

## *The Right to a Healthy Environment through the Lenses and Practice of the ECtHR*

### International judicial or quasi judicial fora dealing with environmental issues (human rights bodies admitting claims referring to the right to a healthy environment in italics)

- International Court of Justice
- International Tribunal for the Law of the Sea
- International Criminal Court [art. 8, para 2., point b) iv)]
- European Court of Justice
- African Court of Justice
- arbitrary bodies (investment courts, as well)
- WTO dispute settlement – Appellate Body
- *European Court of Human Rights*
- *Inter-American Court of Human Rights*
- *African Court on Human and Peoples' Rights* – pending: *African Court of Justice and Human Rights* (protocol not in force)

### Right to a healthy environment

- *history* (1972 Stockholm, 1992 Rio, explicitly: 1981 African Charter, 1988 San Salvador Protocol); constitutional recognition: >90 states (incl. Hungary but Italy: state aim), implicitly: 1996 – ICESCR, 1979 – women's rights convention, 1989 – rights of the child convention
- *substantive aspects*
- *procedural aspects* – 1998 Aarhus Convention

### Four appearance forms

1. traditional human right
2. state aim and objective
3. auxiliary rights – part of other explicitly mentioned rights
4. postulates, general requirement – paralegal or non-legal (interests of the future generations)

### Margin of appreciation

- state discretion, interpretation domain is wide

*Pine Valley v. Ireland*, judgment: The Court held that there had been *no violation of Article 1 of Protocol No. 1* to the Convention, finding that the annulment of the building permission could not be considered disproportionate to the legitimate aim of preservation of the environment.

### The Strasbourg practice

- more than 60 cases with environmental aspects in the docket (cca. 15 cases with 'no violation' decisions)
- progressive interpretation; auxiliary right (segment, environmental elements being part of explicitly recognized traditional rights)
- 5 rights are frequently invoked:

#### **Right to life (Article 2 of the Convention)**

- *Dangerous industrial activities* (Öneryıldız v. Turkey)
- *Natural disasters* (Budayeva and Others v. Russia)

#### **Prohibition of inhuman or degrading treatment (Article 3 of the Convention)**

- *Passive smoking in detention* (Florea v. Romania, Elefteriadis v. Romania)

#### **Right to a fair trial (Article 6 of the Convention)**

- *Access to court* (L'Erablière asbl v. Belgium, Howald Moor and Others v. Switzerland)
- *Failure to enforce final judicial decisions* (Apanasewicz v. Poland)

#### **Right to respect for private and family life and home (Article 8 of the Convention)**

- *Industrial pollution* (López Ostra v. Spain Fadeyeva v. Russia, Tătar v. Romania)
- *Environmental risks and access to information* (Guerra and Others v. Italy)
- *Road traffic noise* (Deés v. Hungary)

#### **Protection of property (Article 1 of Protocol No. 1 to the Convention)**

- *ownership of a plot of land* (Papastavrou and Others v. Greece, N.A. and Others v. Turkey, Turgut and Others v. Turkey)