

CLIMATE CHANGE FROM THE PERSPECTIVE OF THE EUROPEAN COURT OF HUMAN RIGHTS

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ABSTRACT

Is it possible to address one of the most serious dangers of the modern world, climate emergency, before the European Court of Human Rights? Although climate change can potentially impair many of the rights recognized by the European Convention on Human Rights, there has not yet been any judgment on this issue from the ECtHR. This article explores the opportunities to use ECHR human rights law to reduce climate change's effects. It discusses the relevance of the human rights framework in the subject matter illustrated with case law from the European Court of Human Rights. The paper's main goal is to establish and explain the explicit link between climate change and human rights in relation to the corresponding obligations of governments according to the standards of the ECtHR jurisprudence.

Keywords: climate change, human rights, European Convention on Human Rights

JEL: O40

DOI: 10.5937/intrev2204125M

UDC: 341.231.14(4)

341.645.5(4)

551.583:341.2

COBISS.SR-ID 83806985

INTRODUCTION

In a desire to improve the quality of life, man has selfishly and carelessly exploited natural resources disturbing the natural balance by creating a number of issues that now endanger that same quality of life for humans [1]. In developed, industrial countries, there is 1.2kg waste per capita [2]. Climate change poses one of the most significant threats to human survival [3]. Literature states that regional human rights systems may present the most adequate forum for individuals to confront states that fail to fulfil the obligation to prevent the foreseeable negative effects of climate change and ensure that people affected by it have access to effective remedies [4]. In the context of this statement, the research question can be defined as follows: *Is it possible to address the climate emergency through the framework of the human rights standards established by the European Convention on Human Rights (ECHR)?* Even though the aim of the ECHR was not to offer protection against the risk climate change poses to human rights, it is a “living instrument” that must be interpreted in accordance with the present-day condition [5].

The European Court of Human Rights (ECtHR) has not yet given any judgment in climate change cases. Therefore, the paper will focus on identifying possible ways to address these issues by providing an analysis of the procedural and substantive aspects of the ECHR as well as of the jurisprudence of the ECtHR. The first section will discuss the procedural aspects to identify whether applicants in climate change cases are likely to fulfil the admissibility criterion outlined in Article 34. The following part will discuss whether a substantive aspect of the ECHR is applicable to the risks arising from climate change and identify relevant articles of the ECHR in this matter. In addition, the authors will examine the pending cases before the ECtHR related to climate change.

The main goal of the paper is to establish and explain the explicit link between climate change and human rights in relation to the corresponding obligations of governments according to the standards of the ECtHR jurisprudence.

PROCEDURAL REQUIREMENTS: *IUS STANDI*

The applicants must meet the "victim" criteria under Article 34 of the ECHR to have access to the ECtHR. The victim requirement of Article 34 states that there is no room for *actio popularis* and that anyone, including NGOs and groups of people, may submit a claim. However, the applicant must be personally affected by an alleged breach of the ECHR rights or, as a potential victim, must be under a serious and imminent risk of being directly affected [6]. Since most climate damages at this moment remain to materialize, it seems that claims may be submitted mostly by future or potential victims, which, according to the case law of the ECtHR, are accepted only in highly exceptional circumstances. In light of this fact, it is quite challenging to frame climate change issues in terms of victim requirements as well as the jurisdiction or control over persons or territories required by the ECtHR case law. On the contrary, the lack of time to prevent irreversible and dangerous climate change might justify complaints from potential or future victims, which could be determined by the ECtHR on a case-to-case basis, considering the availability of effective domestic remedies and the vulnerability of the applicant in question to climate change [7].

SUBSTANTIVE ASPECT OF THE ECHR

The enjoyment of human rights can be considered a milestone in the development of regional standards concerning environmental protection [8]. Even though the human rights approach to climate change has not been explicitly included in the ECHR, the link between ECHR rights and the environment has been recognized by the ECtHR and it may be expanded to the violation of rights related to climate change risks [9]. ECtHR has found that a number of rights may be implicated in the context of environmental degradation (Table 1).

Table 1: Examples of the relations between environmental degradation or risks and ECHR rights according to the jurisprudence of the ECtHR (Factsheet Environment and the ECHR 2022.)[29]

Article of the ECHR	Environmental degradation/risk	Judgement of the ECtHR
Article 2 of the ECHR – Right to life	Dangerous industrial activities	Öneryıldız v. Turkey [10]
	Exposure to nuclear radiation	L.C.B. v. the United Kingdom [11]
	Natural disasters	Budayeva and Others v. Russia [12]
Article 3 of the ECHR – Prohibition of inhuman or degrading treatment	Passive smoking in detention	Florea v. Romania [13]
Article 8 of the ECHR – Right to respect for private and family life and home	Environmental risks and access to information	Brincat and Others v. Malta [14]
	Industrial pollution	Cordella and Others v. Italy [15]
	Noise pollution	Moreno Gómez v. Spain [16]
	Soil and water contamination	Dzemyuk V. Ukraine [17]
Article 10 of the ECHR – Freedom of expression	Access to information of public interest on the environmental and health impact	Rovshan Hajiye v. Azerbaijan [18]
Article 1 of Protocol No. 1 to the ECHR – Protection of property	Land restrictions imposed for environmental reasons	Anonymos Touristiki Etairia Xenodocheia Kritis v. Greece [19]

The ECtHR has decided most environmental cases under Article 2 and Article 8 of the ECHR. In accordance with Article 2 as well as with Article 8, states have positive obligations to protect against threats to life and limb. This means that protection must be provided against ECHR violations that the state "knew or ought to have known," i.e. risks of which it had actual or hypothetical knowledge [20]. The doctrine of positive obligations in connection to the environment and climate change implies that states might be responsible for environmental disasters that are not the result of state action. In assuming awareness of a risk of environmental harm, the ECtHR relies on information that are available to the authorities, including government studies and scientific data [21].

In light of the previous facts, positive obligations in accordance with Article 2 of the ECHR are particularly relevant in climate change cases. The authorities have a duty to prevent the manifestation of foreseeable risk to life by creating a legal and administrative framework to provide effective protection, which implies that states may be held responsible for negligence in how they address risks [22]. This implies that any non-compliance with the Paris Agreement targets or omissions of the states to establish an adequate legal framework in this term means ignoring the harm that climate change has been proven to cause. In addition, if losing a life would be involved as the result, it seems that it could be claimed that there is a breach of a positive obligation of the State under Article 2 of the ECHR.

According to the jurisprudence of the ECtHR, the right to respect for private and family life under Article 8 of the ECHR can be violated by failing to appropriately protect people from the negative effects brought by natural disasters and environmental pollution and as well as by the failure of the states to inform public about environmental degradation [23]. Even though most environmental cases are referring to Article 8 of the ECHR, they are primarily relating to circumstances in which environmental issues have already interfered with rights recognized by Article 8. Only in a few cases, the ECtHR concluded that states have a duty to take measures against potential environmental threats in accordance with Article 8, which is of crucial importance for climate change issues. Therefore, the applicants in pending climate change cases invoke Article 2 as well as Article 8 of ECHR.

CLIMATE CHANGE CASES BEFORE THE ECtHR

It was only a matter of time before climate change litigation reached the ECtHR after the Urgenda case was filed in the Netherlands, followed by cases involving the same issue before the Human Rights Committee and before the Committee for the Rights of the Child [24]. The first three climate cases are pending before the ECtHR. These applications allege several violations of the ECHR in relation to the allegedly insufficient emissions reduction measures made by states [25].

The first application was brought in September 2020, when six young people from Portugal complained to the ECtHR, claiming that the 33 respondent states had collectively violated their rights to life, privacy, and protection from discrimination by failing to implement emissions reductions consistent with the Paris Agreement's 1.5°C target [26]. The applicants claim that the annual forest fires which have occurred in Portugal since 2017 are a direct consequence of global warming. They claim that there is a health danger associated with these fires and that this has already resulted in allergies and respiratory issues that are increased by the hot weather. In order to prevent the climate crisis and protect their rights, applicants are requesting that the ECtHR order respondent states to take more immediate action [27].

In the second case, the applicants are a group of elderly women who claim that they have health problems related to heatwaves as the result of the fact that the Swiss government failed to establish an adequate climate target in order to limit global warming. The applicants claim that the respondent state did not act in accordance with the positive obligation standards under Article 2 of the ECHR and Article 8 of the ECHR (*Verein Klima Seniorinnen Schweiz and others v. Switzerland*, pending case).

In *Carême v. France* case, ECtHR is considering the application submitted by former mayor of the municipality of Grande-Synthe, who claims that the respondent state did not take adequate measures to prevent climate change and that this failure constitutes a breach of Article 2 of the ECHR and Article 8 of the ECHR [28].

Each of these cases has the potential to result in a precedent-setting decision that directs the ECtHR future case law on climate change.

CONCLUSION

The first three climate cases before the ECtHR raise a variety of significant and complex challenges, mostly regarding the admissibility criteria and substantive rights of the ECHR. With respect to the victim status, the authors support the doctrine thesis that it should be determined by the ECtHR on a case-to-case basis, considering the availability of effective domestic remedies and the vulnerability of the applicant in question. In addition, climate change cases could present the ground for the wider interpretation of Article 34 referring to certain aspects of *actio popularis*. From the substantive aspect of the ECHR, this

international human rights treaty could respond to the climate change risks in the context of human rights protection in accordance with the positive obligation of the states under Article 2 of the ECHR (the right to life) and Article 8 of the ECHR (the right to respect for private and family life). Furthermore, even if the ECtHR found violations of the ECHR in the pending climate change cases, the question regarding the appropriate remedies would still present a significant challenge that would determine the future role of the ECtHR with respect to the climate emergency.

After all, the human rights arena is maybe not the right place for every environmental battle.

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Article history:

Received 13 November 2022

Accepted 14 December 2022