthy environment.

The goal of adopting the Protocol is to improve the responsibility of the present towards future generations and to prevent damage to nature with short-term and long-term effects of the climate crisis on future generations. That is why the new rules and duties are important for the promotion of the principles

⁹ Point 2 of Resolution 2396 (2021) of the Parliamentary Assembly of the Council of Europe, *Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe*. Retrieved on November 10, 2023, from <https://pace.coe.int/pdf/658d3f594762736ba3c0f378798b2c9529cf4be34aa45a8c38616ecd18fa80c0/res.%202396.pdf>

¹⁰ Points 7 of Resolution 2396 (2021) of the Parliamentary Assembly of the Council of Europe, *Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe*. Retrieved on November 10, 2023, from <https://pace.coe.int/pdf/658d3f594762736ba3c0f378798b2c9529cf4be34aa45a8c38616ecd18fa80c0/res.%202396.pdf>

of transgenerational responsibility, equality and solidarity. Nowadays, threats of environmental destruction and climate change are considered the greatest challenges of humanity, while the Parliamentary Assembly considers the use of man-made technologies, such as: artificial intelligence, nanotechnology and genetic engineering, to be a great challenge to human rights. Therefore, at the national level, a legal framework should be built and consolidated that would guarantee the right to a safe, clean, healthy and sustainable environment.¹¹

In the draft of the Additional Protocol, it is defined that the right to a safe, clean, healthy and sustainable environment includes the right of current and future generations to live in a non-degraded, sustainable and decent environment that is suitable for their health, development and well-being.¹² The same document foresees the principle of transgenerational responsibility, equality and solidarity. According to it, every generation has a duty to protect the environment and biodiversity and to prevent any irreparable and irreversible damage to life on earth, in order to ensure the right of future generations to live in a safe, healthy and sustainable environment. Therefore, each generation has a duty to ensure that natural resources are used and managed in an ecologically sustainable manner, and that scientific and technological progress in all fields does not harm life on earth. Therefore, according to the stated principle, each generation has an obligation to prevent the accumulation of damage to the environment, as well as to eliminate harmful consequences for it.¹³

The draft protocol also contains the principles of prevention, precaution, non-regression and the principle of *in dubio pro natura*. According to them, when the risk of damage is determined, it would be necessary to take measures for preventive action and elimination of the risk in order to eliminate damage to the environment. National and international provisions on environmental protection can only be subject to continuous improvement in relation to the current results of scientific and technological research.¹⁴ If adopted, the protocol should guarantee everyone the right to a safe, clean, healthy and sustainable environment.¹⁵ The exercise of that right can only be subject to formalities, conditions and restrictions prescribed by law and which are necessary

¹¹ Points 13 and 14.1 of Resolution 2396 (2021) of the Parliamentary Assembly of the Council of Europe, *Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe*. Retrieved on November 10, 2023, from <https://pace.coe.int/pdf/658d3f594762736ba3c0f378798b2c9529cf4be34aa45a8c38616ccd18fa80c0/res.%202396.pdf>

¹² Article 1 of the *Draft Protocol to the European Convention on Human Rights regarding the right to a safe, healthy and sustainable environment*. Retrieved on November 10, 2023, from <https://pace.coe.int/en/files/29501/html>, November 10, 2023.

¹³ *Ibid.* Article 2.

¹⁴ *Ibid.* Article 4.

¹⁵ *Ibid.* Article 6.

in a democratic society in the interest of national security, territorial integrity or public safety in order to prevent disorder or crime, protect the health, rights and freedom of others. According to the draft protocol, everyone should have access to information related to the environment in the possession of public authorities, so there would be no need to prove the existence of an interest. In addition, if a certain project, program or policy would have an impact on the environment and biodiversity, everyone would have the right to be consulted in advance so that decision-making bodies regarding the approval and development of that project would listen to them. According to the provisions contained in the draft, every person whose rights are guaranteed by the protocol would have the right to an effective legal remedy.¹⁶

When the European Convention on Human Rights was adopted, the situation in the world was different. However, later poverty, wars, environmental and natural disasters contributed to limited progress on human rights in many parts of the world. The idea behind the third generation of human rights is solidarity, and these rights include the collective rights of society and people. The draft protocol expresses the view that the right to a healthy environment is a right that must be protected for the benefit of both current and future generations, especially considering that today's generations are facing serious environmental and social crises. According to the available data, it is relevant that global warming will have a very harmful effect on a large number of basic human rights, such as the right to life and health.¹⁷

Until the adoption of the new protocol, the European Court of Human Rights will continue to indirectly protect the right to a healthy environment, by linking it to the protection of some other rights guaranteed by the Convention, such as the right to private and family life, the right to expression or the right to free enjoyment of property. Therefore, the right to a healthy environment will continue to be derived from the extensive interpretation and application of other rights guaranteed by the European Convention on Human Rights.¹⁸ Such action of the court has a positive effect on the protection of human rights at the

¹⁶ Article 8 of the *Draft Protocol to the European Convention on Human Rights regarding the right to a safe, healthy and sustainable environment*. Retrieved on November 10, 2023, from <https://pace.coe.int/en/files/29501/html>, November 10, 2023.

¹⁷ Point 16, Parliamentary Assembly, Committee on Social Affairs, Health and Sustainable Development,

Anchoring the right to a healthy environment, need for enhanced action by the Council of Europe, 2021. Rapporteur: Mr Simon Moutquin, Belgium, SOC. Retrieved on November 10, 2023, from <https://assembly.coe.int/LifeRay/SOC/Pdf/TextesProvisaires/2021/20210909-HealthyEnvironment-EN.pdf>

¹⁸ Todić, D. (2021). Povelja EU o osnovnim pravima i pravo na (zdravu) životnu sredinu. *Ecologica*, Vol. 28, no. 104, 627. Available at: <https://doi.org/10.18485/ecologica.2021.28.104.19>.

national level because it affects the implementation of national regulations in the field of environmental protection by the competent state authorities.

However, the question is whether and when the additional protocol will be adopted. The authors believe that the problems related to guaranteeing the new right are not exclusively of a political nature, but that there are also objective problems regarding its standardization. Thus, it is stated that in the context of global pollution, it is impossible to determine the exact cause-and-effect relationship between the tortfeasor and the aggrieved party. Such an impossibility makes it difficult for a court of law to provide protection related to the environment violation in the case of global pollution. The same authors point out that it is certainly easier to provide protection to basic human rights that are of a personal and individual nature, such as, for example, the right to life, while the environment is common and collective, so it is difficult to individualize the protected interest.¹⁹

However, in the absence of a guarantee of the right to a healthy environment, one of the difficulties faced by petitioners to the European Court of Human Rights is proving that a right that is not directly related to the environment has been violated. The court's extensive interpretation of existing rights still requires complex medical evidence as petitioners are required to prove a causal link between a particular form of environmental degradation and a health condition. This can cause high costs both for the individual petitioners and the countries against which petitions are filed.²⁰

The authors believe that despite the aspiration to establish a new law, it is unlikely that this new law would change the approach to the victim to a greater extent. It seems that the European Court of Human Rights, as well as national courts, would still demand that it be proven that an individual is personally affected by some of the consequences of endangering the environment, and not that he acts on behalf of the representative of the entire population of a certain country.²¹

¹⁹ Đajić, S. (2012). Pravo na zdravu životnu sredinu i Evropski sud za ljudska prava. *Pravni život*, no. 12, 289.

²⁰ Balfour-Lynn, H., Willman, S. (2022). The Right to a Healthy Environment: The Case for a New Protocol to the European Convention on Human Rights. *Environmental Rights Recognition Project*, 18. Available at: <http://dx.doi.org/10.2139/ssrn.4206563>; the same attitude is present in the work of the author Kobylarz, N. (2023). Anchoring The Right to a Healthy Environment In The European Convention on Human Rights: What Concretized Normative Consequences Can Be Anticipated for The Strasbourg Court In The Field of Admissibility Criteria?. *Environmental Law before the Courts: A US-EU Narrative*, G. Antoneli (ed.). Springer, 35. Available at: <http://dx.doi.org/10.2139/ssrn.4398112>.

²¹ Balfour-Lynn, H., Willman, S. (2022). The Right to a Healthy Environment: The Case for a New Protocol to the European Convention on Human Rights. *Environmental Rights Recognition Project*, 18. Available at: <http://dx.doi.org/10.2139/ssrn.4206563>

PROTECTION OF THE RIGHT TO A HEALTHY ENVIRONMENT IN THE EUROPEAN COURT OF HUMAN RIGHTS' CASE LAW

According to Etinski, the European Court of Human Rights took the position according to which the European Convention for the Protection of Human Rights and Fundamental Freedoms cannot be interpreted exclusively in accordance with the intentions of its authors, which were expressed more than forty years ago.²²

In the European Court of Human Rights case-law, the protection of the right to a healthy environment is provided through the protection of some other rights, such as: the right to respect for private and family life, home and correspondence, freedom of expression, the right to life or the right to unhindered enjoyment of property.

Violation of the right to respect for private and family life, home and correspondence

According to Article 8 of the European Convention on Human Rights, everyone has the right to respect for their private and family life, home and correspondence. Therefore, public authorities may not interfere with the exercise of that right, unless it is in accordance with the law and necessary in a democratic society in the interest of national security, public safety or economic welfare of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection rights and freedom of others. By providing protection for the said right in the case of *Hatton and others v. the United Kingdom*, the right to a healthy environment was indirectly protected.²³

The European Convention on the Protection of Human Rights does not explicitly prescribe the right to a clean and quiet environment. However, when an individual is directly and seriously affected by noise or some other type of environmental threat, it is considered that there is a violation of the right provided for in Article 8 of the aforementioned Convention, which protects the individual's right to respect for his or her private and family life, home and correspondence. Such approach was taken in *Powell and Rainer v. the United*

²² Etinski, R. (2018). The interrelationship between the European Convention on Human Rights and the Aarhus Convention. *Collection of Papers of the Faculty of Law in Novi Sad*, no. 1, 8–9.

²³ *Hatton and others v. the United Kingdom*, (App. no. 36022/97), 8. 7. 2003.

Kingdom.²⁴ In the case, the petitioners complained about disturbances due to the noise made by airplanes, so the court in that case considered whether there was a violation of Article 8 of the European Convention, because it considered that the private life and the ability to enjoy the comforts of his home were negatively affected by the noise produced by aircrafts using Heathrow Airport. The court analyzed the violation of the right to a healthy environment through the interpretation of the violation of Article 8 of the European Convention on Human Rights in the case of *Lopez Ostra v. Spain*²⁵, as well as in the case of *Guerra v. Italy*²⁶.

In the *Hatton v. United Kingdom* verdicts delivered on October 2, 2001, the European Court of Human Rights held that there had been no violation of Article 8 of the European Convention because noise at Heathrow Airport was being produced by aircrafts, not owned and not under the control or direction of the government or its institutions. Therefore, the United Kingdom cannot be said to have interfered with the petitioner's private or family life. Thus, the right provided for in Article 8 was analyzed in terms of the state's obligation to take reasonable and appropriate measures to ensure the respect for the petitioner's right to private or family life.²⁷ In the aforementioned case, the position was taken that one must take into account the fair balance that must be achieved between the conflicting interests of the individual and the community as a whole. Therefore, states should to the greatest possible extent minimize interference with the rights prescribed by Article 8 of the European Convention, try to find alternative solutions and achieve their goals by encroaching on human rights as little as possible.²⁸ In contrast to the above case, in previous cases the court considered that the state did not achieve an essential balance between the interest it sought and the effective enjoyment of the rights from Article 8 of the European Convention on Human Rights.²⁹

The right to unhindered enjoyment of property

Article 1 of Protocol 1 to the European Convention on Human Rights stipulates that every natural and legal person has the right to unhindered enjoyment of their property. Therefore, no one can be deprived of their property,

²⁴ *Powell and Rainer v. the United Kingdom*, 21. 2. 1999, p. 18, paragraph 40.

²⁵ *Lopez Ostra v. Spain*, 9. 12. 1994, p. 54–55 and p. 51.

²⁶ *Guerra and Others v. Italy*, 19. 2. 1998-I. It also concerned environmental pollution, para. 96.

²⁷ *Hatton and others v. the United Kingdom*, (App. no. 36022/97), 8. 7. 2003, point 85.

²⁸ *Ibid.*, point 86.

²⁹ *Ibid.*, point 90.

unless it is in the public interest and under the conditions stipulated by law and general principles of international law. However, this does not affect the right of the State to apply such laws as it deems necessary to regulate the use of property in accordance with the general interests or to ensure the collection of taxes or other duties or penalties.

The interpretation of the aforementioned provision by the European Court of Human Rights in some cases is related to the protection of the right to a healthy environment. Such approach is present in the decision of the court in the *Hammer v. Belgium case*.³⁰ In the said case, the petitioner renovated the house and cut trees on the neighboring land. A Flemish water company that was partly controlled by the government carried out work to connect the house to the sewerage and water supply systems. However, there was no reaction from the local authorities at that time. In the same year, a police officer drew up a report in which he stated that the act of cutting down trees on the property was in violation of the Flemish Ordinance on Forestry, that the cottage was built without a planning permit and that it was located in a wooded area for which such a permit could not even be issued. In this particular case, the petitioner complained about the violation of his property rights guaranteed by Article 1 of Protocol No. 1. Interpreting all the relevant circumstances, as well as the said article, the court took the position that in no way can the said right reduce the right of the state to implement the laws it considers necessary to apply in order to control the use of property in accordance with the general interest or the interest to ensure the payment of taxes, contributions or other penalties.³¹ In this specific case, the right to unhindered enjoyment of the property could not be protected, because the petitioner's house was built on a wooded area where construction was not permitted. Therefore, it was justified to demolish the building and restore to its original state the site where it was erected contrary to the regulations that provide for the mandatory issuance of a planning permit.³² The demolition of the house had a legitimate goal in accordance with paragraph 2, article 1, Protocol 1. This is precisely why the petitioner was denied legal protection and no tolerance could be demanded from third parties who, according to the petitioner's allegations, threatened her rights, and the measure which was undertaken and which she complained about could not possibly be seen as disproportionate.³³ The goal that was sought to be achieved by undertaking activities by the competent authority was legitimate because

³⁰ *Hammer v. Belgium*, (App. no. 21861/03).

³¹ *Ibid.*, point 71.

³² *Ibid.*, point 72.

³³ *Ibid.* point 73.

it aimed to protect the forest area in which construction is not allowed.³⁴ The only thing at issue in the particular case was whether the benefit to the proper planning of the construction and the protection of the forest area in which the petitioner's house was located could be considered proportionate to the inconvenience caused to the petitioner, and therefore various factors had to be taken into account.³⁵ It is important to point out that in the aforementioned case, the court took the position that the environment represents a value in itself, even though it is not expressly guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. From the current practice, it follows that the state has the obligation to take appropriate measures in case of activities that are dangerous for the environment.³⁶

Freedom of expression

The protection of the right to a healthy environment is provided by an extensive interpretation of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Freedom of expression is guaranteed by the mentioned article. According to that guarantee, everyone has the right to it, and it includes the freedom to hold one's own opinion, to receive and communicate information and ideas without the interference of public authorities and regardless of borders. According to Article 10, paragraph 2 of the European Convention, the use of these freedoms implies certain duties and responsibilities and may be subject to formalities, conditions, restrictions or penalties prescribed by law and necessary in a democratic society in the interest of national security, territorial integrity or public safety, in order to prevent disorder or crime, protection of health or morals, protection of the reputation or rights of others, prevention of disclosure of information received in confidence or to preserve the authority and impartiality of the judiciary.

In the case of *Társaság a Szabadságjogokért v. Hungary*, the European Court of Human Rights issued a verdict on April 14, 2009, recognizing the right of access to official documents. If state authorities possess information of public importance, the refusal to provide such documents to those seeking access constitutes a violation of the right to freedom of expression and information guaranteed by Article 10 of the Convention. In the aforementioned case, the court recognized the right to access public documents.³⁷ Such atti-

³⁴ *Hammer v. Belgium*, (App. no. 21861/03), point 81.

³⁵ *Ibid.* point 82.

³⁶ Krstić, I. (2012). Zaštita životne sredine u jurisprudenciji Evropskog suda za ljudska prava. *Pravni život*, no. 9, 659–660.

³⁷ *Társaság a Szabadságjogokért v. Hungary*, (App. no. 37374/05), 14. 4. 2009.

tude of the court results in the recognition of the right to access environmental information in administrative proceedings and administrative disputes.

The right to life

The right to a healthy environment is linked by the European Court of Human Rights to Article 2 of the European Convention on Human Rights, which guarantees the right to life. In the case of *Öneriyıldız v. Turkey* of November 30, 2004, the petition was filed by the petitioner whose apartment was built without authorization on land surrounded by a garbage dump that was jointly used by four district councils. A methane explosion occurred in 1993, and on that occasion, the waste that erupted from the pile engulfed more than ten houses that were located below it, including the house of the petitioner, who then lost nine close relatives.³⁸

The petitioner complained that no measures were taken to prevent the explosion despite the fact that the expert's report drew the authorities' attention to the need to act preemptively, as there was a high probability of an explosion occurring. The European Court of Human Rights considered that in the specific case the right guaranteed by Article 2 of the European Convention on Human Rights was violated in its material part, due to the lack of appropriate activities to prevent the accidental death of nine close relatives of the petitioner. In addition, the court considered that Article 2 was violated in the procedural part due to the lack of adequate legal protection protecting the right to life. In this regard, the court noted that the Turkish government did not provide the residents of the poor neighborhood where the petitioner lived with information about the risks they were exposed to while living there.

The protection of the right to a healthy environment was linked to the right to life in the case of *Budayeva and others v. Russia*. In July 2000 the town of Tirmauz in the mountain district of Mount Elbrus in Russia was destroyed by a landslide in which eight people died or were injured, including the first petitioner. The disaster caused both physical and psychological consequences for the petitioners who also lost their homes in it. They claimed in their petition that Russian authorities had failed to mitigate the effects of the landslide and to conduct a judicial investigation into the disaster.³⁹

³⁸ Press Unit of the European Court of Human Rights. (2023). *Factsheet – Environment and the ECHR*. Retrieved on November 10, 2023, from https://www.echr.coe.int/documents/d/echr/fs_environment_eng#:~:text=Even%20though%20the%20European%20Convention,may%20be%20undermined%20by%20the

³⁹ *Ibid.*

The Court considered that in the specific case there was a violation of the article 2 of the Convention in its essential part, due to the failure of the Russian authorities to protect the life of the husband of the first petitioner and he petitioners and residents of the city from the landslide that predicted great damage to their city. In addition, the court considered that there was a violation of Article 2 within its procedural part, due to the lack of an adequate judicial investigation of the accident. The issue of Russia's responsibility for the Tirmauz accident has never been investigated or questioned by any judicial or administrative body at the national level.⁴⁰

CONCLUSION

Environmental protection and promotion of measures to prevent environmental threats is one of the most important goals of the European Union. Although a large number of documents guaranteeing the right to a healthy environment have been adopted at the level of the Union, such a right is not included in the European Convention on the Protection of Human Rights. However, it should be borne in mind that the Convention was adopted in 1950, and that the mentioned right is a right of the third generation, and that it was first mentioned in the final Declaration of the United Nations in 1972, adopted at the final conference held in Stockholm. According to the mentioned document, it is possible to supplement the provisions of the European Convention with a new protocol that will include the right to a healthy environment among the rights guaranteed by the Convention. The first attempt to adopt such a protocol from 2009 did not give adequate results, while the next steps towards its adoption were taken in 2021. Based on the analysis of its provisions, it seems that the views contained in the verdicts of the European Court of Human Rights have been implemented in the Draft Protocol to the European Convention on the Protection of Human Rights from 2021. As the said Convention does not expressly guarantee the right to a healthy environment, it is protected by the extensive interpretation of its provisions by the European Court of Human Rights, which guarantee the right to life, the right to unhindered enjoyment of one's property, the right to private life and correspondence or freedom of expression. Of course, in such a way it is possible to influence legislation at the national level and case-law of countries that have

⁴⁰ Press Unit of the European Court of Human Rights. (2023). *Factsheet – Environment and the ECHR*. Retrieved on November 10, 2023, from https://www.echr.coe.int/documents/d/echr/fs_environment_eng#:~:text=Even%20though%20the%20European%20Convention,may%20be%20undermined%20by%20the.

ratified the Convention. Some of the positions contained in the verdicts of the European Court of Human Rights, such as the right to access environmental information in administrative proceedings and administrative disputes, are contained in the Draft Protocol to the European Convention. The adoption of the mentioned document would establish the basis for making decisions of the European Court in relation to the violation of human rights resulting from harmful effects on the environment. This would enable the eventual determination of a violation of rights, regardless of whether or not there was a violation of another right.

However, it should be emphasized that even until then it is possible to obligate the states to pay compensation for the violation of another right that is related to the right to a healthy environment. Therefore, it should preemptively influence the competent authorities at the national level to refrain from activities that cause damage to the environment, as well as to take all available measures to prevent the occurrence of harmful consequences.

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