

The Right to a Healthy Living Environment in the Context of the European Convention on Human Rights

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ABSTRACT

Although more than 150 countries recognize the right to a healthy environment in their national constitutions, there is no autonomous, globally recognized human right to live in a healthy environment. Despite the absence of explicit recognition of the human right to a healthy living environment in the international environment, it exists and is developing through the application of already existing internationally recognized human rights to environmental issues. The conducted analysis, presented in this Article, implicitly formulates the right to a healthy living environment as it stems from the ECHR and the case law of the ECtHR. The presented Article is focused on the substantive and procedural aspects of essential ECHR rights that can be implicitly linked to the right to a healthy living environment, while also identifying and defining the most important factors that ensure the effective enforcement and protection of the right to a healthy living environment in accordance with the ECHR. The presented concept of a model of the right to a healthy living environment, as it implicitly derives from the ECHR and the ECtHR, offers a broader insight into the right to a healthy living environment, together with extensive, yet fundamental arguments stemming from the case law of the ECtHR. Undoubtedly, the results of the conducted analysis contrib-

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ute to raising awareness and strengthening environmental protection as well as protecting the rights of individuals in relation to the topic at the national level.

Keywords: the right to a healthy living environment, protection of human rights, ECHR, ECtHR, case law

Pravica do zdravega življenjskega okolja v kontekstu Evropske konvencije o človekovih pravicah

POVZETEK

Čeprav več kot 150 držav priznava pravico do zdravega okolja v svojih nacionalnih ustavah, pa avtonomne, svetovno priznane človekove pravice do življenja v zdravem okolju ni. Kljub odsotnosti izrecnega priznanja človekove pravice do zdravega življenjskega okolja v mednarodnem okolju le-ta obstaja in se razvija z uporabo že obstoječih mednarodno priznanih človekovih pravic v okoljskih vprašanjih. Izvedena analiza, predstavljena v tem prispevku, implicitno oblikuje pravico do zdravega življenjskega okolja, kot ta izhaja iz EKČP in sodne prakse ESČP. Predstavljeni prispevek se osredotoča na vsebinske in postopkovne vidike bistvenih pravic iz EKČP, ki jih je mogoče implicitno povezati s pravico do zdravega življenjskega okolja, hkrati pa opredeli najpomembnejše dejavnike, ki zagotavljajo učinkovito uveljavljanje in varstvo pravice do zdravega življenjskega okolja v skladu z EKČP. Predstavljeni koncept modela pravice do zdravega življenjskega okolja, kot ta implicitno izhaja iz EKČP in ESČP, ponuja širši vpogled v pravico do zdravega življenjskega okolja, skupaj z obsežnimi, a temeljnimi argumenti, ki izhajajo iz sodne prakse ESČP. Rezultati opravljene analize nedvomno prispevajo k ozaveščanju in krepitvi varstva okolja ter varstvu pravic posameznikov v zvezi z obravnavano tematiko na nacionalni ravni.

Ključne besede: pravica do zdravega življenjskega okolja, varstvo človekovih pravic, EKČP, ESČP, sodna praksa

1. Introduction

Boyd (2018, p. 18) points out that although more than 150 countries have recognized the right to a healthy environment in their domestic legislation, there is no single, internationally recognized definition of the right to a healthy living environment, nor is there a comprehensive system of protection of the environment and related rights. Moreover, a human right to a healthy environment is not explicitly recognized by any instrument of the United Nations (UN), the Council of Europe or the European Union. However, it is necessary to establish that the 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), adopted within the UN framework, is different, as it aims to strengthen access to information, legal protection, and public participation in environmental matters. Nevertheless, the scope of the Aarhus Convention guarantees only procedural rights and not substantive rights related to a healthy living environment.

Furthermore, also the European Convention on Human Rights (ECHR), which is the focus of this article, does not contain an explicit right to a healthy living environment. However, climate change in particular affects a range of human rights, including the rights to health, housing, food and water, and even the right to life (Varvastian, 2019, p. 5). Despite the absence of an explicit recognition of a human right to a healthy living environment in the international instruments, it is now generally accepted that human rights and environmental protection are interrelated, even to the extent that, as Vasak (1977, p. 29) explains, environmental rights could belong to the so-called third generation of human rights. Thus, a healthy living environment, environmen-

tal protection and preservation, together with the rights of individuals related to this area are central topics of both the wider international community and the European Court of Human Rights (ECtHR) as the right to a healthy living environment exists and develops through the application of already existing internationally recognized human rights to environmental issues (Knox, Tronolone, 2024, p. 159).

Despite the absence of an explicit definition or recognition of the right to a healthy living environment in the ECHR, the ECtHR defines its content not only through individual provisions of the ECHR as it will be furthermore explained in this article, but (for instance in cases ECtHR *Ver-ein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 2024; ECtHR *Taşkın and Others v. Turkey*, 2004; and ECtHR *Öneryıldız v. Turkey*, 2004) also through international instruments such as the commitments arising from the 2015 Paris Agreement, the 1992 UN Framework Convention on Climate Change, and the 1998 Aarhus Convention. It also considers international principles such as the right of states to exploit their own natural resources without causing environmental harm to entities outside their jurisdiction, as set out in Principle 21 of the 1972 Stockholm Declaration, and the principle of effective mutual cooperation to prevent serious environmental degradation or harm to humans, derived from Principle 14 of the 1992 Rio Declaration. Furthermore, the ECtHR also considers the precautionary principle, first recognized by the 1992 Rio Declaration, for example in case *Tătar v. Romania* establishing violations of Article 8 of the ECHR (ECtHR *Tătar v. Romania*, 2009, paras. 69, 111 and 120). In seeking a common understanding among the Contracting Parties of the ECHR and the actualization of its interpretation, the ECtHR also takes into account general human development and widely accepted standards to fulfil the principle of effectiveness, which is one of the key methods used by the ECtHR in interpreting and applying the ECHR (Etinski, 2018, p. 9). This ensures that the ECHR is interpreted and

applied dynamically, meaning the rights listed in the ECHR are current, practical, and effective and not merely static or theoretical.

The purpose of this article is to present as comprehensively as possible the concept of the right to a healthy living environment as it implicitly derives from the ECHR and as it can be understood through ECtHR jurisprudence. Detailed norms in connection with this right can be established through the “greening” of human rights already guaranteed by the ECHR by applying them to environmental issues (Knox, 2020, p. 81).

A particular challenge of the research area lies in the fact that the very concept of the environment refers to a broad and interdisciplinary field. Furthermore, there is no general environmental convention in international law, nor is there a unified interpretation of environmental concepts or a single recognized right to a healthy living environment. The scientific problem arising from this topic requires extensive theoretical research in the field of environmental law and human rights law, both globally and in Europe. However, as such an undertaking would exceed the scope of this article, the main focus is on the right to a healthy living environment as interpreted through the provisions of the ECHR, especially those that significantly affect the research field and are referenced by the ECtHR. These are essential for understanding the subject of the analysis or for illustrating the scope and complexity of the presented issue. Despite the aforementioned limitations, the article presents a broad range of rights related to a healthy living environment. Furthermore, the analysis also outlines legal arguments that support the effective realization and protection of the right to a healthy living environment at the national level and provides a detailed explanation of this right within the framework of the ECHR and the jurisprudence of the ECtHR.

Given the wide scope of the presented issue, the main research question is: How is the right to a healthy living en-

vironment defined in the context of the ECHR, considering that the ECHR does not explicitly include this right in its normative framework? In order to avoid a vague delineation of the research field and to ensure a better understanding of the concept of the right to a healthy living environment, as it implicitly derives from ECtHR case law, the article follows several objectives. These include an analysis of the ECHR and especially the vast ECtHR jurisprudence related to the environment and individual rights, the demonstration of the “greening” of existing human rights arising from the ECHR, the formulation and analysis of the substantive and procedural aspects of the right to a healthy living environment under the ECHR; and the identification of factors that ensure the effective realization and protection of this right, as it derives from ECtHR case law. In addressing these questions, the article employs a systematic analysis of the ECHR provisions and relevant ECtHR case law concerning environmental protection and related individual rights. The aforementioned is followed by a factor analysis of the ECtHR’s jurisprudence to present the substantive scope and procedural protection of the right to a healthy living environment, as it derives from ECtHR case law. Furthermore, the methods of logical analysis and synthesis are used to construct a conceptual model of the right to a healthy living environment as it implicitly derives from the ECHR. Finally, deductive reasoning is applied to present the findings of the conducted analysis.

Due to space limitations, the presented article does not specifically address the admissibility conditions before the ECtHR. However, for every case, regardless of the Article of the ECHR, under which the alleged violation occurs, the applicant must demonstrate the ECtHR jurisdiction (ECtHR *Duarte Agostinho and Others v. Portugal and 32 Others*, 2024), victim status (ECtHR *Carême v. France*, 2024), the absence of *actio popularis*, which is not permitted under the ECHR system (*ibid.*) and the exhaustion of domestic remedies (ECtHR *Viviani and Others v. Italy*, 2015).

In line with the aim and objectives, this article is structured into four sections: an introduction presenting the research area and its key features, a second chapter focusing on the substantive aspect of the right to a healthy living environment as it implicitly derives from the ECHR and ECtHR jurisprudence, and a third chapter addressing the procedural aspect of the aforementioned right. The presented article concludes with a summary of findings.

2. Substantive aspect of the right to a healthy living environment

2.1. Substantive aspect in relation to Article 2 of the ECHR

The provisions of Article 2 of the ECHR have a negative aspect, as they are intended to prevent certain state measures or to limit state's sovereignty when adopting national measures that would be in conflict with this Article. The ECtHR has developed the doctrine of positive obligations in relation with Article 2, meaning that states may be required to take measures to protect the right to life or to establish a legal framework that effectively deters violations.

In the context of environmental harm and pollution, Article 2 is applied in cases of natural disasters and hazardous activities such as nuclear weapons testing, an operation of chemical plants with toxic emissions or waste disposal sites. In cases of natural disasters, states fulfil their primary obligation by implementing preventive measures to avoid loss of life, even in the event, that such disasters are beyond human control (ECtHR *Budayeva and Others v. Russia*, 2008, para. 135). Furthermore, in cases of hazardous activities Article 2 is applied regardless of whether death of an individual has already occurred or life of individuals is merely at risk, and regardless of whether the activities are conducted by public

authorities or private companies (ECtHR *Öneryıldız v. Turkey*, 2004, para. 71).

However, there is a significant distinction between natural disasters and hazardous activities when determining the state's positive obligations under Article 2. In cases of natural disasters, a broader margin of appreciation is afforded to states due to the unpredictable nature of natural disasters (ECtHR *Budayeva and Others v. Russia*, 2008, para. 135). The scope of the state's obligations also depends on the severity of the environmental harm, the (un)predictability of risks, the level of potential threat to life, the intentionality of acts or omissions and the origin and extent of environmental risk or pollution (*ibid.*, para. 162). In cases of natural disasters, a state fulfils its obligations by having appropriate early-warning and emergency mechanisms in place and by maintaining the relevant infrastructure. Additionally, a state must ensure an effective implementation of established protective measures, especially by providing the public with information about natural disasters, hazardous activities or any threats to life (*ibid.*, para. 131). On the other hand, in the context of hazardous activities, the state's obligation is fulfilled by adopting appropriate regulations that govern the issuance of operation permits, taking into account the specificities of the dangerous activity and the potential risks to life as well as by implementing safety and monitoring regulations (ECtHR *Öneryıldız v. Turkey*, 2004, para. 90).

Nevertheless, when assessing whether a positive obligation under Article 2 has been fulfilled, available information at the time of the incident is taken into account. Therefore, causality between the harmful effects of hazardous activities and the foreseeability of life-threatening risks must be demonstrated based on the scientific knowledge available at the time (ECtHR *L.C.B. v. the United Kingdom*, 1998, para. 41). If causation cannot be established for example, between emissions from a nearby steel plant and the development of

cancer, or between nuclear testing and leukaemia, there is no violation of Article 2 (*ibid.*).

Consequently, a substantive violation of the right to life may occur due to the absence of appropriate national measures to prevent accidental deaths related to environmental hazards, such as a lack of a general legal framework guaranteeing the right to life or authorizing the operation of waste facilities without defined monitoring systems (ECtHR *Budayeva and Others v. Russia*, 2008, para. 158). A violation also occurs if a state fails to inform individuals of environmental risks to which they are exposed due to their place of residence (*ibid.*, para. 132). Moreover, even if a state disseminates information, it may still be held responsible of a substantive violation of Article 2 if it fails to take practical steps to reduce the risk to human life (ECtHR *Öneryıldız v. Turkey*, 2004, para. 108). Furthermore, a failure to establish effective planning and building policy in areas known to be seismically active or otherwise hazardous can also constitute a substantive violation of the right to life (ECtHR *Özel v. Turkey*, 2015, para. 174).

2.2. Substantive aspect in relation to Article 8 of the ECHR

In cases concerning environmental degradation caused by pollution or harmful environmental factors, the ECtHR has interpreted Article 8 of the ECHR as closely connected to notions of private life, family life, and home. The ECtHR interprets the term “home” broadly, namely as a physically defined area where private and family life develops. Instead of the term “home”, the ECtHR also often uses concepts such as private sphere or living space (ECtHR *Fadeyeva v. Russia*, 2005, paras. 82 and 86; ECtHR *Brândușe v. Romania*, 2015, para. 64).

The ECtHR has found in numerous cases that the right to respect one’s home includes not only the right to respect the

physical area of residence but also the enjoyment of a home within reasonable limits (e.g. ECtHR *Hatton and Others v. the United Kingdom*, 2003, para. 96). A polluted environment or excessive environmental nuisance can affect individuals' well-being to such an extent that it constitutes a violation of their private and family life (ECtHR *Guerra and Others v. Italy*, 1998, para. 60). The threshold for defining a harmful impact is assessed according to the intensity and duration of an environmental nuisance, physical and psychological effects of it and a broader environmental context. This includes demonstrating a causal link between environmental factors and harm to the individual, such as through medical certificates proving that emissions (e.g., noise, vibrations, light pollution, low-frequency sounds, odours) negatively affect the health of an individual or through technical measurements indicating that environmental norms have been exceeded (e.g. ECtHR *Fadeyeva v. Russia*, 2005, para. 69).

The substantive aspect of Article 8 therefore requires of states to take positive measures to protect individual rights in such a way that rights, deriving from the aforementioned Article, are protected effectively (ECtHR *Guerra and Others v. Italy*, 1998, para. 58). The ECtHR does not mandate what kind of specific measures states must adopt, however it evaluates whether the national authorities have taken appropriate steps to do so (ECtHR *Fadeyeva v. Russia*, 2005, para. 69). The ECtHR has in this respect indicated that an effective remedy could be a relocation from hazardous areas (*ibid.*, para. 133). Moreover, as noise from airports or road traffic may affect the quality of life and enjoyment of one's home, if authorities adopt effective noise control measures, they may fulfil obligations deriving from Article 8 (ECtHR *Hatton and Others v. the United Kingdom*, 2003, paras. 129 and 130). In accordance with the substantive aspect of Article 8, states are also obligated to balance economic interests with individual rights. Although the ECtHR ruled that states have wide discretion to do so, a reasonable balance must be

achieved (ECtHR *Luginbühl v. Switzerland*, 2006).

Article 8 of the ECHR also establishes the duty of states to protect the environment itself. In order to be able to refer to the protection of the environment, for example a natural habitat of animals, the interference with living conditions of animals must affect the private or family life of the individual. For example, urban development that damages a natural environment or wildlife habitat may trigger Article 8 protections if the resulting harm has a direct and serious impact on the private or family life of the persons concerned (ECtHR *Kyrtatos v. Greece*, 2003, paras. 53 and 54).

Substantive aspect of Article 8 also implies a duty to inform the public about environmental risks. Failure to do so constitutes a violation of both Article 8 and the right to freedom of expression under Article 10 of the ECHR (ECtHR *Guerra and Others v. Italy*, 1998, para. 46).

Thus, substantive violations of Article 8 occur when a state or local authorities are passive in regulating for instance industrial emissions or waste processing operations, especially if ongoing noise or toxic emissions pose a serious threat to health and living conditions (ECtHR *López Ostra v. Spain*, 1994, para. 51). The aforementioned applies whether the source of pollution is public or private, as state's responsibility also arises from inadequate regulation (ECtHR *Tătar v. Romania*, 2009, para. 87). Additionally, it is not sufficient for a state to merely adopt regulatory framework to prevent harmful emissions and pollution. It must also enforce preventive and practical measures to evaluate the effectiveness of the protection afforded to individuals. For instance, failure to address odour emissions from landfills or the persistent malfunctioning of waste disposal services may lead to a violation of Article 8 (ECtHR *Di Sarno and Others v. Italy*, 2012, para. 109). Substantive violations of Article 8 can also occur when a state fails to prevent contamination of drinking water, does not eliminate such pollution promptly, or does not relocate residents from affected areas as such

contamination interferes with the right to respect for one's home and family life (ECtHR *Dzemyuk v. Ukraine*, 2014, para. 73). Similarly, the operation of heavily polluting companies in densely populated urban areas, particularly when emissions exceed national safety standards, constitutes a violation, even if housing in such zones was technically not permitted (ECtHR *Fadeyeva v. Russia*, 2005, para. 132).

2.3. Substantive aspect in relation to Article 10 of the ECHR

The right to freedom of expression under paragraph 1 of Article 10 of the ECHR includes the freedom to hold opinions and to receive information and ideas without interference by public authorities and regardless of frontiers. The primary aim of this provision is to protect individuals from direct acts of censorship by the state (ECtHR *The Observer and Guardian v. the United Kingdom*, 1991, para. 59).

In the context of environmental protection, this right encompasses the dissemination of information regarding environmental issues, from which two core questions arise. Firstly, whether the interference with freedom of expression is necessary in a democratic society, and secondly, whether a reasonable balance was struck between restricting the freedom of expression and pursuing a legitimate aim (*ibid.*).

Environmental issues are of a significant public interest and it is crucial that individuals and groups are enabled to participate in public debate by sharing information and opinions on such issues. This high level of protection is also afforded to non-journalist individuals and organizations, in particular environmental NGOs, which act as watchdogs and their role is essential in a democratic society (ECtHR *Vides Aizsardzibas Klubs v. Latvia*, 2004, para. 42). Furthermore, even small and informal groups can effectively perform this function. Therefore, individuals, associations (whether formal or informal), and other organizations involved in en-

environmental protection must be allowed to share facts of public concern and to promote transparency of public authorities' actions (*ibid.*).

2.4. Substantive aspect in relation to Article 1 of Protocol No. 1 to the ECHR

Although Article 1 of Protocol No. 1 to the ECHR does not directly refer to environmental issues, it applies in environmental contexts, as individuals have the right to a peaceful enjoyment of their possessions, and in addition also public authorities may control or restrict the use of property. The concept of possessions has an autonomous meaning under the ECHR, not limited to ownership of physical goods and independent of formal classification in domestic law. Thus, protection under Article 1 of Protocol No. 1 is not confined to notions like direct or indirect possession or legal ownership. It also encompasses a legitimate expectation that an individual may effectively enjoy their property, provided such expectation has a sufficient basis in national law (ECtHR *Brosset-Triboulet and Others v. France*, 2010, para. 66). Effective enjoyment of property rights means not only an obligation to refrain from interference but also the responsibility of states to adopt adequate environmental standards, regulatory measures, and controls over hazardous activities, especially where there is a direct link between state action and an individual's (un)ability to enjoy their property (ECtHR *Öneryıldız v. Turkey*, 2004, para. 134).

The main distinction between obligations of states under Article 1 of Protocol No. 1 and those under Article 2 of the ECHR lies in the absolute nature of the obligation to protect life (ECtHR *Budayeva and Others v. Russia*, 2008, para. 175). While Article 2 imposes an absolute positive obligation, obligations to protect peaceful enjoyment of property are not absolute and depend on what is reasonable under the given circumstances. In this sense, states enjoy a broader margin

of appreciation in determining the measures to protect right, deriving from Article 1 of Protocol No. 1 compared to the narrower scope regarding the protection of life.

Furthermore, a state must ensure active protection of rights and establish a fair balance between individual interests and the public interest, otherwise a violation of Article 1 of Protocol No. 1 may occur (ECtHR *Brosset-Triboulet and Others v. France*, 2010, para. 80). In matters of regional planning and environmental preservation, where a general community interest is prominent, states are granted wider discretion in determining whether a fair balance has been achieved than in cases concerning exclusively civil rights (ECtHR *Depalle v. France*, 2010, para. 84). Therefore, state measures are not assessed in substance by ECtHR unless the interference by a state is disproportionate or a state fails to establish a lawful, proportionate, and balanced approach (*ibid.*, para. 83).

Whether a fair balance is achieved is also assessed through compensation awarded to the individual. Pursuing environmental goals by expropriating property without adequate compensation reasonably linked to the value of the property typically constitutes a disproportionate interference. If no compensation is awarded, the balance between public interest and individual rights is not achieved (ECtHR *Turgut and Others v. Turkey*, 2008, para. 91). Therefore, when property is expropriated or buildings are demolished with a goal of environmental protection, adequate compensation must be provided. A violation also occurs where the state fails to complete the expropriation process or compensate the affected individuals appropriately (ECtHR *Dimitar Yordanov v. Bulgaria*, 2018, para. 61). Individuals are entitled to compensation also in cases, where environmental protection regulations change the purpose of land use, effectively resulting in expropriation (ECtHR *Papastavrou and Others v. Greece*, 2003, paras. 37–39). Moreover, a failure to compensate an individual due to prolonged procedures or failure to

offer substitute land or other forms of redress, especially if the person still resides in the hazardous area or had to abandon their property, may also constitute a violation (ECtHR *Dimitar Yordanov v. Bulgaria*, 2018, paras. 58 and 61).

Lack of compensation is only justifiable in exceptional circumstances. For example, individuals may be required to demolish structures at their own expense, even if they were lawfully built many years ago, if they are located on public land (ECtHR *Brosset-Triboulet and Others v. France*, 2010, para. 95).

2.5. Substantive aspect in relation to Article 3 of the ECHR

Article 3 of the ECHR establishes the duty of a state to organise the national prison system, regardless of logistical and financial difficulties, in such a way that respect for the human dignity of prisoners is ensured (ECtHR *Florea v. Romania*, 2010, para. 50). Accordingly, a state is also obliged to adopt measures to protect prisoners from harmful emissions, such as the effects of passive smoking. A violation of Article 3 of the ECHR in relation to a healthy living environment is, for example, the exposure of prisoners to passive cigarette smoke, in particular where, according to medical examinations and recommendations of doctors, the persons concerned should be protected from the harmful effects of (passive) smoking due to their state of health (ECtHR *Eleftheriadis v. Romania*, 2011, para. 48).

3. Procedural aspect of the right to a healthy living environment

3.1. Procedural aspect in relation to Article 2 of the ECHR

The obligations that states have to protect the right to life are not only substantive. In the procedural sense, national authorities are required to adopt a legislative framework to

prevent violations of the right to life due to dangerous activities or natural disasters. This framework must ensure effective legal (administrative and judicial) procedures for determining liability in case of violations, along with the conduct of an independent and impartial investigation (ECtHR *Budayeva and Others v. Russia*, 2008, paras. 129, 132 and 142).

The procedural aspect of Article 2 of the ECHR thus imposes investigative obligations on states in relation to the loss of life. The aim of these obligations is to ensure the effectiveness of the legislative framework necessary for the protection of life. Families of victims have the right to know why their loved ones died, and there is a public interest in punishing those responsible for the loss of life. The reason a state must conduct an investigation is that in such cases, state authorities are usually the only ones capable of establishing the causes of death related to environmental factors (*ibid.*, para. 140).

However, Article 2 of the ECHR does not confer an automatic right for individuals to have those responsible criminally prosecuted or convicted. In cases of death due to environmental factors, prosecution is appropriate only when it is necessary to deter future violations and only if the violation was intentional (ECtHR *Öneryıldız v. Turkey*, 2004, para. 118). In environmental matters, violations are often unintentional, and in such cases, criminal prosecution is not mandatory, as civil, administrative, or disciplinary sanctions may suffice (*ibid.*, para. 92). Nevertheless, in cases involving hazardous activities where authorities were fully aware of the potential consequences but failed to take the necessary and appropriate measures within their powers to reduce or prevent the risk (including the risk of loss of life), the state must ensure that those responsible are prosecuted for a criminal offense (*ibid.*, para. 93).

In line with the above, a procedural violation of the right to life may occur if, in the event of accidents linked to environmental factors (natural disasters or industrial pollu-

tion), a state fails to conduct a judicial investigation *ex officio* (*ibid.*). Such an investigation must be carried out promptly in order to determine responsibility and the circumstances of the incident. Its effectiveness relates primarily to clarifying the context of the violation, identifying shortcomings in the legislative framework, and establishing the responsibility of public officials or authorities involved in the events (*ibid.*, para. 142).

3.2. Procedural aspect in relation to paragraph 1 of Article 8 of the ECHR

The case law of the ECtHR furthermore reveals procedural violations related to paragraph 1 of Article 8 of the ECHR. While the substantive aspect of the aforementioned Article refers to the state's positive obligation to ensure the protection of individual rights under this Article, the procedural aspect concerns the process through which these protective measures are determined. This process must be fair and must consider the interests of individuals (ECtHR *McMichael v. the United Kingdom*, 1995, para. 87).

Although Article 8 of the ECHR does not contain explicit procedural requirements, the assessment of procedural safeguards in environmental policymaking and decision-making processes focuses on achieving a fair balance. This includes how effectively the interests of individuals were considered throughout the procedure (ECtHR *Hatton and Others v. the United Kingdom*, 2003, para. 104). A fair balance between the community's economic interests and the individual's right to the enjoyment of home and private and family life is attainable if the state pursues a legitimate aim (e.g. regional economic prosperity) together with a consideration of various competing interests throughout the decision-making process (ECtHR *Flamenbaum and Others v. France*, 2012, para. 142). If the state fails to conduct any prior environmental feasibility study or does not carry out

pollution or emissions analysis, a procedural violation of Article 8 may occur.

Furthermore, the procedural aspect also concerns the existence of an effective and accessible process that allows individuals and the public to obtain all relevant data and information (ECtHR *Grimkovskaya v. Ukraine*, 2011, para. 72). Procedural protection under Article 8 applies to access to information on the basis of which individuals can assess risks to which they are or were exposed. This applies even in the absence of quantifiable data and regardless of whether the data existed at the time or emerged later (ECtHR *Roche v. The United Kingdom*, 2005, paras. 165 and 169). Even when the state conducts hazardous activities itself, it must ensure an effective and accessible procedure for sharing essential information (ECtHR *Mcginley and Egan v. the United Kingdom*, 1998). Furthermore, the state must ensure that private entities also comply with transparency obligations (*ibid.*, para. 244). A state meets its obligation under Article 8 by establishing an effective information-access mechanism, although individuals must also actively request the available documents and data. If they fail to do so, there is no violation (*ibid.*, paras. 102-103). Even if there is a substantive violation of Article 8 regarding public information disclosure, this does not automatically imply a procedural violation. For instance, if a state publishes studies it commissioned itself, it has fulfilled its duty to inform individuals about potential risks (ECtHR *Di Sarno and Others v. Italy*, 2012, para. 113).

Moreover, the procedural dimension of Article 8 also includes the state's obligation to ensure effective legal remedies. A violation may occur if individuals lack the ability to challenge official actions or omissions before an independent body or if court decisions lack reasoning to assess responsibility or an effective system of sanctions (ECtHR *Bor v. Hungary*, 2013, para. 27). An effective national legal remedy allows individuals to file claims against a state's failure to implement necessary environmental measures or action

plans. The mere existence of a sanction system is insufficient as measures must be timely and effectively enforced (*ibid.*).

3.3. Procedural aspect in relation to Article 10 of the ECHR

The public's right to information, as enshrined in Article 10 of the ECHR, does not impose any general obligation on public authorities to collect and disseminate information relating to the environment. The positive obligation that States are nevertheless obliged to ensure access to information on environmental issues and the right to receive information in relation to environmental matters under Article 10 of the ECHR may be imposed on States in conjunction with Articles 2 and 8 of the ECHR (ECtHR *Öneryıldız v. Turkey*, 2004, para. 90; ECtHR *Guerra and Others v. Italy*, 1998, para. 60). States must thus ensure access to information for those individuals whose right to life under Article 2 has been violated or is at risk of being violated and/or whose right to respect for private and family life and home under Article 8 of the ECHR has been violated or is at risk of being violated.

In relation to access to information on environmental matters, the criteria for assessing national procedures used to provide information in relation to environmental matters relate to the establishment of an effective and accessible procedure for individuals to seek all relevant information as well as the right of the public to access the results of environmental and health impact assessments carried out (ECtHR *Brândușe v. Romania*, 2015, para. 63). The criteria must be met whenever public authorities decide on hazardous activities which they know involve harmful risks to health (*ibid.*).

The right to receive information is also emphasised in the case of hazardous activities which fall within the competence of a State whereas in relation to the protection of life under Article 2 of the ECHR, a State is obliged to inform the public of all dangers which endanger life, including in cases

of natural disasters (ECtHR *Budayeva and Others v. Russia*, 2008, para. 131). In the case of decisions on the State's environmental and economic policy, the decision-making process is required to include the carrying out of appropriate research studies to assess the environmental impacts, thereby enabling a fair balance to be achieved between the various competing interests (ECtHR *Taşkın and Others v. Turkey*, 2004, para. 119). Nevertheless, the public's right to information also includes the right to access the results and conclusions of such studies, as they enable individuals to assess the risks to which they are exposed (*ibid.*).

However, this does not mean that decisions can only be made if comprehensive and measurable data are available on every aspect of the matter being decided (ECtHR *Hatton and Others v. the United Kingdom*, 2003, para. 128).

3.4. Procedural aspect in relation to paragraph 1 of Article 6 of the ECHR

Given that Article 1 of the ECHR stipulates that the signatory states must secure to everyone within their jurisdiction the rights and freedoms defined in the ECHR, it is essential that these rights are also substantively guaranteed to everyone within their jurisdiction, regardless of the form chosen (Testen, 2002). Although the ECHR does not require the signatory states to ensure the realization of rights in their domestic law through a precisely defined method, Article 6 of the ECHR specifies certain guarantees intended to ensure the exercise of ECHR rights in proceedings within the signatory states.

The right to a fair trial, as guaranteed by paragraph 1 of Article 6 of the ECHR, primarily refers to equality of arms, the obligation to ensure a fair hearing, the possibility to challenge the arguments and evidence submitted by the other party of the dispute, the right of each party to appear in person before the court upon request, the duty of courts to

issue reasoned decisions, as well as a right of enforcement of a judicial decision (ECtHR *Gorraiz Lizarraga and Others v. Spain*, 2004, para. 56; ECtHR *Öneryıldız v. Turkey*, 2004, para. 152).

One of the components of the right to a fair trial protected by paragraph 1 of Article 6 of the ECHR is also the right of access to a court. Although the ECHR does not expressly state this right, it derives from ECtHR case law that this provision guarantees everyone the right to submit any claim related to their civil rights and obligations before a competent court while such a dispute must be also genuine and serious, while the outcome of the proceedings must be directly decisive (ECtHR *Golder v. the United Kingdom*, 1975, paras. 35-36; ECtHR *Balmer-Schafroth and Others v. Switzerland*, 1997, para. 32).

The concept of a civil right and/or obligation has an autonomous meaning for the purposes of the ECHR, however, it must be a right or obligation recognized in the national legal system (Manual on Human Rights and the Environment, 2022, p. 85). Furthermore, the ECtHR does not necessarily follow the distinctions between private and public law matters as defined in national systems and does not exclude the applicability of Article 6 of the ECHR if the dispute concerns (only) private parties (*ibid.*) Therefore, in environmental matters, individuals may invoke an explicit right to live in a healthy and clean environment, if and as it derives from national law. The ECtHR recognizes it as a civil right within the meaning of paragraph 1 of Article 6 of the ECHR and may thus establish its violation (ECtHR *Taşkın and Others v. Turkey*, 2004, paras. 130-134). Individuals also rely on the protection of rights arising from other, more general provisions of national law, as (at least) the right to protection of physical integrity and property is practically included in every European legal order. These rights are therefore recognized in the national laws of most European states and thus constitute civil rights within the meaning of paragraph

1 of Article 6 of the ECHR (ECtHR *Athanassoglou and Others v. Switzerland*, 2000, para. 44). In addition to the aforementioned, the ECtHR has also recognized, for example, the right to build on one's own land, to develop one's land, the right to protect the monetary value of one's land by opposing the development of neighbouring land, and the right to protect landowners from pollution, as civil rights in relation to the environment (ECtHR *Fredin v. Sweden*, 1991, paras. 62-63).

In order to invoke the right of access to a court, there must also be a direct link between the environmental risk and the asserted (civil) right. To invoke Article 6 of the ECHR, it is thus necessary to demonstrate a serious and direct environmental risk and the degree of likelihood that the outcome of the proceedings will be directly decisive for the rights of the individuals concerned (ECtHR *Balmer-Schafroth and Others v. Switzerland*, 1997, para. 40). Individuals must therefore demonstrate that there exists specific and direct danger to themselves, while merely citing general or hypothetical risks applying to all (relevant) hazardous activities is not sufficient to establish a violation of paragraph 1 of Article 6 of the ECHR (*ibid.*). Conversely, paragraph 1 of Article 6 of the ECHR does not apply when the right invoked by the individual is merely a procedural right under administrative law not connected with the defence of any specific right that the person may have under national law (Manual on Human Rights and the Environment, 2022, p. 87).

In connection with the above, environmental associations or organizations that have the right to initiate proceedings in the national legal system to defend the interests of their members may also invoke the right of access to a court, but only if they represent the interests of their members, such as their personal property. They are not entitled to protection of the right of access to a court under paragraph 1 of Article 6 of the ECHR if they advocate only a broader public interest (ECtHR *Gorraiz Lizarraga and Others v. Spain*, 2004, paras. 46-47). To allege such a violation there must be a connec-

tion with a civil right and *actio popularis* are thus excluded (ECtHR *L'Erablière A.S.B.L. v. Belgium*, 2009, para. 25). Environmental associations may therefore invoke the right of access to a court only if the proceedings they initiate concern civil rights falling within the scope of paragraph 1 of Article 6 of the ECHR and thus advocate beyond the general public interest in environmental protection.

Furthermore, in relation to a right to access to a court, an appropriate legal remedy in case of an unfair decision-making process must be ensured. In relation to national environmental policy, individuals must have the possibility of a legal remedy against any decision, act or omission, if they believe that their interests were not sufficiently considered in the decision-making process (ECtHR *Taşkın and Others v. Turkey*, 2004, para. 119). Moreover, individuals must have the possibility of legal remedy to challenge specific scientific studies commissioned by public authorities, and the court must also ensure access to such documents if they are not publicly available (ECtHR *Tătar v. Romania*, 2009, paras. 113, 116-117 and 119).

The right of access to a court also includes the right to an implementation of final and enforceable court decisions, which means that all parties to the dispute, including public authorities, must comply with court rulings (ECtHR *Kyrtatos v. Greece*, 2003, paras. 30 and 32). A final and enforceable court decision ordering the cessation of activities that pose a danger to health and the environment and which is never enforced consequently means that the danger to health and the environment associated with pollution is never eliminated (ECtHR *Dzemyuk v. Ukraine*, 2014, para. 92). Thus, by failing to enforce final court decisions, national authorities deprive paragraph 1 of Article 6 of the ECHR of all its effects. In such cases, any measures taken to protect rights of individuals are completely ineffective, and individuals are deprived of any practical effect of protection (ECtHR *Lemke v. Turkey*, 2007, paras. 42 and 52).

A violation of paragraph 1 of Article 6 of the ECHR therefore occurs if parties in national proceedings cannot obtain judicial review or substantive assessment of a government decision, if it could violate any of their rights due to hazardous activities (ECtHR *Karin Andersson and Others v. Sweden*, 2014, para. 70). A violation of paragraph 1 of Article 6 of the ECHR may also result from ineffective legal protection, such as due to the (overall) length of the proceedings (ECtHR *Apanasewicz v. Poland*, 2011, para. 82), lack of due diligence by the authorities and insufficient use of available enforcement measures (*ibid.*), or when national authorities fail to take the necessary steps to enforce court decisions for years (ECtHR *Bursa Barosu Başkanlığı and Others v. Turkey*, 2018, para. 145).

However, the right of access to a court arising from paragraph 1 of Article 6 of the ECHR is not an absolute right. Restrictions may be compatible with the ECHR if they pursue a legitimate aim and are proportionate to their goal, whereby one form of compatible restriction is the use of limitation periods. On the other hand, when a (national) restriction on the right of access to a court is disproportionate to the requirements of legal certainty and fairness or if legal or factual restrictions effectively hinder the complainant's right of access to a court that constitutes a violation of paragraph 1 of Article 6 of the ECHR (ECtHR *Howald Moor and Others v. Switzerland*, 2014, para. 71). Although national legal provisions on limitation periods pursue the legitimate aim of legal certainty, systematic application of this rule, particularly to individuals suffering from illnesses caused by hazardous emissions and/or activities that could only be diagnosed many years after the events, deprives these individuals of the possibility of asserting their rights before the courts (*ibid.*, para. 77). In such cases, where it is scientifically proven that a person could not have known they suffer from a particular illness, this fact must be considered in the calculation of the limitation period (*ibid.*, para. 78).

3.5. Procedural aspect in relation to Article 13 of the ECHR

Article 13 of the ECHR guarantees that individuals who claim that their rights and/or freedoms, as defined in the ECHR, have been violated, shall have an effective legal remedy before national authorities (ECtHR *Leander v. Sweden*, 1987, para. 77). Therefore, everyone who believes that their rights or freedoms stemming from the ECHR have been infringed is entitled to protection. The aim of Article 13 of the ECHR is thus to ensure the availability of an effective domestic legal remedy through which individuals can, already at the national level, initiate proceedings due to violations of their ECHR rights, thereby avoiding recourse to the ECtHR (ECtHR *Hatton and Others v. the United Kingdom*, 2003, para. 140).

In the context of environmental matters, reliance on Article 13 of the ECHR primarily concerns alleged violations of the right to life (Article 2 of the ECHR), the right to private and family life (Article 8 of the ECHR), or the right to the protection of property (Article 1 of Protocol No. 1 to the ECHR). For an alleged violation of Article 13, it is important to determine whether individuals already have an (effective) legal remedy at the national level for asserting their rights or whether the procedural requirements for protection requirements for the protection of rights guaranteed by the ECHR are fulfilled (*ibid.*, paras. 131-140).

High standards have been established for assessing the effectiveness of domestic remedies under Article 13 in cases of alleged violations of the right to life under Article 2. These include the obligation of national authorities to conduct a thorough and effective investigation, which itself is a procedural requirement stemming from Article 2. Within the scope of Article 13, the conduct of the investigation may be evaluated under two additional conditions: whether the investigation was initiated *ex officio* and whether minimum standards

were met, particularly where the procedural aspect of the alleged violation requires it. Without an investigation that also meets these minimum standards, the individual concerned cannot effectively use any available legal remedy, as the information required to clarify the circumstances, especially in cases involving a death of individuals, is often exclusively held by state officials or authorities (ECtHR *Budayeva and Others v. Russia*, 2008, paras. 142 and 192).

Although Article 13 of the ECHR requires that an effective legal remedy has to be ensured even where the violation was committed by a state official in the exercise of official duties together with a mechanism for establishing the responsibility of state officials or authorities for their actions or omissions neither Article 13 nor any other provision of the ECHR guarantees the right to criminal prosecution and/or conviction of those responsible (ECtHR *Öneryıldız v. Turkey*, 2004, para. 147). Moreover, the required remedy does not need to be a single mechanism; the guarantees of Article 13 can also be fulfilled through a combination of remedies provided under national law (ECtHR *Leander v. Sweden*, 1987, para. 77).

Article 13 also does not prescribe the form of the legal remedy. A state determines how it will fulfil its obligations under this provision (ECtHR *Öneryıldız v. Turkey*, 2004, para. 146). However, the nature of the violated right may affect the type of remedy that a state must provide. For example, in cases of alleged violations of rights under Article 2 of the ECHR, the remedy must include the possibility of claiming compensation for pecuniary and non-pecuniary damage (*ibid.*, para. 147). Nonetheless, relatives of victims are entitled to compensation reflecting the pain, stress, anxiety, and frustration suffered due to violations under this Article (ECtHR *Keenan v. the United Kingdom*, 2001, para. 123).

Furthermore, even though states enjoy a certain degree of discretion in providing appropriate remedies in their legal systems, and regardless of the form or type of remedy provided, it must be taken into account that individuals

claiming to be victims of violations of rights under the ECHR must have access to a domestic body that can examine and rule on the alleged violation and, where appropriate, award compensation (ECtHR *Öneryıldız v. Turkey*, 2004, para. 145). Although Article 13 refers to a national authority, which is generally a judicial authority, it does not necessarily have to be a court. It is sufficient that the remedy or combination of remedies is accessible, effective, and available before domestic authorities (ECtHR *Klass and Others v. Germany*, 1978, para. 67). In order to assess the effectiveness of a remedy, it is important what powers and guarantees a domestic body has in order to make a decision. It must be composed of independent members who are protected in their independence and are competent to decide on the merits of the claim and, where appropriate, award compensation for pecuniary and non-pecuniary damage (ECtHR *Öneryıldız v. Turkey*, 2004, para. 158).

A legal remedy must be effective both in law and in practice (ECtHR *Keenan v. the United Kingdom*, 2001, para. 123). It must also allow for the substantive assessment of alleged violations and not merely procedural issues (ECtHR *Öneryıldız v. Turkey*, 2004, para. 145). Therefore, a violation of Article 13 may result from a limited scope of judicial review. If a judicial authority is only competent to examine whether the authorities acted irrationally, unlawfully or manifestly unreasonably, and not whether the alleged environmental emissions were a justified restriction of the right to respect for private and family life or home, this may constitute a violation of Article 13 (ECtHR *Hatton and Others v. the United Kingdom*, 2003, para. 141).

The abovementioned requirements apply both to cases of natural disasters and to cases of accidents caused by hazardous activities (ECtHR *Budayeva and Others v. Russia*, 2008, para. 142).

The right under paragraph 1 of Article 6 of the ECHR acts as *lex specialis* in relation to Article 13. If the ECtHR finds a

violation under paragraph 1 of Article 6, it does not examine whether Article 13 was violated, as paragraph 1 of Article 6 offers a broader protection and stricter standards. A violation under Article 6 absorbs the protection under Article 13 (ECtHR *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 2024).

In connection with Articles 2 and 8 of the ECHR and Article 1 of Protocol No. 1, the fulfilment of procedural requirements for the protection of these rights may also be assessed through Articles 6 and 13 (ECtHR *Öneryıldız v. Turkey*, 2004, paras. 139-160). However, access to a court under Articles 2 and 8 is broader than under Articles 6 and 13 due to the difference in the nature of the protected interests. Article 6 primarily ensures procedural protection, i.e. access to a court in determining civil rights and obligations, while Articles 2 and 8 aim to ensure appropriate respect for life as such and also, for example, private and family life (ECtHR *Hunt v. Ukraine*, 2006, para. 65). Moreover, compared to Articles 6 and 13, the procedural rights under Articles 2 and 8 do not require that the outcome of the judicial proceedings has to be decisive for the individual's rights or that there be a serious risk of infringement of rights. Nevertheless, if the procedural aspects of Articles 2, 8, or Article 1 of Protocol No. 1 already address all issues covered by Articles 6 and 13 for instance insufficient reasoning in a national court decision, absence of a criminal investigation and/or lack of other remedies, the alleged violations of Articles 6 or 13 are not examined separately. This applies despite the different nature of the rights covered by these Articles, which normally allow for separate claims and consideration (ECtHR *Budayeva and Others v. Russia*, 2008, para. 195).

In connection with the right to life (Article 2 of the ECHR) and the right to private and family life (Article 8 of the ECHR), a violation of paragraph 1 of Article 6 may occur. More specifically, in instances of a denial of access to a court, a violation of paragraph 1 of Article 6 occurs if a decision approv-

ing/extending a permit for hazardous activities cannot be challenged before an appropriate national authority and/or the procedure was not fair (ECtHR *Athanassoglou and Others v. Switzerland*, 2000, para. 54).

On the other hand, even if there has been a substantive and/or procedural violation of the right to life or a violation of Article 8 and/or of Protocol No. 1 to the ECHR, this does not automatically mean that there has also been a violation of Articles 6 or 13 (ECtHR *Kolyadenko and Others v. Russia*, 2012, para. 231). For instance, there is no violation of Article 13 in connection with Articles 2, 8, and Protocol No. 1 if national law allows individuals to bring civil compensation claims and if the deciding authority has access to all necessary information and the competence to assign responsibility (*ibid.*). The mere fact that the outcome of the proceedings is unfavourable for an individual does not in itself justify the claim that the available legal remedies are inadequate or that Article 13 of the ECHR has been violated (*ibid.*).

4. Conclusion

The analytical study on which this Article is based aimed to establish a research foundation and formulate answers to the research questions. It combined insights into the regulation of the ECHR and the ECtHR's case law. The integration of the research framework and the modelling of a conceptual structure of the right to a healthy living environment under the provisions of the ECHR and ECtHR case law enabled answers to both research questions. The analysis of the rich jurisprudence of the ECtHR, which dynamically interprets and substantively enriches the ECHR, sharpened three common elements.

Firstly, in connection with the right to a healthy living environment, the ECtHR greens the human rights already recognized under the ECHR, meaning that the ECtHR takes into account that various environmental factors arising from

a person's living environment may directly and adversely impact individuals and thereby may affect their rights such as the right to life (Article 2), the right to respect for private and family life (Article 8), the right to the protection of property (Article 1 of Protocol No. 1), the right to a fair trial (Article 6), the right to an effective remedy (Article 13), the right to freedom of expression (Article 10), the prohibition of torture or inhuman or degrading treatment (Article 3), the right to liberty and security (Article 5), and the right to freedom of assembly and association (Article 11).

In relation to the aforementioned, the ECtHR has, as negative and harmful environmental factors, considered for instance industrial pollution (ECtHR *López Ostra v. Spain*, 1994), noise emissions and pollution (e.g. industrial noise) (ECtHR *Moreno Gómez v. Spain*, 2004), air traffic and aircraft noise (ECtHR *Hatton and Others v. the United Kingdom*, 2003), road traffic noise (ECtHR *Deés v. Hungary*, 2010), radiation from mobile transmitters (ECtHR *Luginbühl v. Switzerland*, 2006), wind turbines (ECtHR *Fägerskiöld v. Sweden*, 2008), diesel particle emissions (ECtHR *Greenpeace EV and Others v. Germany*, 2009), urban development (ECtHR *Kyrtatos v. Greece*, 2003), waste collection, treatment and disposal (ECtHR *Di Sarno and Others v. Italy*, 2012), water contamination (ECtHR *Dzemyuk v. Ukraine*, 2014), deprivation of liberty related to environmental matters (ECtHR *Manguras v. Spain*, 2010), and environmental risks from hazardous activities and natural disasters (ECtHR *L.C.B. v. the United Kingdom*, 1998).

Secondly, deriving from the ECtHR case law, a substantive aspect of the right to a healthy living environment can be identified. It concerns the positive obligations of states in ensuring measures that harmful environmental factors do not interfere with human rights guaranteed under the ECHR.

Regarding Article 2, the substantive aspect obliges states to adopt all measures necessary to protect the right to life and to establish a legal framework that effectively deters vio-

lations (an absolute positive obligation). For example, with respect to dangerous activities, states meet their positive obligations by adopting regulations that reflect the level of risk, ensuring public access to information about such activities or potential life-threatening risks. Under paragraph 1 of Article 8, states must ensure active measures to protect individuals' rights and guarantee their actual enforcement. Authorities must strike a fair balance between economic interests and those of an individual, while also ensuring the public is informed of environmental risks. Concerning Article 1 of Protocol No. 1, states are positively obliged to do all that is reasonably possible to protect the right to peaceful enjoyment of property, especially where there is a direct link between state action and the effectiveness of that enjoyment. Furthermore, for an assessment of whether a fair balance has been achieved, a possibility of compensation is also taken into account. As for Article 10, states are not inherently obliged to collect and disseminate environmental information. Nevertheless, in relation to Articles 2 and 8, they must provide access to such information (the public's right to be informed) and allow individuals or groups to contribute to public debate by disseminating environmental information. Under Article 3, the substantive aspect includes the state's duty, regardless of logistical or financial challenges, to organize the national prison system in such a way that prisoners' human dignity is respected.

Thirdly, environmental factors may also affect the state's obligation to guarantee procedural rights. These rights form the procedural aspect of the right to a healthy living environment.

The procedural aspect of Article 2 relates to the state's duty to investigate a death of an individual. The goal is to ensure an effective legal and administrative framework to protect life and to punish those responsible. Under Article 8, the procedural aspect requires that a state must ensure an effective domestic remedy allowing individuals to challenge

inaction regarding the establishment or enforcement of necessary environmental measures and plans aimed at protecting public health. This also includes access to information allowing individuals to assess potential or actual threats that are closely linked to their private and family life. The right to a fair trial (Article 6) includes the right of access to a court, which is allowing individuals to bring claims related to their civil rights and obligations and the right to an enforcement of binding court decisions, including those against public authorities. Article 13 guarantees the right to an effective legal remedy before national authorities for anyone alleging a violation of rights under the ECHR. Procedural guarantees also arise under Article 5 regarding liberty and security of individuals, as bail conditions may also reflect the accused's professional background in connection with environmental matters.

The presented analysis enhances the understanding of the right to a healthy living environment in the context of the ECHR and contributes to the compliance with the principle of *pacta sunt servanda*, under which international actors, including Slovenia, are obliged to fulfil assumed commitments. This strengthens the rule of law both internationally and domestically.

The results of the conducted analysis i.e. the conceptual model of the right to a healthy living environment are relevant for future academic research and national professional awareness. They offer a comprehensive view of this right together with extensive but fundamental arguments based on ECtHR jurisprudence. It is important to emphasize that nonetheless, this article also helps individuals in seeking a peaceful and healthy living environment and strengthens environmental and human rights protection on a national level.

We hope the findings of this limited but relevant contribution to the topic of environmental protection and related human rights will interest readers, as violations of

the presented subject area not only breach international obligations and the rule of law, but nonetheless cause environmental damage and exposure of individuals to environmental risks.

LITERATURE AND SOURCES:

- Boyd, D. R. (2018). Catalyst for change: Evaluating forty years of experience in implementing the right to a healthy environment. In *The human right to a healthy environment* / Knox, H. H., Pejan, R. (eds.), Cambridge: Cambridge University Press, pp. 17-41.
- ECtHR *Apanasewicz v. Poland*, European Court of Human Rights, No. 6854/07, 3. 5. 2011, ECLI:CE:ECHR:2011:0503JUD000685407.
- ECtHR *Athanassoglou and Others v. Switzerland*, European Court of Human Rights, No. 27644/95, 6. 4. 2000, ECLI:CE:ECHR:2000:0406JUD002764495.
- ECtHR *Bor v. Hungary*, European Court of Human Rights, No. 50474/08, 18. 7. 2013, ECLI:CE:ECHR:2013:0618JUD005047408.
- ECtHR *Brândușe v. Romania*, European Court of Human Rights, No. 6586/03, 27. 10. 2015, ECLI:CE:ECHR:2009:0407JUD000658603.
- ECtHR *Brosset-Triboulet and Others v. France*, European Court of Human Rights, No. 34078/02, 29. 3. 2010, ECLI:CE:ECHR:2010:0329JUD003407802.
- ECtHR *Budayeva and Others v. Russia*, European Court of Human Rights, No. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, 29. 9. 2008, ECLI:CE:ECHR:2008:0320JUD001533902.
- ECtHR *Bursa Barosu Başkanlığı and Others v. Turkey*, European Court of Human Rights, No. 25680/05, 19. 6. 2018, ECLI:CE:ECHR:2018:0619JUD002568005.
- ECtHR *Carême v. France*, European Court of Human Rights, No. 7189/21, 9. 4. 2024, ECLI:CE:ECHR:2024:0409DEC000718921.
- ECtHR *Deés v. Hungary*, European Court of Human Rights, No. 2345/06, 9. 11. 2010, ECLI:CE:ECHR:2010:1109JUD000234506.
- ECtHR *Depalle v. France*, European Court of Human Rights, No. 34044/02, 29. 3. 2010, ECLI:CE:ECHR:2010:0329JUD003404402.
- ECtHR *Di Sarno and Others v. Italy*, European Court of Human Rights, No. 30765/08, 10. 1. 2012, ECLI:CE:ECHR:2012:0110JUD003076508.
- ECtHR *Dimitar Yordanov v. Bulgaria*, European Court of Human Rights, No. 3401/09, 6. 9. 2018, ECLI:CE:ECHR:2018:0906JUD000340109.
- ECtHR *Duarte Agostinho and Others v. Portugal and 32 Others*, European Court of Human Rights, No. 39371/20, 9. 4. 2024, ECLI:CE:ECHR:2024:0409DEC003937120.
- ECtHR *Dzemyuk v. Ukraine*, European Court of Human Rights, No. 42488/02, 4. 9. 2014, ECLI:CE:ECHR:2014:0904JUD004248802.
- ECtHR *Elefteriadis v. Romania*, European Court of Human Rights, No. 38427/05, 25. 1. 2011, ECLI:CE:ECHR:2011:0125JUD003842705.
- ECtHR *Fadeyeva v. Russia*, European Court of Human Rights, No. 55723/00, 9. 6. 2005, ECLI:CE:ECHR:2005:0609JUD005572300.
- ECtHR *Flamenbaum and Others v. France*, European Court of Human Rights, No. 3675/04 and 23264/04, 13. 12. 2012, ECLI:CE:ECHR:2012:1213JUD000367504.
- ECtHR *Florea v. Romania*, European Court of Human Rights, No. 37186/03, 14. 9. 2010, ECLI:CE:ECHR:2010:0914JUD003718603.
- ECtHR *Fredin v. Sweden*, European Court of Human Rights, No. 12033/86, 18. 2. 1991, ECLI:CE:ECHR:1991:0218JUD001203386.
- ECtHR *Golder v. the United Kingdom*, European Court of Human Rights, No. 4451/70, 21. 2. 1975, ECLI:CE:ECHR:1975:0221JUD000445170.

- ECtHR *Gorraitz Lizarraga and Others v. Spain*, European Court of Human Rights, No. 62543/00, 27. 4. 2004, ECLI:CE:ECHR:2004:0427JUD006254300.
- ECtHR *Greenpeace EV and Others v. Germany*, European Court of Human Rights, No. 18215/06, 12. 5. 2009, ECLI:CE:ECHR:2009:0512DEC001821506.
- ECtHR *Grimkovskaya v. Ukraine*, European Court of Human Rights, No. 38182/03, 21. 7. 2011, ECLI:CE:ECHR:2011:0721JUD003818203.
- ECtHR *Guerra and Others v. Italy*, European Court of Human Rights, No. 14967/89, 19. 2. 1998, ECLI:CE:ECHR:1998:0219JUD001496789.
- ECtHR *Hatton and Others v. the United Kingdom*, European Court of Human Rights, No. 36022/97, 8. 7. 2003, ECLI:CE:ECHR:2003:0708JUD003602297.
- ECtHR *Howald Moor and Others v. Switzerland*, European Court of Human Rights, No. 52067/10 and 41072/11, 11. 3. 2014, ECLI:CE:ECHR:2014:0311JUD005206710.
- ECtHR *Hunt v. Ukraine*, European Court of Human Rights, No. 31111/04, 7. 12. 2006, ECLI:CE:ECHR:2006:1207JUD003111104.
- ECtHR *Karin Andersson and Others v. Sweden*, European Court of Human Rights, No. 29878/09, 25. 9. 2014, ECLI:CE:ECHR:2014:0925JUD002987809.
- ECtHR *Keenan v. the United Kingdom*, European Court of Human Rights, No. 27229/95, 3. 4. 2001, ECLI:CE:ECHR:2001:0403JUD002722995.
- ECtHR *Klass and Others v. Germany*, European Court of Human Rights, No. 5029/71, 6. 9. 1978, ECLI:CE:ECHR:1978:0906JUD00050297.
- ECtHR *Kolyadenko and Others v. Russia*, European Court of Human Rights, No. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05, 35673/05, 28. 2. 2012, ECLI:CE:ECHR:2012:0228JUD001742305.
- ECtHR *Kyrtatos v. Greece*, European Court of Human Rights, No. 41666/98, 22. 5. 2003, ECLI:CE:ECHR:2003:0522JUD004166698.
- ECtHR *L.C.B. v. the United Kingdom*, European Court of Human Rights, No. 23413/94, 9. 6. 1998, ECLI:CE:ECHR:1998:0609JUD002341394.
- ECtHR *Leander v. Sweden*, European Court of Human Rights, No. 9248/81, 26. 3. 1987, ECLI:CE:ECHR:1987:0326JUD000924881.
- ECtHR *Lemke v. Turkey*, European Court of Human Rights, No. 17381/02, 5. 6. 2007, ECLI:CE:ECHR:2007:0605JUD001738102.
- ECtHR *L'Erablière A.S.B.L. v. Belgium*, European Court of Human Rights, No. 49230/07, 24. 2. 2009, ECLI:CE:ECHR:2009:0224JUD004923007.
- ECtHR *López Ostra v. Spain*, European Court of Human Rights, No. 16798/90, 9. 12. 1994, ECLI:CE:ECHR:1994:1209JUD001679890.
- ECtHR *Luginbühl v. Switzerland*, European Court of Human Rights, No. 42756/02, 17. 1. 2006, ECLI:CE:ECHR:2006:0117DEC004275602.
- ECtHR *Mcginley and Egan v. the United Kingdom*, European Court of Human Rights, No. 21825/93 and 23414/94, 9. 7. 1998, ECLI:CE:ECHR:1995:1128DEC002182593.
- ECtHR *McMichael v. the United Kingdom*, European Court of Human Rights, No. 16424/90, 24. 2. 1995, ECLI:CE:ECHR:1992:1208DEC001642490.
- ECtHR *Öneryıldız v. Turkey*, European Court of Human Rights, No. 48939/99, 30. 11. 2004, ECLI:CE:ECHR:2004:1130JUD004893999.
- ECtHR *Özel v. Turkey*, European Court of Human Rights, No. 14350/05, 15245/05 and 16051/05, 17. 11. 2015, ECLI:CE:ECHR:2013:1022DEC000424309.
- ECtHR *Papastavrou and Others v. Greece*, European Court of Human Rights, No. 46372/99, 10. 4. 2003, ECLI:CE:ECHR:2001:1004DEC004637299.
- ECtHR *Roche v. The United Kingdom*, European Court of Human Rights, No. 32555/96, 19. 10. 2005, ECLI:CE:ECHR:2002:0523DEC003255596.
- ECtHR *Taşkın and Others v. Turkey*, European Court of Human Rights, No. 46117/99, 10. 11. 2004, ECLI:CE:ECHR:2004:1110JUD004611799.
- ECtHR *Tătar v. Romania*, European Court of Human Rights, No. 67021/01, 17. 3. 2009, ECLI:CE:ECHR:2009:0127JUD006702101.
- ECtHR *The Observer and Guardian v. the United Kingdom*, European Court of Human Rights, No. 13585/88, 26. 11. 1991, ECLI:CE:ECHR:1991:1126JUD001358588.
- ECtHR *Turgut and Others v. Turkey*, European Court of Human Rights, No. 1411/03, 8. 7. 2008, ECLI:CE:ECHR:2008:0708JUD000141103.

- ECtHR *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, European Court of Human Rights, No. 53600/20, 9. 4. 2024, ECLI:ECLI:CE:ECHR:2024:0409JUD005360020.
- ECtHR *Vides Aizsardzibas Klubs v. Latvia*, European Court of Human Rights, No. 57829/00, 27. 5. 2004, ECLI:CE:ECHR:2004:0527JUD005782900.
- ECtHR *Viviani and Others v. Italy*, European Court of Human Rights, No. 9713/13, 24. 3. 2015, ECLI:CE:ECHR:2015:0324DEC000971313.
- Etinski, R. (2018). The interrelationship between the European Convention on Human Rights and the Aarhus Convention. In Zbornik radova: Pravni fakultet u Novom Sadu / Marjanski, V. (ed). Pravni fakultet u Novom Sadu, pp. 1-15.
- Knox, J. H. (2020). Constructing the human right to a healthy environment. *Annual Review of Law and Social Science*, 16, pp. 79-95.
- Knox, J. H., Tronolone, N. (2024). Environmental justice as environmental human rights. *Vanderbilt Journal of Transnational Law*, 57 (1), pp. 153-217.
- Manual on Human Rights and the Environment* (2022). Council of Europe.
- Testen, F. (2002). In *Komentar Ustave Republike Slovenije*. / Šturm, L. (ed). Ljubljana: Fakulteta za podiplomske državne in evropske študije.
- Varvastian, S. (2019). The human right to a clean and healthy environment in climate change litigation. Max Planck Institute for Comparative Public Law and International Law (MPII).
- Vasak, K. (1977). A 30-year struggle: The sustained efforts to give force of law to the Universal Declaration of Human Rights. In *The UNESCO courier: A window open on the world* / Caloz, R. (ed). UNESCO, pp. 29-32.