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Vectors of the Impact of ECtHR Decisions on the Formation of a National Model for the Implementation and Protection of Environmental Human Rights

1. Introduction

The appearance of the European Court of Human Rights (ECtHR) was an important and evolutionary step forward on the way to the establishment of human rights and freedoms in Europe. This event was a fateful historical fact that testified the desire of the European community to create a single space within which the idea of human rights and freedoms became the basis for the formation of a supranational model of protection. In addition, the adoption of the Convention was a revolutionary step, since at the time of its development, an individual person had never before been a subject of international law. It was also not possible to exercise rights outside the territory of a separate state. The ECtHR became the guarantor of the inviolability of accepted universal norms, and the activity of this institution became the basis for the formation of a national model for the implementation and protection of human rights, including environmental rights.

The case law of the ECtHR actually strengthens the agreements of states regarding universal legal norms, and in this way plays a significant role in the process of integration of European countries around the common heritage of political and legal traditions, ideals, and the rule of law. The statement about the need for collective international legal protection of the exercise of rights and freedoms is present in the preamble of the Convention and additional Protocols and indicates a clear awareness of the fact that in the absence of universal guidelines, it is impossible to guarantee uniform minimum standards of environmental human rights for all by national legal institutions and mechanisms alone.

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The history of the functioning of the ECtHR shows us the positive effect of judicial practice. However, in the light of recent trends and crisis phenomena, new challenges arise, cautious criticism of the institute appears, and the implementation of legal positions at the level of the national law of states and the implementation of ECtHR decisions are complicated by a number of domestic factors. Therefore, the issue of the impact of the ECHR on the formation of a national model for the implementation and protection of fundamental human rights and freedoms, ensuring their effective legal protection is at the forefront of relevance today. The aforementioned becomes especially relevant in the field of protection of human environmental rights, since the environmental problems and challenges facing humanity at the modern stage increasingly require the improvement of the national institutions for the protection of environmental rights.

It should be noted that the role of the ECtHR is not only in judicial practice *stricto sensu*. It is a complex part of the complex construction of democracy on the European continent. The ECtHR is involved in consolidating the constituent elements of the rule of law that are universal throughout the world. At the same time, the ECtHR should not be an 'ivory tower' but should constantly monitor the activity of the Council of Europe to nourish and enrich its judicial practice.² The ECtHR as an institution is designed to strengthen countries in the field of countering attempts to undermine the democratic way of life, and this, in turn, will ensure general political stability in Western Europe.³

2. Supranational vectors of influence

In order to understand the possibilities of the influence of ECtHR decisions on the formation of a national model for the implementation and protection of environmental human rights, it is advisable to briefly analyse the supranational vectors of such influence.

And first of all, it should be emphasised that the practice of the ECtHR affects the formation by the international community of a universal system of values, which are the core of the humanistic paradigm of human rights and are recognised by the European community as the 'highest good'. All Contracting Parties, i.e., states that have ratified the Convention, must undertake (*erga omnes* effect) to guarantee the inviolability of these benefits. At the same time, there is a direct definition of what is good and even what is not (prohibitions of a specific legal content).

2 *Annual Report 2019* (Council of Europe – European Court of Human Rights, 2020), https://www.echr.coe.int/Documents/Annual_report_2019_ENG.pdf (3.03.2024).

3 L. Wildhaber, *The European Court of Human Rights: The Past, The Present, The Future*, "American University International Law Review" 2007, vol. 22, no. 4, p. 521.

At the same time, the ECtHR is an active creator of the system of values, because in its judicial practice it demonstrates and justifies the recognition of values in society, which are not explicitly mentioned in the Convention, but the implementation of its provisions will be impossible without taking them into account. Such values include a healthy environment and the respective right of everyone to protect their environmental rights. That is why we can confidently say that the decisions of the ECtHR directly affect the formation of a national model for the implementation and protection of environmental human rights. It is in the above that its axiological influence is manifested.

The source of the informational and psychological impact of the ECtHR's practice in the institutional aspect is directly the Strasbourg Court itself, which forms legal positions when making decisions. At the same time, subjects contributing to the informational and psychological impact of the practice of the ECHR play a significant role. They are both the authorities of the state party to the Convention and other subjects (human rights non-governmental organisations, scientific and educational institutions, bar associations, etc.), which perform the important function of relaying the legal positions of the ECHR by making them public and bringing them to the general public.

Human rights influence occurs not only at the individual level of the complainant, but also at the level of functioning of the legal institutions of the state, which are obliged to respond to the decision of the ECtHR. At the international level, such an influence is manifested in the search for answers to new systemic challenges facing the entire European community. Accordingly, at the national level, judicial practice signals to the states about the violation of specific actions of specific human rights provided for by specific articles of the Convention, and at the same time demonstrates the methodology of the system of protection of anthropological values as a model for national systems. Therefore, the functioning of the ECtHR takes place on the basis of pragmatic realism, which allows moving 'human rights in the book' not only to the plane of 'human rights in court', but also 'human rights in action'. The hermeneutics of the ECtHR has a clear methodological guideline – human rights.⁴

The control and supervisory influence of the ECtHR is reflected not only in the resolution of a specific dispute about the violated right and the determination of the amount of compensation, but also in the implementation of 'constitutional justice', which is embodied in the clarification, protection, and development of the rules provided for by the Convention. In this way, the ECHR helps states to comply with their obligations.⁵

The system of key values of the Convention in national legislation is conceptually anchored both at the level of the Constitution and at the level of

4 D. Luban, *Human Rights Pragmatism and Human Dignity*, in: *Philosophical Foundations of Human Rights*, M. Renzo, R. Cruft, M. Liao (eds), Oxford University Press 2013.

5 P. Egli, *Another Step in the Reform of the European Court of Human Rights: The Report of the Group of Wise Persons*, "Zaö RV" 2008, p. 155.

branch legislation. However, the issues of practical implementation of these rights and freedoms, procedural norms, and rules do not always correspond to the philosophy of the Convention. This is what gives grounds for complaints and, accordingly, decisions in favour of the complainants.

So, let us now closer examine what vectors of influence of ECtHR jurisprudence exist in the formation of a national model for the implementation and protection of environmental human rights.

3. National influence vectors

It is worth emphasising that over the past few years, issues of ecology and environmental protection have been included in the world agenda at all levels: the UN General Assembly, the new EU Green Deal, meetings in Davos, etc. Even the global pandemic of the coronavirus disease (COVID-19) demonstrated that the health and well-being of mankind is inseparable from a responsible approach to the environment.

Therefore, the effective operation of the national judicial system, which should be available to citizens to protect environmental rights, is extremely important for ensuring the rule of law and protecting the environmental rights of citizens.

Recognising the practice of the ECtHR as a mandatory source of law, the national legislator actually changes the legal system to incorporate European standards of human rights protection into it. That is, the impact of ECtHR decisions can be seen at the legislative level.

In addition, the study and application of the practice of the ECtHR in environmental cases is extremely important for national judicial practice, as it not only contributes to the expansion of opportunities for the protection of environmental rights with the help of the Convention, but also eliminates the gaps that exist in the environmental legislation of an individual state.

It should be noted that the European Convention on Human Rights (1950) does not enshrine the right to a healthy environment as such. Environmental issues are dealt with indirectly, in fact through the European Court of Human Rights' interpretation of the Convention, providing limited protection due to already recognised human rights.

For example, the Court expanded the right to life guaranteed by Article 2 to include the right to protection against risk arising from dangerous industrial activities. Likewise, it was considered that the right to private and family life enshrined in Article 8 includes the right to protection from serious harm to the natural environment. A good example of this conclusion is the trial in court of a case on environmental damage, which consisted in exceeding the established standards for air pollution through excessive emissions of sodium cyanide, which occurred due to non-compliance with environmentally safe production technologies at a gold mining enterprise ("Transgold SA", which

in 2004 was reorganised into 'Aurul SA') in Baia Mare in Romania. As a result of such activities, environmental damage was caused to ecosystems the Tisza and Danube rivers, as well as the population of Hungary, Ukraine, Serbia, and the Republic of Romania. According to expert studies and the conclusion of the interstate court, the total environmental damage was established to exceed 150 million US dollars. Despite the existence of a decision awarding compensation for environmental damage caused to these states, proceedings were initiated for compensation for damage to individuals. This refers to the decision of the ECtHR in *Tătar v Romania*,⁶ where the ECtHR concluded that violation of the right to a safe environment directly results in a violation of the human right to health, as well as private and family life of a person, as it harms an individual's well-being.

The ECtHR justified its decision to uphold the environmental rights of the plaintiffs in *Tătar v Romania*⁷ by stating that the business entity (gold mining company) could not achieve a fair balance of private (interest in ensuring the applicant's right to housing and favourable conditions for the well-being of their family) and public (processing of toxic waste) interests, despite the presence of special properly executed permits for the implementation of this form use of natural resources of national importance, which was determined by the court as a violation of the requirements of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The same happened in other cases, when the provision of the right to a healthy natural environment was realised through the interpretation of the rights enshrined in the Convention.

The issue of the violation of the right to life associated with the negative factors of the natural environment was first considered by the ECtHR in *Guerra and Others v Italy*.⁸ The applicants in this case lived at a distance of one kilometre from a mineral fertiliser plant. During the plant's operation, several accidents occurred, the largest of which led to a significant release of pollutants into the atmosphere, due to which one and a half hundred people were hospitalised with severe arsenic poisoning. The applicants claimed that the lack of practical measures to reduce the level of pollution and the high risk of accidents associated with the operation of the factory violated their right to respect for life and physical integrity (Articles 2 and 8 of the Convention). They also argued that the relevant authorities failed to inform the public about the risks and the procedure to be followed in the event of a serious accident, violating their right to freedom of information (Article 10 of the Convention). Having considered the facts in this case, the court found no violations of Articles 2 and 10, instead ruling on violations of Article 8 of the Convention.

6 *Tătar v Romania* App no 67021/01 (ECtHR, 27 January 2009).

7 *Ibidem*.

8 *Guerra and Others v Italy* App no 14967/89 (ECtHR, 19 February 1998).

In this decision, the ECtHR placed particular emphasis on compliance with the principle of subsidiarity. This principle assumes that the establishment of the procedure for ensuring environmental rights remains with the state, because it was the state in this case that did not provide the local population with information about the risks associated with the activities of the chemical plant, and also did not establish a procedure for obtaining information and the procedure for compensation for damage in the event of accidents.

Another noteworthy example of the protection of environmental human rights is the case of *Hatton and Others v United Kingdom*,⁹ which concerned noise pollution in the immediate vicinity of London Heathrow Airport and, in particular, the adequacy of a study carried out by the authorities before the introduction of a system of noise quotas. The European Court decided that there had been a violation of both Article 8 and Article 13 of the European Convention. The court referred to the right to privacy due to environmental damage. Thus, the noise from night air traffic at Heathrow Airport violated the right to privacy and the integrity of the homes and families of the residents of surrounding areas in accordance with Article 8 of the Convention. In addition, there was a violation of the right to access to an effective remedy under Article 13 of the Convention on the basis that the UK courts failed to provide adequate judicial protection.

To date, the ECtHR has considered several cases against Ukraine related to environmental protection. There are few such solutions, but they are especially valuable. In particular, these are the cases *Dubetska and Others v Ukraine*,¹⁰ *Grymkovskaya v Ukraine*,¹¹ and *Dzemyuk v Ukraine*.¹²

In these decisions, it was emphasised that in Ukraine, there are certain gaps in the legislation regarding the prevention of problems related to the protection of the human right to a healthy environment. Therefore, national courts should consider the practice of the ECtHR to solve the problems of protecting environmental human rights at the national level.

However, in its decisions, the ECtHR also notes that there cannot be a well-founded complaint under Article 8 of the Convention if the damage complained of is insignificant compared to the environmental risks inherent in living in every modern city. With regard to poor health, it is difficult to distinguish the effects of environmental risks from those of other relevant factors such as age, occupation, or personal lifestyle. In the general environmental context, there is no doubt that severe water and soil pollution can adversely affect public health in general and impair the quality of life of an individual, but its actual impact in each individual case cannot be quantified.

Therefore, in each specific case, national courts must establish in detail the factual circumstances of the case and, in order to determine whether the

9 *Hatton and Others v United Kingdom* (2003) 37 EHRR 28.

10 *Dubetska and Others v Ukraine* App no 30499/03 (ECtHR, 10 February 2011).

11 *Grymkovska v Ukraine* App no 38279/03 (ECtHR, 17 January 2012).

12 *Dzemyuk v Ukraine* App no 42494/02 (ECtHR, 17 February 2010).

state bears responsibility under Article 8 of the Convention, establish whether the situation was the result of a sudden and unexpected turn of events or, on the contrary, existed for a long time and was well-known to the state authorities; whether the State was, or should have been, aware that the danger or harmful influence affected the applicant's private life, and to what extent the applicant contributed to the creation of that situation for himself and was able to remedy it without undue expense. The court must also assess whether the authorities have carried out sufficient preliminary studies to assess the risk of the planned potentially dangerous activity and whether they have developed an adequate policy towards polluting enterprises based on available information, and whether this policy has been implemented in a timely manner.

The ECtHR examines various categories of cases through the interpretation of the human rights enshrined in the Convention, which in one way or another make it possible to resolve the issues of environmental human rights protection. Among the main cases of the ECtHR, it is advisable to cite in particular:

1. Right to life (Article 2 of the Convention): Dangerous industrial activities (*Öneryıldız v Turkey*¹³); Dumping of toxic waste (*Di Caprio and Others v Italy*¹⁴); Exposure to nuclear radiation (*L.C.B. v the United Kingdom*¹⁵); Greenhouse gas emissions (*Verein KlimaSeniorinnen Schweiz and Others v Switzerland*;¹⁶ *Duarte Agostinho and Others v Portugal and 32 Other States*;¹⁷ *Carême v France*¹⁸); Industrial emissions and health (*Smaltini v Italy*;¹⁹ *Locascia and Others v Italy*²⁰); Natural disasters (*Murillo Saldias and Others v Spain*;²¹ *Viviani and Others v Italy*;²² *Özel and Others v Turkey*;²³ *Kolyadenko and Others v Russia*;²⁴ *Budayeva and Others v Russia*^{25,26}); Petroleum activities (*Greenpeace Nordic and Others v Norway*;²⁷ Prohibition of inhuman or degrading treatment (Article 3

13 *Öneryıldız v Turkey* App no 48939/99 (ECtHR, 30 November 2004).

14 *Di Caprio and Others v Italy* App no 39742/14, 51567/14, 74208/14, and 21215/15 (ECtHR, decision pending).

15 *L.C.B. v United Kingdom* App no 23413/94 (ECtHR, 9 June 1998).

16 *KlimaSeniorinnen v Switzerland* App no 53600/20 (ECtHR, 9 April 2024).

17 *Duarte Agostinho and Others v Portugal and 32 Other States* App no 39371/20 (ECtHR, Grand Chamber, 9 April 2024).

18 *Carême v France* App no 7189/21 (ECtHR, 9 April 2024).

19 *Smaltini v Italy* App no 43961/09 (ECtHR, 16 April 2015).

20 *Locascia and Others v Italy* App no 35648/10 (ECtHR, 19 October 2023).

21 *Murillo Saldias and Others v Spain* App no 76973/01 (ECtHR, 28 November 2006).

22 *Viviani and Others v Italy* App no 72260/13 (ECtHR, 14 January 2019).

23 *Özel and Others v Turkey* App no 14350/04 (ECtHR, 6 March 2012).

24 *Kolyadenko and Others v Russia* App no 17423/05 (ECtHR, 28 February 2012).

25 *Budayeva and Others v Russia* App no 15339/02 (ECtHR, 20 March 2008).

26 On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

27 *Greenpeace Nordic and Others v Norway* App no 34068/21 (ECtHR, decision pending).

- of the Convention): Passive smoking in detention (*Florea v Romania*;²⁸ *Elefteriadis v Romania*²⁹);
2. Right to liberty and security (Article 5 of the Convention): *Mangouras v Spain*;³⁰
 3. Right to a fair trial (Article 6 of the Convention): Access to court (*Athanasoglou and Others v Switzerland*;³¹ *Gorraiz Lizarraga and Others v Spain*;³² *L'Érablière asbl v Belgium*;³³ *Howald Moor and Others v Switzerland*;³⁴ *Karin Andersson and Others v Sweden*;³⁵ *Stichting Landgoed Steenbergen and Others v the Netherlands*³⁶); Failure to enforce final judicial decisions (*Kyrtatos v Greece*;³⁷ *Apanasewicz v Poland*;³⁸ *Bursa Barosu Başkanlığı and Others v. Turkey*³⁹);
 4. Right to respect for private and family life and home (Article 8 of the Convention): Dam construction threatening archaeological site (*Ahunbay and Others v Turkey*⁴⁰); Environmental risks and access to information (*Guerra and Others v Italy*;⁴¹ *McGinley and Egan v the United Kingdom*;⁴² *Roche v the United Kingdom*;⁴³ *Vilnes and Others v Norway*;⁴⁴ *Brincat and Others v Malta*⁴⁵); Greenhouse gas emissions (*Duarte Agostinho and Others v Portugal and 32 Other States*;⁴⁶ *Verein KlimaSeniorinnen Schweiz*

28 *Florea v Romania* App no 37186/03 (ECtHR, 14 September 2010).

29 *Elefteriadis v Romania* App no 38427/05 (ECtHR, 25 January 2011).

30 *Mangouras v Spain* App no 12050/04 (ECtHR, 28 September 2010).

31 *Athanasoglou and Others v Switzerland* App no 27644/95 (ECtHR, 6 April 2000).

32 *Gorraiz Lizarraga and Others v Spain* App no 62543/00 (ECtHR, 27 April 2004).

33 *L'Érablière asbl v Belgium* App no 49230/07 (ECtHR, 24 February 2009).

34 *Howald Moor and Others v Switzerland* App nos 52067/10 and 41072/11 (ECtHR, 11 March 2014).

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

36 *Stichting Landgoed Steenbergen and Others v the Netherlands* App no 19732/17 (ECtHR, 16 February 2021).

37 *Kyrtatos v Greece* App no 41666/98 (ECtHR, 22 May 2003).

38 *Apanasewicz v Poland* App no 6854/07 (ECtHR, 3 May 2011).

39 *Bursa Barosu Başkanlığı and Others v Turkey* App no 25680/05 (ECtHR, 19 June 2018).

40 *Ahunbay and Others v Turkey* App no 6080/06 (ECtHR, 21 January 2019).

41 *Guerra and Others v Italy* App no 14967/89 (ECtHR, 19 February 1998).

42 *McGinley and Egan v the United Kingdom* App nos 21825/93 and 23414/94 (ECtHR, 9 June 1998).

43 *Roche v the United Kingdom* App no 32555/96 (ECtHR, 19 October 2005).

44 *Vilnes and Others v Norway* App nos 52806/09 and 22703/10 (ECtHR, 24 March 2014).

45 *Brincat and Others v Malta* App nos 60908/11, 62110/11, 62129/11, 62312/11, and 62338/11 (ECtHR, 24 July 2014).

46 *Duarte Agostinho and Others v Portugal* App no 39371/20 (ECtHR, 9 April 2024).

and Others v Switzerland;⁴⁷ *Carême v France*⁴⁸); High-voltage power line (*Calancea and Others v the Republic of Moldova*;⁴⁹ *Thibaut v France*⁵⁰); Industrial pollution (*López Ostra v Spain*;⁵¹ *Taşkin and Others v Turkey*;⁵² *Fadeyeva v Russia*;⁵³ *Giacomelli v Italy*;⁵⁴ *Tătar v Romania*;⁵⁵ *Dubetska and Others v Ukraine*;⁵⁶ *Apanasewicz v Poland*;⁵⁷ *Cordella and Others v Italy*⁵⁸); Mobile phone antennas (*Luginbühl v Switzerland*⁵⁹); Noise pollution (Air traffic and aircraft noise) (*Powell and Rayner v the United Kingdom*;⁶⁰ *Hatton and Others v the United Kingdom*;⁶¹ *Flamenbaum and Others v France*⁶²); Road traffic noise (*Deés v Hungary*⁶³); Neighbouring noise (*Moreno Gómez v Spain*⁶⁴); Wind turbines and wind energy farms (*Fägerskiöld v Sweden*⁶⁵); Industrial noise pollution (*Borysiewicz v Poland*⁶⁶); Rail traffic (*Bor v Hungary*⁶⁷); Emissions from diesel vehicles (*Greenpeace e. V. and Others v Germany*⁶⁸); Soil and water contamination (*Dzemyuk v Ukraine*⁶⁹); Urban development (*Kyrtatos v Greece*⁷⁰); Waste collection, management, treatment, and disposal (*Brândușe v Romania*;⁷¹ *Di Sarno and Others v Italy*;⁷² *Locascia and Others v Italy*⁷³);

47 *KlimaSeniorinnen v Switzerland* App no 53600/20 (ECtHR, 9 April 2024).

48 *Carême v France* App no 7189/21 (ECtHR, 9 April 2024).

49 *Calancea and Others v the Republic of Moldova* App no 50425/11 (ECtHR, 10 July 2012).

50 *Thibaut v France* App nos 41892/19 and 41893/19 (ECtHR, 14 June 2022).

51 *López Ostra v Spain* App no 16798/90 (ECtHR, 9 December 1994).

52 *Taşkin and Others v Turkey* App no 46117/99 (ECtHR, 10 November 2004).

53 *Fadeyeva v Russia* App no 55723/00 (ECtHR, 9 June 2005). On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

54 *Giacomelli v Italy* App no 59909/00 (ECtHR, 2 November 2006).

55 *Tătar v Romania* App no 67021/01 (ECtHR, 27 January 2009).

56 *Dubetska and Others v Ukraine* App no 30499/03 (ECtHR, 10 February 2011).

57 *Apanasewicz v Poland* App no 6854/07 (ECtHR, 3 May 2011).

58 *Cordella and Others v Italy* App nos 54414/13 and 54264/15 (ECtHR, 24 January 2019).

59 *Luginbühl v Switzerland* App no 42756/02 (ECtHR, 17 January 2006).

60 *Powell and Rayner v United Kingdom* App no 9310/81 (ECtHR, 21 February 1990).

61 *Hatton and Others v United Kingdom* (2003) 37 EHRR 28.

62 *Flamenbaum and Others v France* App nos 3675/04 and 23264/04 (ECtHR, 13 December 2012).

63 *Deés v Hungary* App no 2345/06 (ECtHR, 09 November 2010).

64 *Moreno Gómez v Spain* App no 4143/02 (ECtHR, 16 November 2004).

65 *Fägerskiöld v Sweden* App no 37611/97 (ECtHR, 26 February 2008).

66 *Borysiewicz v Poland* App no 15150/21 (ECtHR, 17 January 2023).

67 *Bor v Hungary* App no 50474/08 (ECtHR, 18 June 2013).

68 *Greenpeace e. V. and Others v Germany* App no 18215/06 (ECtHR, 12 May 2009).

69 *Dzemyuk v Ukraine* App no 42488/02 (ECtHR, 4 September 2014).

70 *Kyrtatos v Greece* App no 41666/98 (ECtHR, 22 May 2003).

71 *Brândușe v Romania* App no 6586/03 (ECtHR, 7 April 2009).

72 *Di Sarno and Others v Italy* App no 30742/07 (ECtHR, 10 January 2012).

73 *Locascia and Others v Italy* App no 35648/10 (ECtHR, 19 October 2023).

5. Freedom of expression / Freedom to receive and impart information (Article 10 of the Convention): *Steel and Morris v the United Kingdom*;⁷⁴ *Vides Aizsardzības Klubs v Latvia*;⁷⁵ *Association Burestop 55 and Others v France*;⁷⁶
6. Freedom of assembly and association (Article 11 of the Convention): *Costel Popa v Romania*;⁷⁷
7. Right to an effective remedy (Article 13 of the Convention): *Hatton and Others v the United Kingdom*;⁷⁸
8. Protection of property (Article 1 of Protocol No 1 to the Convention): *Fredin (no. 1) v Sweden*;⁷⁹ *Pine Valley Developments Ltd and Others v Ireland*;⁸⁰ *Beinarovič and Others v Lithuania*;⁸¹ *Pop and Others v Romania*;⁸² *Yaşar v Romania*;⁸³ *National Movement Ekoglasnost v Bulgaria*.⁸⁴

Even though the European Convention on Human Rights does not enshrine any right to a healthy environment as such, the European Court of Human Rights has been called upon to develop its case-law in environmental matters because of the exercise of certain Convention rights may be undermined by the existence of harm to the environment and exposure to environmental risks.⁸⁵

Today, a certain number of cases are still being considered in the ECtHR. One of these is *KlimaSeniorinnen v Switzerland*.⁸⁶ After exhausting all available national remedies, with the final decision from the Swiss Supreme Court communicated to the parties in May 2020, an association of senior women (Senior Women for Climate Protection Switzerland) brought the Swiss government before the European Court of Human Rights on November 26, 2020, arguing that their health was threatened by heat waves exacerbated by the climate crisis. They also requested the case to be treated under the expenditure procedure pursuant to Article 41 of the Rules of the Court.

74 *Steel and Morris v the United Kingdom* App no 68416/01 (ECtHR, 15 February 2005).

75 *Vides Aizsardzības Klubs v Latvia* App no 57829/00 (ECtHR, 27 May 2004).

76 *Association Burestop 55 and Others v France* App no 56176/18 (ECtHR, decision pending).

77 *Costel Popa v Romania* App no 47558/10 (ECtHR, 26 April 2016).

78 *Hatton and Others v the United Kingdom* (2003) 37 EHRR 28.

79 *Fredin (no. 1) v Sweden* App no 12033/86 (ECtHR, 18 February 1991).

80 *Pine Valley Developments Ltd and Others v Ireland* App no 12742/87 (ECtHR, 29 November 1991).

81 *Beinarovič and Others v Lithuania* App nos 70520/10 and 21386/12 (ECtHR, 12 June 2018).

82 *Pop and Others v Romania* App no 31269/06 (ECtHR, 9 April 2013).

83 *Yaşar v Romania* App no 64863/13 (ECtHR, 26 November 2019).

84 *National Movement Ekoglasnost v Bulgaria* App no 31678/17 (ECtHR, 15 December 2020).

85 *Environment and the Convention on Human Rights* (ECtHR, Factsheet, April 2024), https://www.echr.coe.int/documents/fs_environment_eng.pdf (3.03.2024).

86 *KlimaSeniorinnen v Switzerland* App no 53600/20 (ECtHR, 9 April 2024).

The application listed three main complaints: Switzerland's inadequate climate policies violate the women's right life and health under Articles 2 and 8 of the ECHR; the Swiss Federal Supreme Court's rejected their case on arbitrary grounds, in violation of the right to a fair trial under Article 6; and the Swiss authorities and courts did not deal with the content of their complaints, in violation of the right to an effective remedy in Article 13.

The ECtHR preliminary accepted the case and communicated it to the Swiss government on March 25, 2021. The ECtHR gave the case priority status and called on Switzerland to submit a response by July 16, 2021, which was timely filed.

On September 21, 2021, the International Commission of Jurists (ICJ) and the Swiss Section of the ICJ submitted a third-party intervention providing observations on the effects of climate change on the right to life and the right to respect for private and family life and for the home and the positive obligations of States resulting from these rights, considering principles of international environmental law, among other issues. The European Network of National Human Rights Institutions (ENNHRI) also submitted a third-party intervention.

On October 13, 2021, the petitioner replied to the Swiss government's response to the ECtHR, arguing that the Swiss government failed to protect the applicants' rights to life and private life under Articles 2 and 8 of the ECHR by failing to adopt the necessary legislative and administrative framework to contribute to preventing a global temperature increase of more than 1.5°C above pre-industrial levels.

On April 26, 2022, the Chamber of the European Court of Human Rights relinquished jurisdiction in favour of the Grand Chamber of the Court. The case is now set to be examined by the ECtHR's Grand Chamber of 17 judges, as it raises a serious question affecting the interpretation of the Convention (Art 30 ECHR).

On December 2, 2022, the applicants submitted a petition highlighting observations on the facts, admissibility, and the merits. On December 5, 2022, several organisations, including the Sabin Centre for Climate Change Law, submitted third party interventions to the case.⁸⁷

After analysing all the above cases, we can indicate that the practice of the ECtHR focuses on the following conclusions:

1. The State has a positive obligation to regulate and control environmental problems that violate the rights provided for in the Convention.
2. Protection of the environment (environmental rights) may become a legitimate goal of limiting other interests (Article 8 and Article 1, paragraph 1) (balance of individual and public interests).

⁸⁷ Climate Change Litigation Databases, [http://climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-council-and-others/\(3.03.2024\)](http://climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-council-and-others/(3.03.2024)).

3. The state has a duty to ensure open access to information on serious risks to the environment and people, ensuring public participation in decision-making and access to the court.

Therefore, all of these obligations necessitate the implementation of universally recognised values at both the legislative and the level of legal enforcement. Decisions of the ECtHR form judicial practice, according to which it is recognised that environmental pollution is the cause of violation of the basic rights of citizens, such as the right to life, to respect for private and family life, etc. The most typical problems of ensuring citizens' access to justice in matters of environmental protection are: non-compliance with the deadlines for consideration of cases, significant court costs, lack of opportunity to obtain qualified legal and expert assistance, insufficient knowledge of judges about legislation in the field of environmental protection (especially international agreements) and about the rights of citizens and non-governmental organisations in this area, the procedural legal capacity of the public is limited.

In view of the above, it is very important to ensure the rule of law in the field of protection of environmental rights is to create at the national level the prerequisites for removing barriers to access to justice in the field of protection of the environment and environmental human rights.

Some researchers point out that the analysis of the practice of the ECtHR proved that the solution to the problems of protection of environmental human rights should be carried out, first of all, at the national level. This can be achieved both by improving national legislation and using the practice of the ECtHR as a source of law by national courts and applying the provisions of international agreements ratified by the state in this area.⁸⁸

The impact of ECtHR decisions on the legal system of the state can be seen not only at the level of protection of human rights and freedoms, but also at the institutional level since certain decisions raise doubts about the compliance of the national judicial system with the jurisdiction of the courts with the provisions of the Convention.

The legislative influence on national law is manifested in the principle of autonomy of the terms and concepts used in the text of the Convention. In addition, certain decisions of the ECtHR have become guiding principles for the protection of environmental rights and individual freedoms and have given rise to a number of uniform applications to the ECtHR.

In addition, the analysis of the decisions made by the ECtHR in cases involving complaints related to the negative impact of the environment reveals several key issues that require the development of new doctrinal approaches and improvements in the application of legal practices. These include: the

88 R. Moskal, *Applicability of Article 8 of the ECHR in Cases Pertaining to the Adverse Effect of the Environmental Hazards*, "Slovo of the National School of Judges of Ukraine" 2018, vol. 3, no. 24, p. 54, http://slovo.nsj.gov.ua/images/pdf/2018_3_24/Moskal%20R.%20Zastosuvannya%20statti.pdf (3.03.2024).

applicability of Article 8 to complaints related to environmental factors; the delineation of the scope of Article 8 and other Convention provisions in relation to ‘environmental issues’; the circumstances that the ECtHR considers when evaluating the arguments of both applicants and states – both regarding the admissibility of the application (i.e., the applicability of Article 8) and compliance with the requirements of Articles 2 and 8 of the Convention; the determination of the state responsibility: whether it involves direct state intervention (violation of negative obligations) or the fulfilment of positive obligations to ensure respect for private and family life and housing; the balance between the state’s discretion in addressing environmental problems, particularly those affecting rights under Article 8 of the Convention on the Rights of the Person, and the subsidiary role of the ECtHR in considering this category of cases; achieving a fair balance between competing interests; the importance of procedural guarantees as one of the key elements in ensuring a fair balance, which is a necessary condition for meeting the requirements of Articles 2 and 8 of the Convention.⁸⁹

Regarding the issue of influence on extrajudicial general practice, it is worth pointing out that national and supranational norms always compete at the level of each individual state. The universal values of a democratic society and human rights provide grounds for the convergence of supranational and national legal systems at the level of legal texts, legal practice, legal regulation, law enforcement, etc. Nevertheless, the national level of protection of constitutional rights often fails not because the state did not do something, but because the state itself is, by its very nature, a violator of rights.⁹⁰

However, it should be remembered that the ECHR is not a panacea for state arbitrariness, although the international community has not yet offered anything better. Over the past 70 years, legal and social realities have evolved and will continue to do so, requiring us to periodically rethink approaches to the content and mechanism for protecting human environmental rights in light of modern challenges. Moreover, as rightly pointed out in the legal literature, the ECtHR, on the one hand, leaves some flexibility in the application of the Convention, but on the other – opens up opportunities for arbitrary and non-transparent decision-making.⁹¹

Some authors point out that at the current stage, new threats related to the ‘democratic deficit’, the presence of armed conflicts, repression, and problems of legitimacy in some European countries are increasingly appearing.⁹² Such trends undermine the institutional strength and *erga omnes* effect of

⁸⁹ *Ibidem*.

⁹⁰ D. Luban, *Human Rights Pragmatism...*

⁹¹ K. Dzehtsiarou, *What is law for the European Court of Human Rights?*, “Georgetown Journal of International Law” 2018, vol. 49, no. 1, p. 89.

⁹² F. NiAoláin, *Transitional Justice and the European Convention on Human Rights*, “Academy Briefing” 2017, no. 10.

the ECtHR. Ultimately, the question of a much narrower limit of powers may arise, as the Court, through its decisions against respondent states, inevitably a critical assessment of the actions of the judicial, executive, and legislative authorities. In doing so, it may also provoke national resistance.

4. Conclusion

Summing up, it should be noted that the ECtHR as an integrated political and legal institution is designed to serve the idea of protecting human rights, including environmental rights. Each judgment of the ECtHR first constructs a supranational legal matter, and then becomes a national property through the implementation of legal positions and conclusions in national legislation. At the supranational level, it is advisable to single out the following areas of influence:

1. The integration effect can be seen in the unification of states around the common idea of developing universal guidelines, minimum standards in the field of environmental human rights protection, unified principles of such protection in order to ensure a unified approach in law enforcement.
2. The axiological influence of the ECtHR is evident in its role as an active creator of the value system, as in its judicial practice it demonstrates and justifies the recognition of values in society.
3. The influence of human rights protection is reflected in the resolution of court cases, the restoration of justice and the provision of reasonable satisfaction.
4. The control and supervisory influence of the ECtHR is reflected both in the resolution of a specific dispute about the violated right and the determination of the amount of compensation, and in the clarification, protection, and development of the rules established by the Convention; in this way, the ECtHR contributes to the states' compliance with their obligations.
5. Informational and psychological impact, etc.

Undoubtedly, the decisions of the ECtHR have a fundamental impact on the formation of a national model for the implementation and protection of environmental human rights, which are reflected in the following directions:

1. The axiological influence can be seen in the participation of the ECtHR in the form of recognition by the European community of a healthy environment as the highest good, with subsequent detailing in judicial and human rights practice.
2. At the legislative level, this influence is evident in the recognition of ECtHR case law as a mandatory source of law, prompting national legislators to adapt the legal system to include European standards for the protection of environmental human rights. In addition, the law-making influence on national law is manifested in the principle of autonomy

of terms and concepts used in the text of the Convention. In addition, certain decisions of the ECtHR have become guiding principles for the protection of environmental rights and individual freedoms and have given rise to a number of uniform applications to the ECtHR.

3. At the level of national judicial practice, the impact of ECtHR decisions in environmental cases is extremely important, as it not only contributes to the expansion of opportunities for the protection of environmental rights with the help of the Convention, but also eliminates the gaps that exist in the environmental legislation of an individual state.
4. Furthermore, the influence of ECtHR decisions extends beyond the protection of human rights and freedoms to the institutional level, where certain rulings cast doubt on the alignment of national judicial systems with the Convention's provisions.
5. The impact on extrajudicial general practice is evident at the level of developing strategies for human rights institutions and the implementation of large-scale educational initiatives to increase the legal awareness of the population about human environmental rights.
6. The doctrinal influence makes it possible to single out a number of issues that arouse scientific interest and subsequently affect the practice of application. In particular, the Convention serves as a tool whose interpretation increases attention to the quality of the law and democratic processes at the national level. It also facilitates the adoption of measures aimed at addressing systemic issues, developing clarifications and rules, and ensure states' compliance with their obligations to protect environmental human rights.

Thus, it can be confidently stated that the ECtHR, as an international institution, continues to actively develop and promote the human-centred concept, both at the supranational and national levels, and constantly influence the formation of a national model for the implementation and protection of environmental human rights, thereby engaging in the goal of creating a safe environment for the realisation of environmental human rights.

Therefore, the influence and effectiveness of the ECHR in the European space is indisputable. The ECHR formed a clear position on the issue of the role of the state in the sphere of implementation and protection of environmental human rights: this sphere is a value in the eyes of society, its protection is a permanent and long-term interest on its part. Economic needs and even some fundamental rights, such as property rights, should not prevail over measures to protect environmental rights, which in turn are the sphere of legislative regulation.

Court practice shows that the number of cases related to violations of environmental human rights is gradually increasing. It can be predicted that, in the future, the absence of effective measures at the national level to ensure favourable conditions for the development of an optimal model for the implementation and protection of environmental human rights will

lead to an increase in such cases. In general, the ECtHR considers the state itself as an entity directly obliged to ensure regulatory and legal regulation of the protection of environmental human rights. Therefore, in order to adopt effective legislation in the field of protection of environmental human rights, states should focus on the practice of the ECHR in this field.

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Vectors of the Impact of ECtHR Decisions on the Formation of a National Model for the Implementation and Protection of Environmental Human Rights

Abstract

The appearance of the European Court of Human Rights (ECtHR) was an important and evolutionary step forward on the way to the establishment of human rights and freedoms in Europe. This event was a fateful historical fact that testified the desire of the European community to create a single space within which the idea of human rights and freedoms became the basis for the formation of a supranational model of protection. In addition, the adoption of the Convention was a revolutionary step, since at the time of its development, an individual person had never before been a subject of international law. It was also not possible to exercise rights outside the territory of a separate state. The ECtHR became the guarantor of the inviolability of accepted universal norms, and the activity of this institution became the basis for the formation of a national model for the implementation and protection of human rights, including environmental rights.

Court practice shows that the number of cases related to violations of environmental human rights is gradually increasing. It can be predicted that in the future, in the absence of effective measures at the national level to ensure favourable conditions for the formation of an optimal model for the implementation and protection of environmental human rights, the number of such cases will increase. In general, the ECtHR considers the state itself as an entity directly obliged to ensure regulatory and legal regulation of the protection of environmental human rights. Therefore, in order to adopt effective legislation in the field of protection of environmental human rights, states should focus on the practice of the ECHR in this field.

Keywords: human rights, environmental rights, ECHR practice, rule of law, Universal Declaration of Human Rights

Wektory wpływu orzeczeń ETPCz na kształtowanie krajowego modelu wdrażania i ochrony praw człowieka

Streszczenie

Powstanie Europejskiego Trybunału Praw Człowieka (ETPCz) było ważnym i ewolucyjnym krokiem na drodze do ustanowienia praw i wolności człowieka w Europie. Wydarzenie to było znaczącym faktem historycznym, który świadczył o dążeniu społeczności europejskiej do stworzenia jednolitej przestrzeni, w ramach której idea praw i wolności człowieka stała się podstawą do stworzenia ponadnarodowego modelu ochrony. Ponadto przyjęcie Konwencji było krokiem rewolucyjnym, ponieważ w czasie jej opracowywania pojedynczy człowiek nigdy wcześniej nie był podmiotem prawa międzynarodowego. Nie było również możliwe korzystanie z praw poza terytorium odrębnego państwa. Europejski Trybunał Praw Człowieka stał się gwarantem nienaruszalności przyjętych uniwersalnych norm, a działalność tej instytucji stała się podstawą do ukształtowania krajowego modelu realizacji i ochrony praw człowieka, w tym praw środowiskowych.

Praktyka sądowa pokazuje, że liczba spraw związanych z naruszeniami środowiskowych praw człowieka stopniowo rośnie. Można przewidywać, że w przyszłości, wobec braku skutecznych działań na poziomie krajowym w celu zapewnienia korzystnych warunków dla ukształtowania optymalnego modelu wdrażania i ochrony środowiskowych praw człowieka, liczba takich spraw będzie rosła. Ogólnie rzecz biorąc, ETPCz uznaje samo państwo za podmiot bezpośrednio zobowiązany do zapewnienia regulacyjnej i prawnej regulacji ochrony środowiskowych praw człowieka. Dlatego też, w celu przyjęcia skutecznego ustawodawstwa w dziedzinie ochrony środowiskowych praw człowieka, państwa powinny skupić się na praktyce ETPCz w tej dziedzinie.

Słowa kluczowe: prawa człowieka, prawa środowiskowe, praktyka ETPCz, rządy prawa, Powszechna Deklaracja Praw Człowieka

