

# **Judgments on the relationship property/environment pronounced by the European Court on Human Rights**

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## **Article 1 of Protocol 1 to the ECHR**

**Every natural or legal person is entitled to the peaceful enjoyment of his possession. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.**

**The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.**

### **Article 8 of the ECHR**

**1. Everyone has the right to respect for his private and family life, his home and his correspondence.**

**2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.**

## **1. History**

In the preliminary negotiations on the ECHR no agreement was reached concerning the protection of property rights. Therefore the ECHR was ratified in 1950 without such guarantee. It was only two years later that the right to property was laid down in Protocol 1 to the ECHR.

## **2. Importance of environment protection**

In a number of cases the ECourtHR (the Court) has stressed the importance of the protection of the environment (see, among many other authorities, Taşkın and Others v. Turkey, no. 46117/99, ECHR 2004-X; Moreno Gómez v. Spain, no. 4143/02, ECHR 2004-X; Fadeyeva v. Russia, no. 55723/00, ECHR 2005-IV).

## **3. Deprivation**

The Court therefore accepts that applicants can be legally deprived of their property “in the public interest”, namely to protect public health and the environment (see Lazaridi v. Greece, no. 31282/04, § 34, 13 July 2006). Such deprivation of property pursues a legitimate aim.

At the same time the Court has held that a deprivation of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference, and that a total lack of compensation can be considered justifiable under Article 1 of Protocol No. 1 only in exceptional circumstances (see N.A. and Others v. Turkey, no. 37451/97, § 41, ECHR 2005-X; Nastou v. Greece (no. 2), no. 16163/02, § 33, 15 July 2005; Jahn and Others v. Germany [GC], nos. 46720/99, 72203/01 and 72552/01, § 111, ECHR 2005-VI).

In some “environmental” cases, the Court concluded that because of a lack of compensation the applicants have been victims of an unlawful expropriation (Papastavrou, Yildirim) or a violation of Art. 14 ECHR (equal treatment), taken together with Art. 1 of Protocol 1 (Pine Valley).

#### **4. Restrictions of use**

Generally speaking the Court gives Member States a large margin of discretion or appreciation concerning restrictions of the use of property. Such restrictions must generally not be compensated. The broad margin of discretion concerning restrictions and (non)compensation is even broader when the Member States measures intend the protection of the environment. So far, the Court has declared no general national environmental protection measure restricting the use of the environment to be violating Art. 1 Protocol 1.

#### **5. Property protecting the Environment**

On the other hand, property owners have so far also been regularly unsuccessful trying to establish a violation of their property rights in the case of negative environmental impacts (noise, destruction of scenic beauty) caused by private or state activities. Only in exceptionally dramatic (Öneryildiz), ethical (Herrmann – Hunting) or rather classical expropriation (Turgut) cases the Court found a violation of the Protocol. The success-rate has insofar hardly been higher (Lopez Ostra) concerning a violation of Art. 8 ECHR.

#### **6. Main Court decisions:**

##### **Powell and Rayner v. United Kingdom, 9310/81, judgment of 21 February 1990**

The applicants lived in the vicinity of Heathrow airport. They complained of excessive noise. The Court found that the operating of the airport was necessary for the economic well-being of the UK. Their property had not lost value. No breach of Art. 8.

##### **Fredin v. Sweden, 12033/86, judgment of 18 February 1991**

The applicant exploited a gravel pit that was situated on his own land. The Swedish authorities did not renew the permit, based on the Swedish Nature Conservation Act. The Court found that the permit had to be renewed every ten years. The applicant was thus aware of the possibility that such a renewal would not take place. The authorities had to take into consideration the protection of the environment. As the applicant had also received a 3 years and eleven months period for closing down the pit, the measure was considered not disproportionate. No breach of the Protocol.

##### **Pine Valley Ltd v. Ireland, 12742/87, judgment of 29 November 1991**

The applicant had bought land for construction. Then the authorities withdrew the permission to construct. There was a local zoning plan which indicated that no construction should take place. Local authorities were opposed to granting a derogation. The Court held that the legislation served the general interest and the protection of the environment. The applicant was a company which knew the existing legislation and was thus aware of the risk. No breach of the Protocol.

As regards two other applicants, the Government had advanced no justification for the difference of treatment between them and the other holders of permissions in the same category as theirs, which an Act had retrospectively validated. The Court therefore concluded unanimously that two applicants had been victims of a violation of Article 14 of the Convention, taken together with Article 1 of Protocol 1.

##### **Lopez Ostra v. Spain, 16798/90, judgment of 9 December 1994**

The applicant complained of noise and fumes from a waste treatment plant, installed at 12 m from her home. She suffered the pollution for more than three years; finally she and her family moved elsewhere. The Court considered the nuisance serious enough to constitute a breach of Article 8.

**Chapman v. United Kingdom, 27238/95, judgment of 18 January 2001**

The applicant, a gypsy, lived with her caravan on a piece of land which, according to the planning policies in force, was to be preserved and where, therefore, dwellings were prohibited. The Court found that the authorities measure, to ask the applicant to move away, pursued the legitimate aim of protecting the right of others through the protection of the environment, and was proportionate

**Papastavrou and others v. Greece, 46372/99, 10/04/2003**

The applicants are 25 Greek nationals who are involved in a long-standing dispute with the State over ownership of land in Omorphokklisia, Galatsi, which is part of a wider area called the Veïkou Estate that was expropriated between 1923 and 1941. On 10 October 1994 the prefect of Athens decided that an area of the Veïkou Estate should be reforested. The applicants challenged that decision before the Council of State, claiming that the land earmarked for reforestation included their plot of land and that reforestation would deprive them of their property rights over it. Their appeal was dismissed on the ground that the prefect's decision had merely confirmed an earlier decision made by the Minister for Agriculture in 1934. However, in 1999 the Athens Forest Inspection concluded that only part of the area concerned had been forest in the past and could therefore be reforested.

The applicants alleged a violation of Article 1 of Protocol No. 1 (protection of property) in that their property had effectively been expropriated without their being paid any compensation.

It was not for the Court to settle the issue of ownership of the disputed land, but for the purposes of the proceedings before the Court the applicants could be regarded as the owners of the land in issue or at least as having an interest in it that attracted the protection of Article 1 of Protocol No. 1. In the Court's view, the authorities were wrong to have ordered the reforestation measure without first assessing how the situation had evolved since 1934. In dismissing the applicants' appeal on the sole ground that the prefect's decision had merely confirmed an earlier decision, the Council of State had failed to protect the property owners' rights adequately, especially as there was no possibility of obtaining compensation under Greek law. A reasonable balance had not therefore been struck between the public interest and the requirements of the protection of the applicants' rights.

The Court held unanimously that there had been a violation of Article 1 of Protocol No. 1 to the Convention and that the question of just satisfaction was not ready for decision.

**Kyrtatos v. Greece, judgment of 22 May 2003**

The applicant claimed that urban development had led to the destruction of a swamp adjacent to their property and that the area around their home had lost its scenic beauty. The Court held that “neither Article 8 nor any other articles of the Convention are specifically designed to protect general protection of the environment as such”. The Convention on Human Rights meant to protect individual human rights rather than the general interest and the needs of the community taken as a whole. No breach.

**Hatton v. United Kingdom, judgment of 8 July 2003**

The applicant complained of excessive noise levels at night. The Court found an economic interest in maintaining the night flights. House prices had not dropped. No breach.

**Kapsalis and Nima-Kapsali v. Greece, judgment of 23 September 2004**

The applicants bought land for the construction of a house, while the planning legislation which were to fix the stretches where construction was allowed, was still in elaboration. They obtained a permit for construction. However, when the planning legislation was final, the permit was withdrawn. The Court found that in areas of urban planning or environmental protection, the authorities had a margin of discretion. Their assessment should therefore prevail, unless it was manifestly unreasonable. The applicants had not taken due care, when buying the land. There was no sign that the administrative decision was arbitrary or unforeseeable. No breach of the Protocol.

**Öneryildiz v. Turkey, 48939/99, judgment of 30 November 2004**

The applicant had built a house on a municipal rubbish tip, without permission. Also other houses had been built there. An explosion occurred, killing 39 persons, among them nine members of the applicant's family. Two years before the accident, an expert opinion had drawn the attention of the municipality on the risk of a methane explosion; yet, the authorities had not done anything. The Court found that there was gross negligence on the side of the authorities. Since they had tolerated the applicant's house for several years, the applicant was entitled to claim protection of his property, though he had constructed illegally. Waste management was a public responsibility, and therefore, Turkey was breaching its obligations under property law.

**Valico v. Italy, judgment of 21 March 2006**

The applicant, a company, had received a construction permit, but did not respect it and was imposed a fine. The Court found that the respect of planning law was a legitimate objective to protect the landscape. Even though the amount of the penalty was considerable, it was not disproportionate, as the demolition of the building was not requested.

**Hamer v. Belgium, judgment of 27 November 2007**

The applicants' parents had built, in 1967, a holiday house in a forest area, without permission. In 1994, the police found that some trees had been cut on the property and discovered the absence of a permit. The applicant was ordered to restore the site to its original state.

The Court found that the measure was justified. The environment was an asset whose protection was of concern to society and to public authorities. Economic considerations and even the right to property should not be given precedence over the protection of the environment. The measure was also proportionate, though the house had existed since more than thirty years, and the authorities knew or should have known of this fact.. No violation of Article 1 of Protocol 1.

**Budayeva a.o. v. Russia, judgment of 22 March 2008**

Exceptionally heavy rainfalls caused a mudslide which destroyed the applicant's house. The Court held that the obligation of the authorities with regard to property rights was limited to "what is reasonable in the circumstances". The authorities had a wide margin of appreciation in deciding what measures to take in order to protect private property. There was some sort of negligence on the side of public authorities. However, this was only a factor which aggravated the natural disaster, it was not the only cause of the damage. As a result, the Court saw no violation of private property.

**Turgut a.o v. Turkey, 1411/03, judgment of 8 July 2008**

The applicant owned property of a piece of land since more than fifty years. The authorities dispossessed him, as this was a forest region, without paying compensation. The Court found that the expropriation was justified in order to protect nature and forests. However, the omission to pay compensation, was excessive.

**Kania v. Poland, judgment of 21 July 2009**

The applicants complained of excessive noise levels. The Court found that “there is no right in the Convention to a clean and quiet environment, but that where an individual is directly and seriously affected by noise or other pollution, an issue may arise under Article 8”. In the case in question, the noise levels were considered not to be excessive, all the more, as they ended due to the closure of the plant in question.

**Yildirim v. Turkey, 21482/03, 24-11-2009**

The applicant is a Turkish national who was born in 1939 and lives in Ankara. Relying on Article 1 of Protocol No. 1 (protection of property), Mr Yildirim complained that his house in Bogazkurt, Ankara, was demolished by the local authorities on the grounds that it was an illegal construction and posed a threat to public health and the environment (protection of a drinking-water source). Violation of Article 1 of Protocol No. 1 because of non-compensation

**Depalle v. France, 34044/02, judgment of 29 March 2010**

The applicant had built a house on the seashore in an area of maritime public property. The permit to build had been given half a century ago, but only for a temporary construction. No property right had ever been recognized by the French authorities. The applicant was asked to restore the site at his costs, without compensation. The Court weighed the general interest – free access to the shore, protection of the environment – against the interests of the applicant. It did not accept that the time element pleaded in favour of the applicant. It saw a growing need to protect coastal areas and their use by the public, and to ensure compliance with planning regulations. Thus, the fact that no compensation was paid, was not considered disproportionate.

**Herrmann v. Germany, 9300/07, 26/6/2012**

Landowner should not be obliged to tolerate hunting on his premises: the case concerned a landowner's complaint about being forced to accept hunting on his land, even though he is morally opposed to hunting. Violation of article P1-1. Earlier cases concerning France (Chassagnou and Schneider) have been decided likewise.

**Flamenbaum a.o. v. France, judgment of 13 December 2012**

The applicants complained of increased noise levels, due to the extension of the runway of Deauville airport. The Court found that the extension had to be declared to be in the public interest. The regional well-being was a legitimate aim. Measures had been taken to protect citizens against noise. The market value of the houses had not dropped. No breach of the Protocol.