

# Human Rights and the Environment: A Priority for the Council of Europe

WHITNEY PSAILA

This article by **Whitney Psaila** was previously submitted as part of ERL1002 and is being published with the author's permission. In the Convention for the Protection of Human Rights and Fundamental Freedoms, there is no mention of the Right to a Healthy Environment. Nonetheless, this Convention has been effectively invoked to aid in environmental advancement. Over three hundred cases involving the environment have been heard by the European Court of Human Rights, which has addressed a variety of concerns. This article references several cases which were presented to the ECHR which show that the exercise of other Human Rights and Fundamental Freedoms may be jeopardised by the lack of a healthy environment.

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Whitney Psaila is currently a second-year student reading for a Bachelor of Laws (Honours) at the University of Malta. During her studies, she has developed a significant interest in the realms of Commercial Law, Corporate Law and Human Rights Law.

In recent years, there has been an increase in the number of persons and organisations using Europe's unparalleled system for human rights protection to address environmental issues.

The Convention for the Protection of Human Rights and Fundamental Freedoms dates back to the 4<sup>th</sup> of November 1950. Signed in Rome within the framework of the Council of Europe, it enshrines essentially classical rights and freedoms. Since then, other rights have been added by means of different Protocols<sup>1</sup> but no mention of any Right with regard to the Environment can be found within them. However, that being said, this Convention has been effectively invoked to aid in environmental advancement.

Over three hundred cases involving the environment have been heard by the European Court of Human Rights (ECtHR), which has addressed a variety of concerns such as pollution, access to environmental information, man-made or natural disasters, and freedom of opinion<sup>2</sup>.

On the 25<sup>th</sup> of September 2014, the ECtHR saw the case of ***Karin Andersson and Others v. Sweden***<sup>3</sup>. The applicants were all landowners in northern Sweden, near Umeå. The Swedish Government authorised the building of a ten kilometre-long railway on or near their lands in a decision that was published in June 2003. The applicants objected to the fact that they had been denied access to a complete legal review of the government's decision to approve the building of the contested railway.

The Court found and held that there had been a violation of *Article 1*, the obligation to respect Human Rights, and *Article 6*, Right to a Fair Trial, of the Convention<sup>4</sup>. At no stage in the domestic procedures, including during the question of whether the railway's placement infringed on their rights as property owners, were the applicants able to receive a thorough judicial review of the authorities' findings. Therefore, even though the petitioners had been admitted as parties before the Supreme Administrative Court in 2008, they lacked access to a court to have their civil rights in the matter determined.

*[The homeowners] did not have access to a court for the determination of their civil rights in this case.*<sup>5</sup>

<sup>1</sup> Protocols No. 1, 4, 6, 7, 12 and 13 to the European Court of Human Rights

<sup>2</sup> 'Protecting the Environment Using Human Rights Law' (*The Council of Europe*)

<<https://www.coe.int/en/web/portal/human-rights-environment>> accessed 5 December 2022

<sup>3</sup> *Karin Andersson and Others v. Sweden* App no 29878/09 (ECtHR, 25 September 2014)

<sup>4</sup> European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) ETS 5

<sup>5</sup> 'Justice for Homeowners Unable to Challenge Plans for a Railway in a Protected Nature Area' [*Impact of the European Convention on Human Rights*] <<https://www.coe.int/en/web/impact-convention-human-rights-/justice-for-homeowners-unable-to-challenge-plans-for-a-railway-in-a-protected-nature-area>> accessed 5 December 2022

The case of *Öneryıldız v. Turkey*<sup>6</sup>, decided on the 30<sup>th</sup> of November 2004, concerned a residence that was illegally developed on property that was also the site of a shared garbage dump utilised by four district councils. In April 1993, there was a methane explosion at the dump, and the debris that erupted from the garbage pile consumed more than ten homes below it, including the applicant's home where nine close relatives perished. The applicant particularly commented on the fact that no precautions had been taken to avoid an explosion, even though an expert study had warned the authorities that such an explosion was not improbable.

Due to the failure to take the necessary precautions to avoid the accidental death of nine of the applicant's close relatives, the ECtHR concluded that *Article 2* of the Convention, the Right to Life, had been violated under its substantive aspect<sup>7</sup>. Since there was insufficient legal protection for the right to life, it was also determined that *Article 2* of the Convention's procedural aspect had been violated. The Court specifically noted that the Turkish Government had not informed the slum dwellers of the hazards they incurred by residing there. Even if it had, it would still be accountable since it had not taken sensible precautions to reduce the dangers to people's lives<sup>8</sup>. The regulatory framework had proven deficient, since the garbage dump had been permitted to open and operate without a coordinated supervising structure.

In *Guerra and Others v. Italy*<sup>9</sup>, the applicants all resided approximately a kilometre distant from a fertiliser-producing chemical facility. Accidents due to malfunction had previously happened, the most significant of which occurred in 1976 when the scrubbing tower for the ammonia synthesis gases erupted, enabling many tonnes of potassium carbonate and bicarbonate solution containing arsenic trioxide to escape. One hundred and fifty patients with acute arsenic poisoning were admitted to the hospital. The applicants claimed that their right to respect for their life and bodily integrity had been violated by the absence of appropriate measures, particularly to reduce pollution levels and serious risks of accidents resulting from the factory's operation. They also claimed that their right to information had been violated by the relevant authorities' failure to warn the public of the dangers and the steps to take in the case of a serious disaster<sup>10</sup>.

On the 19<sup>th</sup> of February 1998, the Court ruled that there had been a violation of *Article 8* of the Convention, concluding that the Italian State had failed to fulfil its commitment to protecting the applicants' Right to Respect

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<sup>6</sup> *Öneryıldız v. Turkey* App no 48939/99 (ECtHR, 30 November 2004)

<sup>7</sup> (n 4) *Article 2*

<sup>8</sup> 'Human Rights and the Environment' (*Impact of the European Convention on Human Rights*)

<<https://www.coe.int/en/web/impact-convention-human-rights/human-rights-and-the-environment>> accessed 5 December 2022

<sup>9</sup> *Guerra and Others v. Italy* App no 14967/89 (ECtHR, 19 February 1998)

<sup>10</sup> Human Rights and the Environment (n 9)

for Private and Family Life<sup>11</sup>. In particular, it was emphasised that extreme environmental pollution might harm people's health and their ability to enjoy their homes, which would negatively impact their personal and family lives.

Another instance when the ECtHR deemed there was an infringement of the above-mentioned articles was in the case of ***Brincat and Others v. Malta***<sup>12</sup>. This case concerned shipyard repair employees who were exposed to asbestos for decades, from the 1950s to the early 2000s, resulting in asbestos-related illnesses. The applicants strongly criticised the Maltese Government for failing to shield them from asbestos' lethal effects once they or a deceased family had been exposed to it.

On the 24<sup>th</sup> of July 2014 the Court decided that there was a breach of *Article 2* of the Convention in respect of the applicants whose relative died and a violation of *Article 8* of the Convention in relation to the remaining applicants<sup>13</sup>. It was specifically found that the Maltese Government had failed to uphold their positive obligations under the Convention, to enact legislation or take other practical measures to ensure that the applicants were adequately protected and informed of the risk to their health and lives, despite the seriousness of the threat posed by asbestos and despite the wide margin of appreciation left to States to decide how to manage such risks. Margin of appreciation refers to the space for manoeuvre that the Strasbourg organs are willing to grant national authorities, in fulfilling their obligations under the European Convention on Human Rights (ECHR).

The Maltese government knew or ought to have known, that shipyard employees might have side effects from asbestos exposure as early as the early 1970s, yet they didn't take any proactive measures to reduce that risk until 2003<sup>14</sup>.

*Article 10* of the ECHR states that every person is entitled to Freedom of Expression. In the case of ***Vides Aizsardzības Klubs v. Latvia***<sup>15</sup>, an NGO working to safeguard the environment filed the application. It issued a resolution in November 1997 that was addressed to the relevant authorities and expressed its worries over the preservation of coastal dunes on a section of coastline in the Gulf of Riga. That the local mayor had helped allow illegitimate building activities in the coastal area was among the things alleged in the resolution, which was published in a local newspaper. The resolution's remarks, according to the mayor, were defamatory, and he sued the applicant for damages. The applicant was compelled to print an official

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<sup>11</sup> (n 4) Article 8

<sup>12</sup> *Brincat and Others v. Malta* App no 60908/11, 62110/11, 62129/11, 62312/11, 62338/11 (ECtHR, 24 July 2014)

<sup>13</sup> (n 4) Article 2 and Article 8

<sup>14</sup> Sychenko E, 'Occupational Health in the Jurisprudence of the European Court of Human Rights: *Brincat v. Malta*' (*Strasbourg Observers*, 8 September 2014) <<https://strasbourgobservers.com/2014/09/08/occupational-health-in-the-jurisprudence-of-the-european-court-of-human-rights-brincat-v-malta/>> accessed 5 December 2022

<sup>15</sup> *Vides Aizsardzības Klubs v. Latvia* App no 57829/00 (ECtHR, 27 May 2004)

apology and to compensate the mayor for publishing false accusations after the Latvian courts determined that the applicant had not provided sufficient evidence to support the veracity of its claims. The applicant claimed that the order against it had violated its right to freedom of speech and, in particular, the right to impart environmental information.

The Court ruled that there had been a breach of *Article 10* of the Convention, concluding that, notwithstanding the latitude granted to national authorities, there had not been a reasonable connection of proportionality between the limits imposed on the applicant organisation's freedom of speech and the legitimate goal sought, which was the preservation of others' reputation and rights<sup>16</sup>. The Court took particular note of the fact that the challenged resolution's primary goal had been to alert the public authorities to a significant matter of public concern; specifically, flaws in a crucial area under local government management. The applicant organisation, a non-governmental organisation with expertise in the field, had thereby carried out its obligation as a "watchdog" under the Environmental Protection Act. Such associational engagement was important in a democratic society<sup>17</sup>.

In another case, *Costel Popa v. Romania*<sup>18</sup>, the applicant, who was the founder of an environmental organisation, took issue with the Romanian courts' refusal to register the organisation in question without giving him a chance to fix any errors in the articles of association, as allowed by national law, before the registration process was concluded<sup>19</sup>.

On the 26<sup>th</sup> of April 2016, Court ruled that there had been a breach of *Article 11* of the Convention, Freedom of Assembly and Association, noting that the grounds given by the Romanian authorities for refusing to register the group were neither persuasive nor reasonable<sup>20</sup>. In light of this, a drastic action like refusing to register the group before it had even begun to operate seemed out of proportion to the desired outcome.

Even though the ECHR does not include a right to a healthy environment as such, the ECtHR has been tasked to build its case-law on environmental problems since the exercise of some Convention rights may be jeopardised by environmental harm and exposure to environmental hazards<sup>21</sup>.

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<sup>16</sup> (n 4) Article 10

<sup>17</sup> 'Vides Aizsardzības Klubs v Latvia' (*Human Rights Guide*) <<https://www.zmogausteisiugidas.lt/en/case-law/vides-aizsardzibas-klubs-v-latvia>> accessed 5 December 2022

<sup>18</sup> *Costel Popa v. Romania* App no [47558/10](#) (ECtHR, 26 April 2016)

<sup>19</sup> European Court of Human Rights, *Environment and the European Convention on Human Rights* (April 2022) <[https://www.echr.coe.int/Documents/FS\\_Environment\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Environment_ENG.pdf)> accessed 5 Decemeber 2022.

<sup>20</sup> (n 4) Article 11

<sup>21</sup> Human Rights and the Environment (n 9)



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