

ECTHR CASE LAW ON LEGAL LIABILITY FOR OFFENCES IN THE FIELD OF ENVIRONMENTAL PROTECTION ENVIRONMENT

Ivchenko Liudmyla

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Annotation. Pursuant to Article 55 of the Constitution of Ukraine, everyone has the right, after exhausting all national legal remedies, to apply for protection of their rights and freedoms to the relevant international judicial institutions or international organisations of which Ukraine is a member or participant [1]. One of such organisations is the European Court of Human Rights (ECTHR), which decides on the establishment of violations of human rights enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms (CCHR). Given that Ukraine has recognised the jurisdiction of the ECTHR and the principle of extending its judgments to third states that are not parties to the case, we consider the study of the Court's case law to be a necessity for the member states.

This article analyses the ECTHR case law on legal liability for environmental offences. Based on the results of the study, it is found that the peculiarity of the ECTHR judgments in cases concerning environmental offences is the absence of direct enshrining of "environmental" rights in the Convention, and the establishment of the components of such offences by interpreting the existing rules in each individual case.

Key words: case-law of the European Court of Human Rights; Convention for the Protection of Human Rights and Fundamental Freedoms; compensation; life and health; environmental rights; environmental protection; legal liability.

1. Introduction.

The state of the environment depends on many factors, including human activity. Thus, according to the results of the UN Climate Change Conference COP28 in Dubai on 01 December 2023, an extremely high level of natural resource use was established, which leads to large-scale depletion of the world's subsoil and an agreement on the abandonment of fossil fuels was adopted. Additionally, the significant impact of Russia's military aggression against Ukraine on the environment was discussed, which may indirectly result in the melting of the Arctic ice, which in turn will lead to negative climate change.

One of the levers to stop the deterioration of the environment is the establishment and proper application of legal liability for offences in this area. In view of the above, it is important to analyse the provisions of the CCHR and the practice of its application in the ECTHR judgments.

2. Analysis of scientific publications.

Such scholars as A. Hetman, Y. Booth, V. Bizyk, I. Lozo, O. Belyanevych, H. Khrystova, V. Strelnyk, G. Yudkivska, Z. Brenzovych, S. Onufriy, V. Borndar and others have devoted their works to the ECTHR case-law on legal liability for environmental offences. Given the rapid development of mankind, ongoing armed conflicts, climate change and, as a result, the deterioration of the environmental situation in the world, this topic remains relevant.

3. The purpose of the study is to analyse the ECTHR case law on legal liability in the field of environmental protection and to establish the grounds for applying the articles of the Convention through the prism of environmental offences.

4. Review and discussion.

Ratification of the CCHR by Ukraine on 17 July 1997 was an important milestone on the way of Ukraine's entry into the European political and legal space. It is worth noting that at the time of the Convention's creation, the issue of environmental rights protection was not sufficiently developed in science and had no regulatory framework. Therefore, the Convention does not contain provisions on the protection of human "environmental rights".

In addition, given the current challenges, the protection of the right to environmental safety as a result of hostilities is not directly reflected in the CCHR. In addition, the provisions of the basic international treaties on the basis of which the state or individuals can be held liable for environmental damage caused during armed conflict were developed according to the logic of international humanitarian law and do not take into account the norms and principles of international environmental law [2].

Despite the absence of norms in the CCHR that explicitly proclaim the human right to environmental safety, the issues of environmental impact on human rights are reflected in articles related to the protection of other human rights and freedoms. The full meaning and interpretation of the Convention's provisions through the prism of environmental offences is disclosed by the ECTHR in its judgements, for example

- Article 2 "Right to life" – *Ozel and Others v. Turkey* (aspect of natural disasters); *Smaltini v. Italy* (impact of industrial emissions on health);
- Article 6 "The right to a fair trial" – *Atanassoglu and Others v. Switzerland* (appeal against a decision to extend the licence of a nuclear power plant);
- Article 10 "Freedom of Expression" – *Vides Aizsardzibas Clubs v. Latvia* (consideration of defamation charges for speaking out against illegal construction in the coastal zone);
- Article 13 "The right to an effective remedy" – *Hutton and Others v. the United Kingdom* (failure to provide adequate judicial protection in a case concerning noise pollution in the immediate vicinity of an airport);
- Article 1 of Protocol No. 1 to the Convention "protection of property" – *Fredin v. Sweden* (cancellation of a licence to operate a gravel pit located on the applicants' land) [3].

In other words, the ECTHR protects violated rights in the field of environmental protection regardless of the absence of their direct regulatory consolidation. After all, the realisation of other fundamental human rights and freedoms proclaimed by the Convention is hardly possible without the existence of a safe environment. In addition, the ECTHR case law is binding not only on the state that was a party to the case, but also on all other states parties to the CCHR.

For the first time, the ECTHR considered the issue of violation of conventional rights due to negative environmental impact in the case of *Guerra and Others v. Italy* (application no. 14967/89, judgment of 19.02.1998). The applicants, living near the Enikem Agricoltura chemical enterprise, complained about constant chemical emissions and frequent accidents at the enterprise, which led to poisoning. The application concerned a violation of Article 10 of the CCHR on Freedom of Expression due to the lack of public awareness of the threat. Additionally, the application stated that "the authorities failed to take appropriate measures to reduce the risk of pollution from the Enikem Agricoltura chemical plant in Manfredonia (the "plant") and to prevent significant accidents; this situation violated the right to life and physical integrity guaranteed by Article 2 of the Convention" [4]. In other words, Italy failed to fulfil its positive obligation to protect the lives of people who were endangered by the operation of the enterprise.

However, the ECTHR stated that consideration of this case in the context of violation of Articles 10 and 2 is inapplicable and should be considered under Article 8. After all, Article 10 does not enshrine a positive obligation of the state to collect and disseminate information on its own initiative in the circumstances of this case.

Thus, the ECTHR judgment in the above case found a violation of Article 8 of the CCHR. The state had not provided for a system of dissemination of information on the state of the environment that would have allowed the applicants to assess the risks that they and their families might face if they continued to live in Manfredonia, a city that would be in particular danger in the event of an accident at the plant. Indeed, it was found that due to the geographical location of the plant, its air emissions often go towards Manfredonia. Severe environmental pollution can affect people's well-being and deprive them of the use of their own homes, thereby having a negative impact on their private and family life.

In the process of adopting this decision, the Court stated that its jurisdiction "extends to all questions of interpretation and application of the Convention submitted to it under Article 48" and that "in the event of a dispute as to the jurisdiction of the Court, the Court itself shall decide on it". In other words, the ECTHR is not limited to the applicants' applications during the consideration of the case and, in the course of the proceedings, may consider them in the context of those articles or paragraphs that were not challenged by the applicants. Such an approach would certainly eliminate procedural obstacles in the process of protecting the violated right. One of such obstacles in national proceedings is cases of dismissal of claims by courts due to incorrect statutory substantiation of the claim. In addition, such practice of national courts is an obstacle to access to justice, and therefore a violation of Article 6 of the CCHR.

The ECTHR judgments state that there can be no substantiated complaint under Article 8 of the CCHR if the harm complained of is insignificant compared to the environmental risks inherent in living in every modern city. With regard to the deterioration of health, it is difficult to distinguish the impact of environmental risks from the impact of other relevant factors, such as age, occupation or private lifestyle [5].

In order to raise an issue under Article 8 of the CCHR, the interference with the applicant's life must directly affect his or her home, private or family life and must reach a certain minimum level. Thus, in the case of *Dzemiuk v. Ukraine*, the ECTHR stated that "the assessment of such a minimum level is relative and depends on all the circumstances of the case, such as the intensity and duration of the harmful effects and their physical or psychological consequences. The overall context of the environment must also be taken into account" [6]. The court's decision in this case established that the location of the cemetery 38 metres from the applicant's home violated the right to respect for her private and family life. Such a location, in violation of the sanitary norms of national law, can lead to contamination of groundwater with cadaveric substances, which in turn negatively affects the applicant's quality of life.

It is worth noting that there was no unanimous expert opinion on the source of the *E. coli* (its origin from the cemetery was not established). Thus, Article 8 not only prohibits arbitrary interference by the State with private and family life, but also establishes a positive obligation to ensure that such rights are not violated.

According to Article 2(1) of the CCHR, "the right of everyone to life shall be protected by law and no one shall be deprived of his life intentionally except in execution of a sentence of death passed by a court after he has been found guilty of a crime for which the law provides for such punishment" [3]. Thus, the state is obliged to prevent any violent and intentional deprivation of human life. However, the analysis of the ECTHR case law shows that a broad interpretation of this Article includes the state's obligation not only not to deprive a person of life, but also the obligation to take all measures to preserve it by creating appropriate laws [7].

The first case to establish a violation of Article 2 of the CCHR - a violation of the right to life in terms of environmental human rights - was *Onorildiz v. Turkey* (application no. 48939/99, judgment of 30.11.2004) [8]. According to the case, the applicant and his family lived in illegally constructed

barracks next to a garbage dump where garbage was taken from four districts of Istanbul. At this landfill, there was a risk of methane explosion, which was released as a result of the decomposition of the waste. All the district mayors and the Mayor of Istanbul were aware of this danger, but the local and state authorities did not take any action to warn people of the danger and prevent the explosion. The applicant complained, relying on Article 2 of the CCHR, that the accident, in which nine members of his family died, had been caused by the negligence of the relevant authorities.

Having examined these facts, the ECTHR concluded that in this case there was a violation of Article 2 of the CCHR. At the time of the explosion, Turkey had regulations in place that regulated the safety of landfills and standards for places of human habitation. Contrary to the provisions of such regulations, the authorities, firstly, did not prevent the illegal construction of slums, and, secondly, knowing about the dangerous characteristics of the landfill, did not take any measures to improve the situation. Thus, the state failed to fulfil its positive obligation to preserve human life.

As a general rule, an application to the ECTHR is possible after all national remedies have been exhausted. The aforementioned judgment found a violation of the ECTHR despite the application of the protection of the right in Turkish national legislation (the guilty officials were brought to justice and compensation was awarded to the applicant). However, the Court found that the remedies used in the domestic proceedings did not fully satisfy the requirements arising from the procedural obligation under Article 2.

Taking into account the above cases, it can be concluded that the applicants, when challenging the violated rights under the Convention, challenge the failure of states to provide available information about a possible environmental threat or restrict such information. In doing so, the plaintiffs refer to a violation of Article 10 of the Convention on Freedom of Expression.

It should be noted that the failure to provide “environmental” information is a component of the positive obligations of states under Articles 2 and 8 of the CCHR, based on the analysis of a number of decisions made by the ECTHR (*Roche v. the United Kingdom*, *Brinkett and Others v. Malta*, *Guerra and Others v. Italy*) [9]. While Article 10(1) of the CCHR states that “everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”. It is recognised as the duty of the state not to prevent individuals from disseminating information by imposing censorship or withdrawing materials.

However, it does not impose a public imperative to collect and disseminate information. Accordingly, this Article is applicable in cases of censorship of information related to the environment, forced restriction by the authorities of the dissemination of such information and restriction of access to it. For example, in the case of *Vides Aizsardzibas Clubs v. Latvia*, an NGO published an article in a newspaper about the city mayor’s illegal permission to build on the coast. The national court ordered the organisation to compensate for the damage caused by such information (defamation) and to apologise for it. However, the ECTHR concluded that the state had violated Article 10 of the CCHR. The information disseminated by the organisation was of public interest and the public had the right to be informed about such actions of local authorities [10].

5. Conclusions.

Thus, despite the existence of a well-established practice of applying the provisions of the Convention, the decision on their admissibility is made by the court depending on the circumstances of a particular case. Over time, under the influence of technological progress and armed conflicts, legal relations are deformed under the influence of new facts and circumstances. A positive achievement in the legal sphere is the practice established by the ECTHR of considering cases of violations of fundamental human rights and freedoms through the prism of their interaction with each other.

In addition, in “environmental” cases, the ECTHR emphasises that one of the determining elements in considering such cases is the behaviour of the state (its actions or inaction at the time of the threat to human rights and freedoms). The Court sets benchmarks for actions to be taken by states. Thus,

an analysis of the decisions of this court is necessary in the process of determining the directions of improvement of national legislation in the field of environmental protection.

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Liudmyla Ivchenko,

*higher education applicant of the third educational and scientific level,
speciality 081 "Law", Sumy National Agrarian University*

E-mail: lspevtrivna@gmail.com

ORCID: 0009-0006-2077-2034