

Lejla Zilić*¹

PROCEDURAL HUMAN RIGHTS IN ENVIRONMENTAL CASES - PRINCIPLES ESTABLISHED IN THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS*²

ABSTRACT

Although the environmental rights are not explicitly protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Court of Human Rights has, nevertheless, examined a large number of environmental cases and developed rich jurisprudence in that field. Using the method of interpreting the European Convention as a living instrument, which says that European Convention must be interpreted in present day conditions, the European Court has examined environmental cases through an intensive interpretation of the domain of human rights and fundamental freedoms protected by the European Convention. In this context, the European Court has developed rich judicial practice both in terms of substantive and procedural human rights in the environmental matters. This paper aims to analyze the principles established by the European Court in its practice regarding procedural human rights in environmental matters. In this context, the paper analyzes the right to a fair trial, the right to an effective remedy, the right to freedom of expression, through the most important environmental cases before the European Court. The principles established in these cases should be guidelines to all countries of the Council of Europe when it comes to access to court, the execution of final court decisions, the right to an effective remedy and access to information in environmental matters.

53

Key words: *procedural human rights, environmental rights, right to a healthy environment, European Court of Human Rights.*

¹ Mr. sc., asistentica na Pravnom fakultetu Univerziteta u Zenici.

² This paper is part of a master thesis titled „Right to a clean and healthy environment in the jurisprudence of European Court of Human Rights and European Court of Justice“, which was submitted by Lejla Zilić to the Marmara University, Faculty of Law in July 2018 and published in: Republic of Turkey Council of Higher Education, National Thesis Center.

INTRODUCTION

The European Convention for the Protection of Human Rights and Fundamental Freedoms (Hereinafter: European Convention)³ does not recognize environmental rights.⁴ This is understandable given that the European Convention came into force before opening a debate on environmental issues at the international level.⁵ Nevertheless, since the nineties of the last century, the European Court of Human Rights (Hereinafter: European Court) has begun to examine cases in which individuals argued that environmental factors violated human rights protected by the European Convention. In this way, the European Court indirectly protects the right to a healthy environment.⁶ Regarding to that,

³ European Convention for the Protection of Human Rights and Fundamental Freedoms (opened to signature 4 November 1950, entered into force 3 September 1953) 213 UNTS 222.

⁴ Former United Nation Special Rapporteur on Human Rights and the Environment, John Knox in his Report on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, defines environmental rights as “rights understood to be related to environmental protection”. See more at John H. Knox, *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, United Nation General Assembly, Human Rights Council, 14 December 2012, A/HRC/22/43. Among scholars there is no single consensus as to whether environmental rights fall into human rights. For this discussion see Luis E. Rodriguez-Rivera, Is Human Rights Right to Environment Recognized Under International Law? It Depends on the Source, 12 COLO, *Journal International Environmental Law and Policy* 1, 2001.

⁵ International debate on environmental issues has started at the United Nation Conference on Human Environment in Stockholm at 1972. The main results of this Conference is adoption of the Declaration of the United Nations Conference on the Human Environment, U.N. Doc. A/Conf.48/14/Rev.1 (1973); 11 I.L.M. 1416 (1972) and Action Plan for the Human Environment, A/Conf. 48/14/Rev.1.

⁶ For the purpose of this paper we will use the term “right to a healthy environment”. Literature use different notions for right to environment such as “right to a clean environment” (see O. M. Hanciu, The right to a clean environment. International recognition of a human right to a clean environment by ECHR jurisprudence, *Challenges of the Knowledge Society, Public Law*, 431; M. Fitzmauric/J. Marshall, The Human Rights to a Clean Environment: Phantom or Reality? The European Court of Human Rights and English Courts Perspective on Balancing Rights in Environmental cases, *Nordic Journal of International Law*, 2006.); “right to a safe environment” (see J. W. Nickel, The Human Right to a Safe Environment: Philosophical Perspectives on its Scope and Justification, Volume 18, Issue 1, *Yale Journal of International Law*, 1993); “right to a healthy environment” (see B. Van Dyke, Proposal to Introduce The Right to a Healthy Environment into the European Convention Regime, *Virginia Environmental Law Journal*, 13/1994); “right to a decent environment” (for example P. Cullet, Definition of an environmental right in a human rights context, *Netherlands Quarterly of Human Rights*, 1995); “right to

the question arises as to how environmental factors can affect human rights protected by the European Convention? An analysis of the case law of the European Court in this field shows that there are three ways in which environmental factors affect human rights:

- Human rights can be directly breached or limited due to environmental factors;
- Bad policy in the area of administration, access to justice and participation in the decision-making process can cause violations of procedural human rights;
- Environmental protection can be a legitimate public interest that justifies interference with human rights.

The focus of this paper will be on procedural human rights in environmental cases.⁷ The paper should answer the question of which procedural human rights must be fulfilled in environmental matters - more specifically, which positive obligations the state has towards individuals in the decision-making process in environmental matters; in which cases and in what way the state must provide access to a court in environmental

a secure, healthy and ecologically sound environment” (United Nation Sub Commission on Prevention of Discrimination and Protection of Minorities, May, 1994, Draft Principles on Human Rights and Environment, U.N. Doc. E/CN/Sub.2/1994/56, Annex I (1992). In international scientific discourse there is no unified opinion on the legal nature and the concept of the right to a healthy environment. Professor Alan Boyle believes that the right to a healthy environment does not fall under any of three generations of human rights. He argues that right to a healthy environment can be seen and treated through all three generations of human rights. Further read at A. Boyle, Human Rights and the Environment: A Reassessment, *Fordham Environmental Law Review* 471-511, 1. On the other hand, Professor Dinah Shelton explains the link between the environment and human rights through three approaches - firstly, according to Shelton, a healthy environment is a precondition to the enjoyment of human rights. The second approach is based on international environmental instruments - which formulates a link between human rights and environmental protection largely in procedural terms. The third approach advocates that the right to a healthy environment is a material human right. Further read at D. Shelton, Human Rights and the Environment, Summary of paper of Professor Dinah Shelton, Permanent Council of the Organization of American States, Committee on Juridical and Political Affairs, OAE/Ser.G CP/CAJP-1896/02, 04 April 2002.

⁷ Procedural human rights in environmental matters relate on norms regulating access to justice, access to information, public participation in decision making process, access to remedy and enforcement of court's decision. These rights are contained in most of the international environmental documents among which probably the most important place belongs to Aarhus Convention (Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 28 June 1988, entered into force 3 October 2001) 2161 UNTS 447; 38 ILM 517 (1999).

matters; what are the procedural obligations of the state in cases of loss of life of people due to ecological disasters; which are positive obligations of the state regarding the public debate on environmental problems?

1. Right to a fair trial in the environmental cases

Right to a fair trial represents one of the central human rights in the European Convention, regulated by Article 6 and developed in practice by the European Court.⁸ Article 6 guarantees the right to a fair trial in the determination of individual's civil right and obligations as well as criminal charges against individuals. This Article includes a set of procedural rights in civil and criminal proceedings. Guarantees from paragraph 1⁹ are applicable in both criminal and civil procedures while guarantees from other paragraphs¹⁰ are applicable only in criminal proceedings. In some situations, civil rights and criminal charges may relate to the environment; - in these situations it is necessary to provide to individuals all requirements from right to a fair trial. In the environmental cases, the guarantees that applicants claimed for are the right to access to court and the right to the enforcement of final judicial decisions, which Article 6 does not expressly recognize. However, the case law of the European Court has established a right to access to the court¹¹ and right to enforcement of final judicial decisions¹² as components of the right to a fair trial.¹³ These rights are not

56

⁸ L. Zilić, *Right to a fair trial in criminal proceedings*, Zenica: Annals of Faculty of Law, University of Zenica, 2014, 188.

⁹ Right to a fair trial and right to a public hearing within a reasonable time by an independent, impartial court established by law.

¹⁰ Right to be presumed innocent, right to be informed promptly of the nature and cause of the accusation, right to defense (to have adequate time and facilities for the preparation of the defense, to defend himself in person or through legal aid), right to equality of arms, right to have free assistance of an interpreter if individual cannot understand the official language used in court. These are explicit rights laid down in Article 6. However, in its practice the Court has developed implied rights that fall under provisions of Article 6 such as privilege against self-incrimination, exclusion of illegally obtained evidences, the right to access to court, the right to enforcement of judicial decision.

¹¹ This implied right the Court established in cases like *Golder v United Kingdom*, Application no. 4451/07, Judgment of 21 February 1975; *Hornsby v Greece*, Application no. 18357/91, Judgment of 19 March 1997, § 50; *Kreuz v Poland*, Application no. 28249/95, Judgment of 19 June 2001, § 52; *Lasjek v Slovenia*, Application no. 33946/03, Judgment of 21 July 2009, § 35; *Multiplex v Croatia*, Application no. 58112/00, Judgment of 10 July 2003, § 54.

¹² Right to the enforcement of judicial decisions the European Court clearly explained in the case *Hornsby v Greece*, § 40.

¹³ These rights belongs to the group of implied rights because they are established by the

absolute, therefore, the state can restrict it, but restrictions must not reduce the essence of these rights.¹⁴

As we said above, in order for these rights to be applicable in environmental cases there need to be a civil right or an obligation of criminal change. Accordingly, the Article 6 is applicable in civil rights if there is a “dispute over a right which can be recognized in domestic law and must be genuine and serious.”¹⁵ Besides it, criminal proceedings related to the environment will exist if there is a criminal charge for environmental harm. From other side, the Article 6 is not applicable “where the right invoked by the applicant is merely a procedural right under administrative law which is not related to the defense of any specific right which he or she may have under domestic law.”¹⁶ Therefore, in this part of paper we will only focus on civil rights and obligations and analyze the case law within above mentioned rights.

1.1. Right to an access to the court

In the context of right to an access to the court, we will analyze two cases - *Balmer-Schafroth and Others versus Switzerland*¹⁷ and *Athanassoglou and Others versus Switzerland*.¹⁸ In these cases the applicants complained that Switzerland violated their right to an access to the court, while the European Court, on the other hand, concluded that in these cases Article 6 paragraph 1 is not applicable.

In both decisions the local authorities extended an operating license for nuclear power factors. After this decision, the applicants sent objections to the Federal Council on its decision to refuse an extension of the operating license and to order the immediate and permanent closure of the nuclear power station. However, Federal Department of Transport, Communications and Energy rejected these objections as being without basis. After unsuccessful proceeding in Switzerland, applicants submitted an application to the European Court claiming that their physical integrity was injured with these decisions and that Switzerland violated their right to an access to the court.

European Court case law.

¹⁴ For example see *Sotiris and Nikos Koutras ATTEE v Greece*, Application no. 39442/98, Judgment of 16 November 2000, § 15.

¹⁵ *Balmer and Others v Switzerland*, § 32.

¹⁶ Manual on Human Rights and Environment, 97.

¹⁷ *Balmer-Schafroth and Others v Switzerland*, Application no. 22110/93, Judgment of 28 August 1997.

¹⁸ *Athanassoglou and Others v Switzerland*, Application no. 27644/ 95, Judgment of 6 April 2000.

Here the European Court has applied the approach we explained in the beginning – Article 6 is only applicable if there is serious and genuine dispute and dispute needs to be over the recognized right in the domestic law. Taking into account the facts of the cases, it is important to point out that applicants did not claim they have suffered any loss, economic or other, for which they intended to seek compensation. They only claimed the operating conditions of the power station. Following that, the European Court concluded that “they did not for all that establish a direct link between the operating conditions of the power station which were contested by them and their right for protection of their physical integrity.”¹⁹ However, seven judges did not agree with the majority²⁰ and in their dissenting opinion they found, in the lights of the European Court’s case-law,²¹ that Article 6 was applicable.²²

These cases show that Article 6 is only applicable in the cases of a serious, specific and imminent environmental risks if there is a sufficiently direct link between the environmental matters and civil right or obligation invoked. From another perspective, the dissenting opinion analyzed above shows that even judges don’t have common opinion on such environmental problems. Maybe in the near future we can expect different decision on these environmental issues.

1.2. Right to the enforcement of final courts’ decisions

According to the European Court’s case law, the right to the enforcement of final courts’ decision is one of the provisions guaranteed under the fair

¹⁹ *Balmer-Schafroth and Others v Switzerland*, § 40.

²⁰ Here is interesting to mention that before the European Court the Commission has decided, by sixteen to twelve, that there has been violation of Article 6.

²¹ For example see *Klass and Others v Germany*, Application no. 5029/71, Judgment of 6 September 1978; *Bentham v the Netherlands*, Application no. 8848/08, Judgment of 23 October 1985; *Bodén v Sweden*, Application no. 10930/84, Judgment of 27 October 1987, *Zander v Sweden*, Application no. 14282/88, Judgment of 25 November 1993; *Fayed v the United Kingdom*, Application no. 17101/90, Judgment of 21 September 1994.

²² According to their opinions, the Article 6 is applicable even if an applicant does not prove at the outset that a risk exist, thus “it suffices if the dispute is genuine and serious and there is a likelihood of risk and damage. It may suffice for finding a violation that there is proof of a link and of the potential danger.” Besides that, in the dissenting opinion the judges emphasized the importance of international law towards protecting persons and heritage such as the European Union and Council of Europe instruments of the environment, the Rio agreements, UNESCO instruments, the development of the precautionary principle and the principle of conservation of the common heritage. See *Balmer-Schafroth and Others v Switzerland*, Dissenting Opinion of Judge Pettiti, Joined by Judges Gölcüklü, Walsh, Russo, Valticos, Lopes Rocha and Jambrek.

trial, precisely an integral part of right to access to the court. Without right to enforcement of final courts' decision the right to a fair trial would lose any sense. One of the most remarkable cases related to this right is case *Okay versus Turkey*²³ in which Turkish authorities failure to implement the domestic courts' decisions to shut down three thermal power plants that were polluting the environment in the province of Muğla, in south-west Turkey.

This case was brought by lawyers who lived in Izmir, 250 km from these power plants. Firstly, they claimed to the Ministries of Health, of the Environment and of Energy and Natural Resources (TEAŞ) and the Muğla provincial governor, that these power plants have jeopardized public health and the environment. The administrative authorities did not reply to the applicants, which according to the Turkish administrative procedure law means the refusal of the request. After that, the administrative court has hired experts in forestry and environment to examine the impact of power plants on environment. The experts concluded that the plants have emitted nitrogen dioxide and sulfur dioxide over the permitted level. The Administrative Court noted that the plants had already caused pollution that was harmful to human health and the environment and that their continued operation could cause irreparable harm to the public. Accordingly, the administrative court decided to suspend power plants' operation. Despite these decisions, the Council of Ministers decided that the thermal power plant should continue to work because the opposite decision would jeopardize the economy of the region and reduce employment. Also, the applicants had filed criminal complaints with the offices of the Ankara Chief Public Prosecutor but Prosecutor issued a decision not to prosecute them.

The applicants have claimed that their right to a fair hearing had been breached on account of the national authorities' failure to implement the administrative courts' judgments. They argued that they had not been personally affected but that they were concerned about their country's environmental problems and wished to live in a healthy environment. On the other hand, Turkey as respondent, has argued that there was no connection between the impugned power plants' conditions of operation and the alleged infringement of the applicants' civil rights.

In assessment, the European Court has examined three questions:

- Whether the Article 6 is applicable in this case?

As we observed above, in order for Article 6 paragraph 1 to be applicable in this case, there must be a dispute over a civil right which is recognized under national law. Of course, the dispute must be serious and genuine, and it must relate not only to the actual existence of a right but

²³ *Okay v Turkey*, Application no. 36220/97, Judgment of 12 July 2005.

also to its scope and the manner of its exercise.²⁴ Taking into account above mentioned conditions, the European Court in paragraph 65 of this case has noted that applicants “relied on their constitutional right to live in a healthy and balanced environment. Such a right is recognized in the Turkish law, as is clear from the provisions of Article 56 of the Constitution and has been acknowledged by the decisions of the administrative courts.”²⁵

According to this finding, we can conclude that Article 6 paragraph 1 is applicable in situations when domestic law guarantees right to live in a healthy, clean and balanced environment, or in other words when domestic law guarantees some kind of protection against damage to the environment caused by different types of harmful activities.

Second question that European court has examined in this case is:

- Whether the right in issue was a civil right?

The answer to this question was “yes”. The European Court firstly took into account the fact that environmental pollution and the risk for public health were established by the administrative court on the basis of an expert report. In addition, the European Court took into account the right to protection of their physical integrity, despite the fact that the risk was not serious, specific and imminent. Accordingly, it was concluded that “the outcome of the proceedings before the administrative courts, taken as a whole, may be considered to relate to the applicants’ civil rights.”²⁶

After these findings, The European Court only had to examine

- Whether Turkey has violated the Article 6?

The answer on this question was, of course, “yes.” Why? Firstly, because the administrative authorities failed to comply with the decision of the administrative court within the prescribed time limits. Afterwards, because the Council of Ministers made the opposite decision and decided that power plants should continue to work. Furthermore, in common with the above mentioned arguments the European Court also pointed out that non-enforcement of the administrative courts’ decisions is incompatible with principles such as rule of law, law-based State and principle of legal certainty.

The conclusion that can be drawn from this judgment is the fact that even the Council of Ministers does not have the right to abolish the courts’ decision, thus the non-enforcement of the final courts’ decision is not compatible with the guarantees of Article 6 or with the rule of law.

²⁴ These standards the Court set out in previous analyzed decisions *Balmer - Schafroth and Others v Switzerland* and *Athanassoglou and Others v Switzerland*.

²⁵ *Okay v Turkey*, § 65.

²⁶ *Okay v Turkey*, § 66.

In the context of right to access to the court; it is important to mention that environmental associations also enjoy the right to an access to the court. In its judgment *Gorraiz Lizarraga and others versus Spain*²⁷ the court pointed out that environmental organizations, which are part of proceedings in domestic law have the right to an access to a court if they are to defend the economic interest of their members.

2. Public participation in decision making process

Public participation in the environmental decision-making process allows citizens to express their opinion on decisions concerning the environment. Participation of the public in the decision-making process is an expression of democracy. The European Court considered the matter of public participation in decision making process in several judgments²⁸ and generally concluded that state has positive obligation to ensure the participation of the public in the decision making process related to the environment.

The European Court has, in more detail, elaborated this issue in case *Hatton and Others versus United Kingdom*²⁹ pointing out that “governmental decision-making process concerning complex issues of environmental and economic policy such as in the present case must necessarily involve appropriate investigations and studies in order to allow them to strike a fair balance between the various conflicting interests at stake.”³⁰

61

Therefore, the conclusion from *Hatton* case and similar cases can be drawn as following:

1. Before making a decision in environmental matters the state has a positive obligation to involve appropriate investigations and studies to predict and evaluate in advance the risks.³¹
2. The state has a positive duty to enable the public to participate in the decision-making process, in other words to enable the public to express their opinion and attitude.³²

²⁷ *Gorraiz Lizarraga and others versus Spain*, Application no. 62543/00, Judgment of 27 April 2004.

²⁸ For example see *Giacomelli v Italy*, Application no. 59909/00, Judgment of 2 November 2006; *Lemke v Turkey*, Application no. 17381/02, Judgment of 5 June 2007; *Taskin v Turkey*, Application no. 46117/99, Judgment of 10 November 2011; *Tatar v Romania*, Application no. 67021/01, Judgment of 27 January 2009; *McMichael v the United Kingdom*, Application no. 16424/90, Judgment of 24 February 1995.

²⁹ *Hatton and others v United Kingdom*, Application no. 36022/97, Judgment of 8 July 2003.

³⁰ *Hatton v United Kingdom*, § 128.

³¹ *Hatton v United Kingdom*, § 128, *Taskin v Turkey*, § 119.

³² *Lemke v Turkey*, § 41.

3. Right to an effective remedy in the environmental cases

The state has a duty to provide an effective remedy when an individual has an arguable claim to a violation of some human right from the European Convention. Thus, Article 13 aims to provide “a means whereby individuals can obtain appropriate relief at national level for violations of their Convention rights before having to set in motion the international machinery of complaint before the Court.”³³ Further, the state has a wide margin of appreciation in determining how to organize the national legal system and provide legal remedies; on the other hand, the state should follow certain principles of the right to an effective remedy raised in European Court’s case law.³⁴

In environmental cases with deadly consequences, such as *Oneryildiz versus Turkey*,³⁵ the states have a duty to carry out an investigation into the cause of the loss of life. This is because without such an investigation, the individual concerned may not be in a position to use any remedy available to him for obtaining relief. Furthermore, in those cases the state has a duty to provide mechanism for establishing the responsibility of the domestic authorities for environmental damages and of course, the families of victims must receive certain compensation for the loss of one of their family members.³⁶ It is also important to emphasize that it does not guarantee the applicants the right to secure the prosecution and conviction of those responsible.

4. Freedom of expression in the environmental cases

According to the established jurisprudence of the European Court, freedom of expression is the fundamental basis of a democratic society and one of the basic conditions for its progress. Freedom of expression constitutes one of the essential foundations of a democratic society,³⁷ therefore, it is guarantee of all other human rights and freedoms.³⁸ Freedom

³³ *Oneryildiz v Turkey*, § 189.

³⁴ For example see *Klass and Others v Germany*, Application no.5029/71, Judgment of 6 September 1978, § 64.

³⁵ *Öneryıldız v Turkey*, Application no. 98939/99, Judgement of 30 November 2004.

³⁶ See *Budayeva and Others v Russia*, Applications no. [15339/02](#), [21166/02](#), [20058/02](#), [11673/02](#) and [15343/02](#), Judgment of 29 September 2008.

³⁷ *Hertel v Switzerland*, Application no. 25181/94, Judgment of 25 August 1998, § 46.

³⁸ M. Macovei, Freedom of expression: A guide to the implementation of article 10 of the European Convention on Human Rights, *Council of Europe*, 2004, 10.

of expression includes freedom to hold opinions,³⁹ freedom to receive information,⁴⁰ freedom to impart information,⁴¹ freedom of press, radio and television broadcasting.⁴² The restriction of freedom of expression is permitted only if interference is prescribed by the law, pursues in a legitimate aim and is necessary in a democratic society. The case law that we will analyze in this part of the paper is related to the right of individuals to receive information on the environment.

4.1. Freedom to receive information on the environment

Individuals have right to receive information on environmental matters, but does that mean that state has a positive obligation to collect and disseminate information on environmental matters? This question the Court has examined in the case of *Guerra versus Italy*.⁴³ The applicants, who have lived near a chemical factory which was harmful to the environment, claimed that Italy violated his freedom of expression because of public authorities' failure to take steps to ensure that the public were informed of the risks and of what was to be done in the event of an accident connected with the factory's operation. In this case the Commission and the European Court had a different opinion about positive obligation of the state to inform the public about possible different hazards of the factory. Therefore, the Commission stated that "Article 10 imposed on States not just a duty to make available information to the public on environmental matters (...) but also a positive obligation to collect, process and disseminate such information, which by its nature could not otherwise come to the knowledge of the public."⁴⁴

63

On the other hand, the European Court pointed out that the public has a right to receive information in cases concerning restrictions on freedom of the press on matters of public interest. However, the European Court had opinion that the facts of this case are not similar with cases concerning the

³⁹ *Vogt v Germany*, Application no. 17851/91, Judgment of 11 March 1994.

⁴⁰ For example see *Leander v Sweden*, Application no. 9248/81, Judgment of 11 July 1987.

⁴¹ For example read *Müller and Others v Switzerland*, Application no. 10737/84, Judgment of 24 May 1988; *Casado Coca v Spain*, Application no. 15450/89, Judgment of 24 February 1994; *Markt Intern Verlag GmbH and Klaus Beermann v Germany*, Application no. 10572/83, Judgment of 20 November 1989.

⁴² *Autronic AG v Switzerland*, Application no. 12726/87, Judgment of 22 May 1990.

⁴³ *Guerra v Italy*, Application no. 14967/89, Judgment of 19 February 1998.

⁴⁴ *Guerra v Italy*, § 52.

freedom of the press. Accordingly, it has concluded that freedom to receive information on environmental matters “basically prohibits a government from restricting a person from receiving information that others wish or may be willing to impart to him.”⁴⁵ That freedom cannot be construed as imposing on a State, in circumstances such as those of the present case, positive obligations to collect and disseminate information of its own motion.”⁴⁶ Consequently, the European Court found that Article 10 is not applicable in this case.

4.2. Freedom to receive and impart information on environmental matters – rights of environmental groups and activists

Furthermore, the environmental cases within the freedom of expression are mostly related to the freedom of expression of various environmental groups or animal protection groups. Thus, environmental groups or activists usually want to distribute information about environmental problems, or want to draw attention to a sensitive environmental issue.

The issue of the freedom of expression of the environmental groups can be analyzed from the point view of the case *Verein gegen Tierfabriken Schweiz (VgT) versus Switzerland*⁴⁷ in which the animal protection group made television advertisement about pig meat industry. In their advertisement they noted that the animals were pumped full of medicines and were raised in inhumane conditions. The message of the advertisement was “*Eat less meat, for the sake of your health, the animals and the environment!*” National authorities refused to register this advertisement saying the advertisement was too political. The applicants began a legal battle that, on a national level, ended in Federal court which in return dismissed the applicant’s claim arguing that the advertisement was incompatible with the Federal Radio and Television Act because of its political nature.

On the other hand, the European Court had a different opinion. Firstly, the European Court found that the refusal of permission for an advertisement was in accordance with the law and in accordance with legitimate aim. However, it considered the applicants had only participated in a public debate about meat industry. Therefore, the advertisement did not represent the personal interest of the applicants but opened a debate in the public interests. Accordingly, the European Court considered these measures as disproportionate.

⁴⁵ *Guerra v Italy*, § 53.

⁴⁶ *Guerra v Italy*, § 53.

⁴⁷ *Verein gegen Tierfabriken Schweiz (VgT) v Switzerland*, Application no. 32772/02, Judgment of 30 June 2009.

Another case in which environmental activists wanted to express their opinion and encourage a public debate about a very important environmental and health issue is the case of *Steel and Morris versus United Kingdom*,⁴⁸ or in the United Kingdom known as the “*McLibel case*.” The applicants were associated with London Greenpeace⁴⁹ which led anti-campaign against Mc Donald’s called “*What’s wrong with McDonald’s?*” The campaign has distributed pamphlets alleging Mc Donald’s is harmful to the environment and health because it destroys rainforests to raise cattle which contributes to the fact of causing cancer and heart disease.⁵⁰ Of course, Mc Donald’s sued activists alleging that pamphlets were defamatory. The trial, which was the longest trial in English legal history, ended with a verdict in favor of Mc Donald’s and awarded £ 60,000 to the company.

Mrs. Steel and Mr. Morris appealed this decision, but the Court of Appeal also ruled in favor of Mc Donald’s, but this time with a reduced amount of compensation - £ 40,000. An interesting fact is that Steel and Morris have argued that multinational corporations should no longer be able to sue for a violation over public interest issues. However, Court of Appeal rejected this argument arguing it was matter of Parliament. The whole legal battle got epilogue on the European Court. Mrs. Steel and Mr. Morris considered the United Kingdom guilty for violating their right to a fair trial and their freedom of expression. In addition, they claimed there had been a violation of Article 6, precisely a violation of the equality of arms because United Kingdom did not provide legal aid for applicants during the hearings.

Consequently, the applicants considered that there was a violation of the freedom of expression without legal aid; they bore the burden of proving the truth of the matters set out in the pamphlets. The activists argued it was contrary to the interests of democracy and plurality to require strict proof of every allegation in the Pamphlets. The European Court undoubtedly concluded the interference was prescribed by law and pursued the legitimate aim of “protection of the reputation or rights of others.” The main question for the European Court was whether the interference was “necessary in a democratic society.” Firstly, it pointed out that environment and public

⁴⁸ *Steel and Morris v United Kingdom*, Application no. 68416/01, Judgment of 15 February 2005.

⁴⁹ It was environmental group in London existed between 1972 and 2001

⁵⁰ Regarding to the environment on distributed leaflets was written: „McDonald’s are the world’s largest user of beef. Methane emitted by cattle reared for the beef industry is a major contributor to the ‘global warming’ crisis. Modern intensive agriculture is based on the heavy use of chemicals which are damaging to the environment. Every year McDonald’s use thousands of tons of unnecessary packaging, most of which ends up littering our streets or polluting the land buried in landfill sites.“

health are issues of public importance. Furthermore, the European Court considered that “even small and informal campaign groups (...) must be able to contribute to the public debate by disseminating information and ideas on matters of general public interest such as health and the environment.”⁵¹

On the other hand, although the plaintiff in the national proceeding was a large multinational company it does not mean that the state should deny the right to defense to the plaintiff in case of libel. Taking into account the fact that United Kingdom has provided such a remedy to Mc Donald’s, in order to achieve the principle of fairness and equality of parties in the proceedings, the state should have provided the legal aid to the defendant as well. Consequently, procedural unfairness and disproportionate award of damages caused a violation of the freedom of speech.

According to this, the message that can be drawn from this judgment is a conclusion that freedom of expression requires procedural fairness and equality of arms especially in cases of litigation between multinational companies and individuals.

CONCLUSION

66 The rich jurisprudence in the field of environmental issues is proof that environmental rights are gaining in importance in the Member States of the Council of Europe. The analysis of judicial practice in procedural human rights points to several conclusions -

1. In many environmental cases, neither the judges have a common opinion - for example, in the *Balmer* case, twelve judges had the same opinion that “Article 6 is only applicable in cases of serious, specific and imminent environmental risks, if there is a sufficiently direct link between the environmental issues and the civil law or obligation.” However, seven judges had a different opinion from them, considering that “Article 6 should be applicable, and the applicant does not need to prove at the beginning that a risk exists or what its consequences are; it suffices if the dispute is genuine and serious and there is a likelihood of risk and damage. It may be sufficient to find a violation that there is a link of a potential danger.” The interesting fact in this case is that before the European Court the Commission has decided, by sixteen to twelve, that there has been violation of Article 6.

2. Regarding to environmental cases with deadly consequences, the practice emphasized that states have procedural obligations:

- to carry out an investigation into the cause of the loss of life;
- to determine whether the public authority is responsible for

⁵¹ *Steel and Morris v United Kingdom*, § 89.

environmental damage;

- In the event of responsibility of a public authority, the state must provide compensation to individuals for material and human losses.

3. In regards to all the environmental cases analyzed in the context of freedom of expression, we can conclude that the European Court puts a large emphasis on the environment and health. It has established that environmental matters are issues of significant public interest and, according to that, measures interfering the right to receive and impart information on environmental matters must be prescribed by law and follow a legitimate aim. Finally, in the democratic and pluralistic society the state needs to ensure public debate and discussion about environmental problems, but this duty does not mean that the state needs to collect information and distribute it to the public.

PROCEDURALNA LJUDSKA PRAVA U OKOLIŠNIM SLUČAJEVIMA - PRINCIPI USPOSTAVLJENI U PRAKSI EVROPSKOG SUDA ZA LJUDSKA PRAVA

SAŽETAK

Iako pravo na zdravu životnu sredinu nije eksplicitno zaštićeno Evropskom konvencijom za zaštitu ljudskih prava i osnovnih sloboda, Evropski sud za ljudska prava je ipak donio niz presuda u vezi sa životnom sredinom i razvio bogatu sudsku praksu u toj oblasti. Koristeći metod tumačenja Konvencije kao živog instrumenta, koji kaže da se Evropska konvencija mora tumačiti u današnjim uslovima, Evropski sud je razmatrao slučajeve zaštite životne sredine kroz ekstenzivno tumačenje domena ljudskih prava i osnovnih sloboda zaštićenih Evropskom konvencijom. U tom kontekstu, sud je razvio bogatu sudsku praksu u oblasti materijalnih i proceduralnih ljudskih prava i pitanja okoliša. Ovaj rad ima za cilj da analizira principe koje je sud ustanovio u svojoj praksi u pogledu proceduralnih ljudskih prava u pitanjima zaštite životne sredine. U ovom kontekstu, u radu se analizira pravo na pravično suđenje, pravo na efikasan pravni lijek i pravo na slobodu izražavanja kroz najvažnije predmete zaštite okoliša pred sudom. Principi uspostavljeni u ovim slučajevima trebali bi biti smjernice za sve zemlje Vijeća Evrope kada je u pitanju pristup sudu, izvršenje konačnih sudskih odluka, pravo na djelotvoran pravni lijek i prvi pristup informacijama u pitanjima okoliša.

Ključne riječi: proceduralna ljudska prava, okolišna prava, pravo na zdrav okoliš, Evropski sud za ljudska prava