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The Case Law of the
European Court of Human Rights
in Environmental Cases

Legal Analysis

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EUROPEAN CONVENTION ON HUMAN RIGHTS

Environmental Case Law Toolkit

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THE RIGHT TO LIFE
ARTICLE 2
OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

   (a) in defence of any person from unlawful violence;

   (b) in order to effect a lawful arrest or to prevent escape of a person lawfully detained;

   (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

– COMPLIANCE WITH ARTICLE 2 –

The right to life under Article 2 is perhaps the most fundamental human right in the European Convention on Human Rights (ECHR). Article 2 relates to the environment in that there may be environmental issues that interfere with the right to life, such as accidents involving hazardous waste or nuclear materials. Non-environmental issues under Article 2 cover topics such as the use of lethal force by agents of the State, abortion, and the right to die.

The right to life includes both a positive and a negative obligation of the State: a positive obligation (represented in Article 2, para. 1) to affirmatively protect the right to life, and a negative obligation (represented in Article 2, para. 1) that prohibits acts of the State that deprive an individual of life with extremely narrow exceptions.[1]

The European Court of Human Rights (hereinafter "Court") considers the following general issues when determining whether a State complied with Article 2 in an environmental issue:

- **The government must establish procedural requirements regarding the right to life.**

Article 2 imposes a duty to implement certain procedures to ensure the right to life. For example, the State must implement appropriate procedures to remedy errors and shortcomings that jeopardize the right to life, such as legal schemes ensuring that authorities will act upon known threats to life. There is also a positive obligation to establish an independent, unbiased, and effective investigative procedure that penalizes violators of the right to life, and to maintain an unbiased court system that gives careful consideration to interferences with the right to life.

[1] Douwe Korff, *The Right to Life: A Guide to the Implementation of Article 2 of the European Convention on Human Rights*, EUROPEAN COUNCIL 7 (2006).

- **The government must meet the substantive requirements of the right to life.**

The State has a duty not to deprive an individual of life. An example would be a duty not to test deadly chemical weapons on the property of an individual. The State also has a positive duty to take appropriate steps to safeguard the lives of those within its jurisdiction, foremost by implementing a legislative and administrative framework that deters threats to the right of life.

Furthermore, if authorities knew or ought to have known about an immediate risk to the life and health of individuals, they have a duty to take appropriate action. There is also a duty to provide information if authorities knew or should have known that a particular environmental hazard threatens lives. While there is generally a wide margin of appreciation (i.e. discretion) for the methods a State chooses to comply with Article 2, the Court will still consider what the State *could* have done in determining whether the State complied with their Article 2 obligations.

L.C.B. V. THE UNITED KINGDOM

SUMMARY	Lack of notice about cancer risk did not violate Article 2.
APPLICATION NUMBER	14/1997/798/1001
DATE OF JUDGMENT	09 June 1998

A. FACTS –

This dispute is about the nuclear tests conducted on Christmas Island by the United Kingdom between 1952 and 1967. Service personnel had to line up in the open during the tests and were possibly exposed to dangerous levels of radiation. The applicant believes that the purpose of this was to experiment on the effects of a nuclear blast. The government rejects this theory, contending that the servicemen were lined up to prevent injury, and that they were believed to have been at a safe distance from the nuclear blast.

The applicant, whose father worked for the military, had leukemia at four years old. The applicant cited a report by the British Nuclear Tests Veterans' Association (BNTVA) that shows an increased risk of cancer in the children of those exposed to these nuclear blasts. The applicant argues that the nuclear blasts were the probable cause of her leukemia. While the High Court of Justice acknowledged that this was a "good study," the court did not find a conclusive causal link between the nuclear blasts and her leukemia, citing evidence such as a relatively normal rate of leukemia for the children of those exposed to nuclear blasts in Hiroshima and Nagasaki.

The applicant contends that she could have received an earlier diagnosis of her condition and thus more effective treatment had the government not failed to notify her family about the increased risk of cancer caused by her father's exposure to radiation, which she alleges violates her right to life and the prohibition of torture under Article 2 and Article 3 respectively.

B. COURT'S RULING –

The Court unanimously ruled that there was not a violation of Article 2 (the right to life).[2]

Article 2 § 1 not only requires a State to refrain from the unlawful taking of life, but it also places a positive obligation on a State to take appropriate steps to safeguard lives. However, the Court noted that there is not sufficient evidence to conclusively decide whether the applicant's father was exposed to dangerous levels of radiation, and the State did not have an obligation to warn the applicant's parents of health effects from radiation unless it "appeared likely at the time" that the radiation exposure was of a real risk to the applicant. The Court concluded that evidence supporting the causal link between the nuclear tests and cancer in children was not strong enough prompt such an obligation.

C. LESSON LEARNED –

In order for an applicant to successfully claim a violation of the right to life under Article 2, there must be sufficient evidence of a causal link between the government's actions and the effect on the applicant's health. This includes situations in which the State should have acted on information but did not. In this case, the causal link between the government's actions and the health of the applicant was not sufficiently proven, thus the State did not have a duty to act. While there is some scientific evidence indicating that such a risk is possible, there is also scientific evidence to the contrary. Inconclusive causal links and studies that support the plausibility of both the applicant's and the government's contentions do not seem to be sufficient to establish an affirmative duty to provide an applicant with specific information.

[2] The Court also unanimously ruled that there was not a violation of the prohibition of torture under Article 3 (*see* Article 2 section).

ÖNERYILDIZ V. TURKEY

SUMMARY	Failure to prevent or remedy explosion violated Article 2.
APPLICATION NUMBER	48939/99
DATE OF JUDGMENT	30 November 2004

A. FACTS –

The applicant lived in the slum quarter of Kazım Karabekir in Istanbul, which was surrounded by a rubbish tip (i.e. a landfill). A 1991 expert report concluded that the rubbish tip did not conform to relevant regulations and thus posed a serious health risk, especially because of the potential for a methane explosion. Authorities did not act on this information, and a methane explosion in April 1993 destroyed ten houses, including the applicant's house, killing nine of his relatives. While two mayors were given criminal sentences for failing to prevent the accident, the court commuted their prison sentences to fines, which were unenforced.

The applicant initiated a claim, and an administrative court awarded the applicant about 2,207 euros in non-pecuniary damages and 208 euros in pecuniary damages. The pecuniary damages included payment for loss of household goods, but the court dismissed the applicant's claims involving lost financial support from killed family members. The applicant alleges that the failure of officials to prevent the explosion and the subsequent insufficient remedies constitute violations of Article 2, Article 1 of Protocol No. 1, and Article 13.

B. COURT'S RULING –

The Court unanimously ruled that there was a violation of Article 2 (right to life).[3]

Because authorities knew or ought to have known of the significant risk of a methane explosion by, at the very latest, the time of the expert report in 1991, Turkish authorities had a positive obligation to take necessary and sufficient measures to safeguard the lives of local residents. Instead of installing a gas-extraction system, which would have been effective and not overly burdensome, Turkish authorities failed to appropriate steps to prevent the explosion. While Turkey argued that a violation could not occur because the applicant lived in the slums illegally, the Court rejected this argument because authorities implicitly accepted this living situation for decades, even collecting taxes and allowing public utilities.

The Court also notes that Article 2 requires an effective, independent, and impartial official investigation procedure and sufficient criminal penalties for lost lives. While authorities conducted an official investigation and exposed the authorities responsible for the deaths, the courts convicted these officials for negligence in performing their duties but not for endangering the lives of others. This penalty was inadequate to meet the obligations arising out of Article 2 because it did not punish authorities for the lost lives.

C. LESSON LEARNED –

This case demonstrates that if public authorities are aware of a significant and imminent risk to the life, they must take affirmative measures to protect those at risk. While much discretion is given to authorities over what measures they take, taking no measures at all is almost a per se violation of Article 2. Overall, there was an unfulfilled duty of the State to implement a legislative and administrative framework to deter threats to life and to ensure a sufficient investigation and penalization when people are killed. This case also shows that the government also has a duty to protect people living in an area illegally, especially if they implicitly permit their living situation.

[3] The Court also ruled, 15 votes to 2, that there was a violation of the right to protection of property under Article 1 of Protocol No. 1 (*see* Article 1 of Protocol No. 1 section). While the Court found a violation of Article 13 (right to an effective remedy), this toolkit does not discuss this particular issue.

BUDAYEVA AND OTHERS V. RUSSIA

SUMMARY	Government action with mudslide violated Article 2.
APPLICATION NUMBER	15339/02, 21166/02, 20058/02, 11673/02 and 15343/02
DATE OF JUDGMENT	20 March 2008

A. FACTS –

The applicants are Russian citizens primarily from the town of Tyrnauz. Several mudslides devastated Tyrnauz in July 2000. Russian authorities did not give any warning of the first mudslide. While there was an order to evacuate the area after the first mudslide, some of the applicants returned home prematurely because there were no barriers or officials to indicate that the evacuation was still active. Some noticed that their utilities were on again and took this to mean they could return home. The next day, there was an even larger mudslide, killing the husband of one of the applicants. Several more mudslides occurred over the next week.

The applicants believed that authorities inadequately maintained structures to protect them from mudslides. A 1999 warning from a state agency of an imminent disaster and a 2000 warning from the Prime Minister of KBR pointed out the poor state of a mud retention dam and a feed-through mud retention collector, but authorities never allocated any funds for repairs to these faulty structures.

After the mudslides, the government gave the applicants free housing and an allowance of what was worth about 530 euros. Furthermore, a domestic court dismissed a claim against the government on the grounds that the government took all reasonable measures to protect the applicants. The applicants allege that government authorities caused or exacerbated the effect of the mudslides and thus caused damage to their homes, possessions, and heath in violation of Article 2 and Article 3.

B. COURT'S RULING –

The Court unanimously ruled that there was a violation of Article 2 (right to life).[4]

Article 2 places a positive duty on the government to take appropriate measures to safeguard the lives of individuals, particularly in regards to dangerous activities, which includes the duty to adequately notify the public about life-threatening emergencies and to establish procedures to fix any shortcomings in protecting the right to life. The Court noted that although various reports warned of an imminent disaster and provided specific steps to prevent or mitigate a mudslide – structural fixes, an early warning system, and an evacuation plan would have helped, for example – authorities failed to implement any measures or even allocate funds to make improvements. While the government issued an evacuation order, many citizens were unaware, so this measure was ineffective. Thus the authorities failed to meet their positive obligation to take steps to protect individuals from threats to the right of life.

Article 2 also requires an effective, independent, and impartial official investigation and careful judicial scrutiny of a possible breach of the right to life. The criminal investigation into the death of the applicant's husband lasted only a week and did not look into the government's failure to protect the town's residents. Furthermore, during a civil suit for damages, the applicant did not have access to facts that only the authorities had access to, nor did the courts seek expert opinions. The Court ruled that this constituted a second violation of Article 2.

[4] The Court also ruled, 15 votes to 2, that there was a violation of the right to protection of property under Article 1 of Protocol No. 1 (*see* Article 1 of Protocol No. 1 section). While the Court found a violation of Article 13 (right to an effective remedy), this toolkit does not discuss this particular issue.

C. LESSON LEARNED –

When the government has knowledge of an imminent risk to lives or severe failures in current protections from natural disasters, the government must take all diligent measures to protect the right to life. In this case, the government took essential no steps to remedy the known risk to life from mudslides, so there seems to be a very clear violation of Article 2.

This decision is notable because natural disasters are almost inherently unforeseeable, but there was enough information available about the risks such that, in this instance, the risk was still considered imminent. Also, this decision highlights that the obligation to protect the right to life under Article 2 is greater than the obligation to protect the right to property under Article 1 of Protocol No 1, for which the Court did not find a violation under the same set of facts (*see* Article 1 of Protocol No. 1 section).

THE PROHIBITION OF TORTURE
ARTICLE 3
OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

– COMPLIANCE WITH ARTICLE 3 –

Like the right to life under Article 2, the prohibition of torture under Article 3 is one of the most fundamental human rights in the ECHR. Some environmental issues, such as exposure to excessive smoke in prison, may result in a violation of Article 3. In fact, Article 3 cases are most common with detainees because they are vulnerable to poor treatment by authorities.[5]

The prohibition of torture imposes both a negative obligation on the State not to engage in actions that constitute torture and a positive obligation on the State to take the necessary steps to prevent torture. Unlike most other obligations arising under the ECHR, there are no exceptions listed in Article 2 that permit derogation from the prohibition of torture.

The Court considers the following general issues when determining whether a State complied with Article 2 in an environmental issue:

- **The State cannot engage in or permit "torture."**

Torture occurs when severe mental pain or physical pain or suffering of a certain threshold of intensity is intentional or deliberately inflicted upon an individual for a specific purpose.[6] The threshold of intensity required to trigger Article 3 depends on the duration of the ill-treatment; the physical and mental effects of the ill-treatment; and the particularities of the victim, such as age, sex, and state of health.[7]

- **The State cannot engage in or permit "inhuman treatment" and "degrading treatment."**

Inhuman treatment occurs in instances of premeditated, lengthy ill-treatment (as opposed to punishment) that causes bodily injury or intense physical and mental suffering. Degrading treatment occurs in instances where certain actions arouse "feelings of fear, anguish, and inferiority," also considering whether these feelings were the purpose of the actions in question.[8] Furthermore, a failure to attend to the special needs of inmates may constitute degrading treatment, whether or not there is an intention to harm, humiliate, etc. this person.[9] Neither inhuman treatment nor degrading treatment require the same level of intensity as "torture" to trigger Article 3 protections, although a certain threshold of intensity must still be met.[10]

[5] Aisling Reidy, *The Prohibition of Torture: A Guide to the Implementation of Article 3 of the European Convention on Human Rights*, EUROPEAN COUNCIL 22 (2003).
[6] *Id*. at 11.
[7] *Id.* at 10.
[8] *Id.* at 16.
[9] *Id.* at 22
[10] *Id.* at 16.

L.C.B. V. THE UNITED KINGDOM

SUMMARY	Lack of notice about cancer risk does not violate Article 3.
APPLICATION NUMBER	14/1997/798/1001
DATE OF JUDGMENT	09 June 1998

A. FACTS –

This dispute is about the nuclear tests conducted on Christmas Island by the United Kingdom between 1952 and 1967. Service personnel had to line up in the open during the tests and were possibly exposed to dangerous levels of radiation. The applicant believes that the purpose of this was to experiment on the effects of a nuclear blast. The government rejects this theory, contending that the servicemen were lined up to prevent injury, and that they were believed to have been at a safe distance from the nuclear blast.

The applicant, whose father worked for the military, had leukemia at four years old. The applicant cited a report by the British Nuclear Tests Veterans' Association (BNTVA) that shows an increased risk of cancer in the children of those exposed to these nuclear blasts. The applicant argues that the nuclear blasts were the probable cause of her leukemia. While the High Court of Justice acknowledged that this was a "good study," the court did not find a conclusive causal link between the nuclear blasts and her leukemia, citing evidence such as a relatively normal rate of leukemia for the children of those exposed to nuclear blasts in Hiroshima and Nagasaki.

The applicant contends that she could have received an earlier diagnosis of her condition and thus more effective treatment had the government not failed to notify her family about the increased risk of cancer caused by her father's exposure to radiation, which she alleges violates her right to life and the prohibition of torture under Article 2 and Article 3 respectively.

B. COURT'S RULING –

The Court unanimously ruled that there was not a violation of Article 3 (the prohibition of torture).[11]

The Court ruled that authorities did not violate the prohibition of torture because there was not sufficient evidence to conclusively decide whether the applicant's father was exposed to dangerous levels of radiation. The State only had an obligation to warn the applicant's parents about health effects from radiation if it "appeared likely at the time" that the radiation truly posed a risk to the applicant. The Court finds it reasonable that the government did not believe there to be a risk.

C. LESSON LEARNED –

In order for an applicant to successfully claim a violation of the right to life under Article 3, there must be sufficient evidence of a causal link between the government's actions and the effect on the applicant's health. This includes situations in which the State should have acted on information but did not. While the Court did not discuss Article 3 at length, a violation requires, at minimum, sufficient evidence to establish a causal link between the government's actions and the health of the applicant. The applicant failed to put forth convincing evidence establishing this relationship, thus the State did not have a duty to act. Nonetheless, this case is unique for establishing that a failure to provide information to an individual may, perhaps, constitute a violation of the prohibition of torture.

[11] The Court also unanimously ruled that there was not a violation of the right to life under Article 2 (*see* Article 2 section).

ELEFTERIADIS V. ROMANIA

SUMMARY	Failure to remedy smoking in cells violated Article 3.
APPLICATION NUMBER	38427/05
DATE OF JUDGMENT	25 January 2011

A. FACTS –

The applicant was serving a sentence of life in prison for murder. Between 1994 and 2000, the applicant was in a 13.81 square meter cell with three smokers. The applicant alleges that he repeatedly tried to move cells from 1994 until 1999, when his request was finally granted. Also in 1999, a doctor diagnosed the applicant with pulmonary fibrosis. In February 2005, the applicant was again moved to a cell with two frequent smokers, which lasted until 2008, when the applicant moved to a cell with non-smokers. The applicant was also exposed to smoke in prison-transport vans and in courtroom waiting areas. In 2008, a doctor diagnosed the applicant with grade two chronic obstructive bronchopneumopathy. The applicant filed a complaint, which the domestic courts rejected because the applicant did not submit evidence of damages and his health improved after moving cells.

While there is anti-smoking legislation, Romania claims that it was impossible to enforce in prisons, and they tried their best to put the applicant with non-smoking cells when possible. Romania also alleges that authorities banned smoking in prison-transport vans, but they could not stop individuals from smoking in courtroom waiting areas. The applicant argues that his unwilling exposure to smoke caused pulmonary illnesses and constitutes a violation of Article 3.

B. COURT'S RULING –

The Court unanimously ruled that there was a violation of Article 3 (prohibition of torture).[12]

The applicant had pulmonary fibrosis – a chronic illness – and repeatedly requested to be transferred to a non-smoking cell, thus authorities had a duty to take measures to safeguard the applicant's health by moving him away from smokers. Instead, authorities forced the applicant to be exposed to smoke in several locations against the recommendation of his doctor. While authorities placed the applicant in a non-smoking cell at one point, this was only because there was capacity at the time, and this does not guarantee that the applicant will be in a non-smoking cell in the future as required by the anti-smoking legislation. In this regards, the Court noted that logistical or financial difficulties in enforcing anti-smoking legislation is not a valid reason for failing to uphold Article 3.

The Court also determined that the domestic courts failed to uphold Article 3. The Court reasoned that the domestic courts should have looked at the damage previously suffered by the applicant even if he had subsequently been transferred to a non-smoking cell. The domestic courts also should not have required the applicant to provide proof of damages.

C. LESSON LEARNED –

This case shows that authorities must take affirmative measures to ensure the health of prisoners. If there is a situation in which a prisoner's health is being seriously affected because of his smoking, then authorities have a positive obligation to move that prisoner. Furthermore, this case shows that although prisons may be terribly overcrowded and suffer from a lack of logistical and financial resources, a lack of resources is not a legitimate excuse for failing to uphold the provisions of Article 3.

[12] The Court threw out the applicant's claim that he had not received appropriate treatment because of a failure to exhaust domestic remedies.

THE RIGHT TO LIBERTY AND SECURITY OF THE PERSON
ARTICLE 5
OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

1. Everyone has the right to liberty and security of person.

   No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

   (a) the lawful detention of a person after conviction by a competent court;

   (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

   (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority of reasonable suspicion of having committed and offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

   (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

   (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;

   (f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and the charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

– COMPLIANCE WITH ARTICLE 5 –

Article 5 protects the right to liberty and security of persons, which pertains to the arrest and detention of individuals. The main purpose of Article 5 is to prevent arbitrary infringements of personal liberties. This relates to the environment because interfering with personal liberties affects an individual's ability to be an environmental advocate. Further, arbitrary interference with personal liberties may also have a "chilling effect" on others.

The Court may consider some of the following rules when determining whether a State complied with Article 5 in an environmental issue:

- **Any deprivation of the right to liberty and security of persons must be lawful.**

Lawfulness implies not only compliance with national and international law, but also that arrest or detention is reasonably foreseeable (i.e. an individual can foresee the consequences of their actions to a reasonable degree of certainty), accessible (i.e. the law is available as opposed to hidden), and certain (i.e. there are clear rules). [13] Furthermore, the deprivation must not be arbitrary. Lawfulness applies both to procedural issues, like the right to be informed of charges and to be bought in front of an impartial and independent judge within the requisite amount of time, and substantive issues, like arresting an someone only if there is reasonable suspicion of an offense.

- **Any lawful deprivation of liberty must meet one of the provisions listed in Article 5.**

Article 5 contains a comprehensive list of exceptional situations in which a lawful deprivation of liberty complies with the ECHR. In general, any deprivation of liberty must be objectively justified and have a duration that is no longer than is necessary.[14] There is also a presumption in favor of liberty, thus the burden of proof lies with the government to justify a deprivation of liberty.[15]

One example of an Article 5 obligation is that after an initial arrest, pre-trial detention can last only as long as is appropriate based on the circumstances of the detained individual, which requires consideration of factors such as the risk of flight; risk of interference with the court of justice; the need to prevent crime; and the need to preserve public order.[16]

[13] Monica Macovei, *The Right to Liberty and Security of the Person: A Guide to the Implementation of Article 5 of the European Convention on Human Rights*, EUROPEAN COUNCIL 14 (2004).
[14] *Id.*
[15] *Id.* at 8.
[16] *Id.* at 28.

STEEL AND OTHERS V. THE UNITED KINGDOM

SUMMARY	Arrest of some protestors violated Article 5, but arrest and imprisonment of other protestors did not.
APPLICATION NUMBER	67/1997/851/1058
DATE OF JUDGMENT	23 September 1998

A. FACTS –

This case involves various protestors (applicants) who were arrested and detained for breaching the peace. A breach of the peace occurs when there is violence or a threat of violence, including conduct that causes violence in others.

The first applicant attempted to obstruct a grouse shoot in Yorkshire in 1992. Authorities arrested her for breaching the peace and then detained her for forty-five hours. A trial court found her guilty of breaching the peace and ordered her to be "bound over," i.e. she would forfeit a certain amount of money if she failed to keep the peace or conduct herself in certain other ways for a set amount of time. She refused the order and thus was imprisoned for twenty-eight days.

The second applicant broke into a construction site and stood in the way of machinery. Authorities arrested her for breaching the peace and then detained her for seventeen hours. The court ordered her to be bound over, but she refused, and thus she was jailed for seven days.

The third, fourth, and fifth applicants handed out leaflets and held up banners in protest of a fighter helicopter sale. Authorities arrested them for breaching the peace and detained them for seven hours. The case was dismissed and the court did not order them to be bound over.

The applicants generally allege that they were deprived of their liberty by being arrested and, in some cases, imprisoned for refusing to be bound over. They argue that the "breach of the peace" standard is difficult to gauge and gives police too much discretion in arbitrary arrests. The applicants allege that this constitutes a violation of Article 5 and Article 10.

B. COURT'S RULING –

The Court unanimously ruled that there was a violation of Article 5 (right to liberty and security) with respect to the third, fourth, and fifth applicants; by 7 votes to 2 that there was not a violation of Article 5 with respect to the first applicant; and unanimously that there was not a violation of Article 5 with respect to the second applicant.[17]

To comply with Article 5 § 1, arrests and initial detention (a deprivation of liberty) must be "lawful," which requires both arrest and detention to be within the terms of the law and that the law itself be sufficiently precise and foreseeable. As for the latter requirement, the Court determined that the concept of "breach of the peace" has been elaborated in English courts such that it is sufficiently precise and foreseeable.

The Court then determined that the first two applicants, who walked in front of a grouse hunter and obstructed a construction project respectively, were arrested and detained in compliance with the breach of the

[17] The Court also unanimously ruled that there was a violation of the right to freedom of expression under Article 10 with respect to the third, fourth, and fifth applicants, but not with respect to the first and second applicants (*see* Article 10 section). While not discussed in this toolkit, the Court also ruled that there was no violation of Article 6 § 3, which, inter alia, requires that individuals receive a sufficient amount of information about a criminal charge against them.

peace law, noting that they were found guilty by a domestic court of law and that such actions could reasonably be deemed to provoke violence. Thus their arrest and initial detention did not violate Article 5 § 1.

On the other hand, the Court determined that the third, fourth, and fifth applicants, who handed out leaflets and displayed banners about weapon sales, were *not* arrested and detained in compliance with the breach of the peace law, noting that the charges against them were subsequently dropped. Thus their arrest and initial detention *did* violate Article 5 § 1.

The Court also concluded that imprisoning the first and second applicants for refusing to be bound over did not constitute a violation of Article 5 § 1. The order "to be of good behaviour" when being bound over is sufficiently precise and foreseeable to comply with Article 5 because the applicants are essentially being asked not to conduct behavior similar to the behavior that police officers arrested them for.[18] Furthermore, the law is clear that a judge may order an individual to be bound over if there is a real risk that they will breach the peace again, and that if such is refused, they may be imprisoned.

C. LESSON LEARNED –

In finding a violation of Article 5 in respect to some applicants but not others, the Court places a lot of merit on whether the domestic courts upheld the justification for the arrest. For the first two applicants, the domestic court found that they breached the peace and ordered them to be held over for that purpose, which the Court found to be sufficient justification. For the third, fourth, and fifth applicants, charges against them were dropped, which, without other evidence, seemed persuasive for the Court's decision that this was a violation of the right to liberty and security.

Furthermore, this case shows that if people are arrested for certain conduct and then ordered "to be of good behaviour," the prohibited conduct may be foreseeable enough to comply with Article 5 because individuals can use their previous behavior as a gauge of what the court expects when it orders them to be "of good behaviour."

[18] The Court also determines that the Government did not breach Article 5 § 5 of the Court, which requires compensation for arrest or detention in violation of the Court.

MANGOURAS V. SPAIN

SUMMARY	High bail for oil accident did not violate Article 5.
APPLICATION NUMBER	12050/04
DATE OF JUDGMENT	28 September 2010

A. FACTS –

The oil tanker "Prestige" crashed in Spain's exclusive economic zone (EEZ) during a storm, spilling about 70,000 tonnes of fuel oil. The ecological and economic damage from the oil spill was severe. The captain, who had failed to cooperate with port authorities before the crash, was arrested, with bail set at three million euros. The reasoning behind the large bail included the nature of the offenses (significant damage to natural resources and disobeying the commands of port authorities), the Greek captain's lack of ties to Spain, the significant civil and criminal liability, public outcry, the captain's professional environment, and the necessity of the captain appearing at trial. The applicant challenged the amount of bail as being excessive because of his profession, income, assets, old age (67 years old), family circumstances, and other reasons, but several different levels of court upheld the amount. In February 2003, about two and a half months after the captain was arrested, the captain's insurer paid the bail as a humanitarian gesture. The captain argues that the bail was excessively high in violation of Article 5.

B. COURT'S RULING –

The Court ruled, 10 votes to 7, that there was not a violation of Article 5 (right to liberty and security).

The Court first noted that Article 5 § 3 of the ECHR generally requires authorities to justify detention, set bail at an appropriate amount, and consider whether detention is indispensable. Looking at the facts, the Court is swayed by the "unanimous determination" at the European and international level to bring those responsible for oil spills to justice, which requires the accused individuals to show up to trial. The Court further reasoned that consideration of the captain's "professional environment" was justified because, in fact, his insurer paid the large bail. Also, for guidance, the Court looks to the International Tribunal for the Law of the Sea, which considers the seriousness of an alleged offense to determine what constitutes a "reasonable" bond. Finally, the Court pays close attention to the purpose of bail – to ensure that the person in custody attends trial. With such a huge amount of money at stake, the Court agrees that the large amount of bail was reasonable to ensure that the captain, when considering his personal situation, attended trial. Thus there was no violation of Article 5 § 3.

C. LESSON LEARNED –

In large environmental disasters with criminal proceedings – particularly when the international community condemns the diaster – the Court seems to believe that setting bail at a huge amount is "reasonable" to ensure that the responsible party attends trial, at least in some circumstances. This is particularly true when a large company has a professional relationship with the suspect because they have more economic ability to pay a large bail. Furthermore, if the bail amount in question is in fact paid, this is strong evidence that the amount of bail was not set too high. Finally, having looked to the International Tribunal on the Law of the Sea for guidance, this case demonstrates that the Court may look to international bodies to determine if bail is reasonable in environmental disasters.

THE RIGHT TO A FAIR TRIAL
ARTICLE 6
OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

   (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

   (b) to have adequate time and the facilities for the preparation of his defence;

   (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

   (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

   (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

– COMPLIANCE WITH ARTICLE 6 –

Article 6 guarantees the right to a fair trial to determine civil rights and obligations as well as criminal charges against an individual. In some instances, civil rights and obligations and criminal charges may relate to the environment. One example of civil rights and obligations relating to the environment is a constitutional right to a healthy environment. An example of criminal charges related to the environment is criminal charges for an environmental disaster.

The Court may consider some of the following rules when determining whether a State complied with Article 6 in an environmental issue:

- **The charges in question must either determine "civil rights and obligations" or be "criminal charges" within the meaning of the ECHR.**

(1) "Civil rights and obligations"

The charges in question determine civil rights and obligations when there is a "genuine and serious dispute" over a right that is arguably recognized under national law and which the Court interprets to be a civil right and obligation – meaning that the domestic classification is not decisive. Generally, civil rights and obligations are legal rights of private persons amongst themselves, such as contract law, and sometimes the legal rights of private persons in relation to the State. The outcome of the case must also have a "direct effect" on this right, as opposed to a "tenuous connection" or "remote consequence."

(2) "Criminal charges"

The Court looks at the national classification of an offense, the nature of an offense, the purpose of a penalty for an offense (an offence with a criminal penalty is much more likely to be considered a criminal charge than an administrative fine, for example), and the degree of severity of a penalty (depriving an individual of their liberty is likely a criminal penalty rather than merely disciplinary, for example) to determine whether something is a "criminal charge."[19]

- **If the charges in question either determine "civil rights and obligations" or are "criminal charges" within the meaning of the ECHR, then the Court will determine whether the State followed the various obligations of Article 6.**

While there are a wide range of obligations related to the right to a fair trial that differ based on the circumstances, a few examples may be useful to put Article 6 in context. For example, Article 6 requires a hearing to occur within a "reasonable time" based on the complexity of a case, whether the applicant or the judicial and administrative authorities are responsible for delay, and what is at stake for the applicant (for example, criminal proceedings with a pretrial detention should be resolved quickly).

Another example is that judicial proceedings must be fair, thus a tribunal must be independent and impartial. Furthermore, Article 6 may require legal aid at various stages of the proceedings, depending on factors such as factual and legal complexity of the case in question. Article 6 also requires the outcome of judicial proceedings to be effectively enforced. However, the right of access to the court is not absolute, and restrictions on access to the court are allowed if there is a "reasonable relationship of proportionality between the means employed and the aim sought to be achieved."[20]

[19] Nuala Mole and Catharina Harb, *The Right to a Fair Trial: A Guide to the Implementation of Article 6 of the European Convention on Human Rights*, EUROPEAN COUNCIL 19 (2006).
[20] *Id.* at 39.

POWELL AND RAYNER V. THE UNITED KINGDOM

SUMMARY	Airport noise did not even arguably violate of Article 6.
APPLICATION NUMBER	9310/81
DATE OF JUDGMENT	21 February 1990

A. FACTS –

The applicants, who live near Heathrow Airport, claim that airplanes flying near their homes cause significant noise disturbance. Noise is measured through a Noise and Number Index (NNI) contour, which considers both the level and the frequency of the noise. One of the applicants falls within the 60 NNI contour, which is classified as "high noise-annoyance."

There are several laws that could possibly control airplane noise, but they do not apply to the applicants. However, the 1982 Civil Aviation Act, for example, permits claims of excessive noise if airplanes violate flight orders, regulations, or fly unreasonably low. While Heathrow Airport took steps to reduce noise levels, such as decreasing night flights, installing noise-monitoring equipment, requiring noise certification for aircrafts, and providing noise-insulation grants for households within the 60 NNI contour, the applicants still contend that the government failed to provide an effective remedy in violation of Articles 6, 8, and 13.[21]

B. COURT'S RULING –

The Court unanimously ruled that they did not have the jurisdiction to consider Article 6 (right to a fair trial).[22] They also ruled that there was not a violation of Article 13 (right to an effective remedy) in conjunction with Article 6.[23]

Article 13 only applies if there is an "arguable" complaint under the ECHR, and while the European Commission of Human Rights ruled that the Article 6 claim was "manifestly ill-founded," the Court may still determine that the claim meets the separate, unique standard of "arguable." However, the Court did not find the Article 6 claim to be arguable. The Court reasoned that only some categories of cases fall within the scope of Article 6 – specifically, cases that determine civil rights and obligations and criminal cases – and compensation for airplane noise does not fall within these categories.

C. LESSON LEARNED –

This case shows that unless a case involves the determination of civil rights and obligations or is a criminal case, then the Court will simply not consider an Article 6 claim.

[21] The applicant also alleged a violation of Article 1 of Protocol No. 1., which the Court did not consider.
[22] The European Commission of Human Rights (now defunct) considered the Article 6 complaint to be "manifestly ill-founded," which precludes consideration by the Court.
[23] The Court also unanimously found there to be a violation of Article 13 in conjunction with the right to respect for family and private life and home under Article 8 (*see* Article 8 section).

BALMER-SCHAFROTH AND OTHERS V. SWITZERLAND

SUMMARY	Power plant dispute was inadmissible under Article 6.
APPLICATION NUMBER	67\1996\686\876
DATE OF JUDGMENT	26 March 1997

A. FACTS –

The applicants are residents of several villages located four to five kilometers away from a nuclear power plant. In 1990, the nuclear power plant's operator filed to extend its operating license indefinitely and increase production by ten percent. The applicants filed an objection with the Federal Council, requesting that the license be denied and the nuclear power plant be permanently closed. They based this request on failed safety standards, construction defects, and the risk of an accident in conjunction with the Nuclear Energy Act. Meanwhile, the authorities denied the applicants' request to take provisional measures against the nuclear power plant and to provide more data.

In December 1992, the Federal Council approved the license request, citing favorable expert reports from various authorities. While the nuclear power plant did not meet technical standards, the Federal Council decided that it is safe nonetheless. The applicants allege that they did not have sufficient access to a tribunal and that the procedure of the Federal Council was not fair, which constitutes a violation of Article 6.

B. COURT'S RULING –

The Court held, 12 votes to 8, that Article 6 (right to a fair trial) was not admissible, thus the Court never reached the merits of the dispute regarding tribunal access and judicial procedure.[24]

In a case involving civil rights and obligations, a dispute must be "genuine and serious" and involve a right that is arguably recognized under domestic law to trigger Article 6. The outcome of the dispute must also have a "direct effect" on the right in question, as opposed to a "tenuous connection" or "remote consequence."

The Court agreed with the applicants they have the right to be adequately protected from the threats posed by nuclear power plants, as recognized by the Nuclear Energy Act and the constitutional right to life. The Court also agreed that the dispute over this right is "genuine and serious," noting that the Federal Council itself decided that the applicants' objections were worth considering in the licensing decision.

However, the Court held that the connection between the Federal Council's decision and the applicant's constitutional right to life was too tenuous and remote to trigger Article 6. The Court reasoned that despite the flaws in the technical standards of the nuclear power plant, the nuclear power plant did not pose a serious and imminent danger to the applicants. Thus, the Court concluded that Article 6 was inadmissible.

C. LESSON LEARNED –

This case shows how difficult it can for Article 6 claims to be admissible in instances where major environmental disasters threaten civil rights and obligation but lack imminence. The Federal Council believed the nuclear power plant was safe, and while the Court may or may not agree with this assessment, the Court at least agrees that a nuclear accident is not "imminent." However, nuclear power plant accidents are relatively rare, thus the "imminence" of such a disaster may be hard to prove under any circumstances. Perhaps for this reason, one dissenting opinion argued that the threat to the applicant's civil rights and obligations did not need to be "serious and imminent" at all, but rather that an applicant only needs to establish a "genuine and serious" dispute with a "likelihood of risk and damage."

[24] The Court also rules that Article 13 is inadmissible because Article 6 does not apply to the case.

MCGINLEY AND EGAN V. THE UNITED KINGDOM

SUMMARY	Access to documents process did not violate Article 6.
APPLICATION NUMBER	21825/93 and 23414/94[25]
DATE OF JUDGMENT	09 June 1998

A. FACTS –

The United Kingdom tested a series of nuclear weapons at Christmas Island in the Pacific Ocean in 1957 through 1958. The government ordered servicemen to stand in a line in an open area and look away from the blast. The government denies knowledge of any harmful effects. In 1993, the environmental monitoring programme released all available data related to the nuclear tests, including measurements of radiation levels.

The applicants both suffered various medical conditions that they contend resulted from the nuclear tests, including renal colic and infertility for Mr. McGinley and sarcoidosis for Mr. Egan. The applicants sought increased pension at various points for these conditions. Authorities denied the requested pension increases, so the applicants appealed to the Pensions Appeal Tribunal (PAT), which dismissed the appeals.

Authorities disclosed many military documents to the applicants, but the applicants still claim that the military is withholding certain medical examinations that would prove they were treated for conditions related to radiation after the blasts. The applicants contend that this violates Articles 6 and 8. The government counters that they released all available documents and that PAT Rule 6, which the applicants failed to use, ensures disclosure of these documents.

B. COURT'S RULING –

The Court ruled, 6 votes to 3, that there was not a violation of Article 6 of the ECHR (the right to a fair hearing).[26]

The Court reasoned that the applicants were merely speculating that undisclosed documents that support their pensions claims even exist. The Court contrasts this to a similar case in which such documents were known to exist. Furthermore, the applicants never applied for disclosure of relevant documents under PAT Rule 6, which would have required the military to disclose all relevant documents without the applicants having to identify what they wanted in specific. Because the applicants did not attempt to use this process, the Court could not conclude that they were denied a fair hearing or effective access to the PAT.

C. LESSON LEARNED –

On a practical level, this case shows that individuals should exhaust all domestic remedies before bringing a claim related to the access of information to the Court – in this case, the applicants did not attempt to use PAT Rule 6. This case also shows that it may be difficult for individuals to prove a violation of the right to a fair hearing on the grounds that the government is withholding information if there is no proof that such information even exists.

[25] Application numbers for the European Commission on Human Rights, which referred the cases to the European Court of Justice.

[26] The Court also found, 5 votes to 4, that there was not a violation of the right to private and family life and home under Article 8 (*see* Article 8 section).

ATHANASSOGLOU AND OTHERS V. SWITZERLAND

SUMMARY	No appeal over power plant inadmissible under Article 6.
APPLICATION NUMBER	27644/95
DATE OF JUDGMENT	6 April 2000

A. FACTS –

The applicants live near the Benzau II nuclear power plant. In 1991, the owner of the nuclear power plant applied to extend its operating license indefinitely. The applicants alleged that the nuclear power plant had construction defects that violated safety standards and increased the risk of an accident. The applicants filed objections with the Federal Council and sought to permanently close the plant, but the Federal Council dismissed these objections and granted a license that ran through late-2004 as subject to certain safety conditions. The Federal Council cited several favorable government-sponsored safety reports in making this decision, including an internal safety assessment, a safety evaluation from the Swiss Nuclear Safety Inspectorate (HSK), and a review from the Swiss Federal Nuclear Safety Commission (KSA).

As evidence of the danger of the plant, the applicants cited a report prepared after the Federal Council's decision by the Institute for Applied Ecology in Darmstadt, which states that the nuclear power plant has safety deficiencies and failed to implement sufficient measures to correct them. Other subsequent reports from the HSK and KSA are more favorable. The applicants complained they could not appeal the lawfulness of the Federal Council decision – which affected their rights to life, to physical integrity, and of property – and thus they were denied effective access to a court in breach of Article 6 § 1 of the Convention.

B. COURT'S RULING –

The Court held, 12 votes to 5, that Article 6 (right to a fair trial) was not admissible, thus they did not reach the merits of the case regarding tribunal access and judicial procedure.[27]

An Article 6 claim involving "civil rights and obligations" requires the dispute to be "genuine and serious" and arguably recognized under domestic law. The outcome also must have a "direct effect" on the right in question. The Court agrees that applicants have a right to life, to physical integrity and of property under domestic law. The Court also agrees with the applicants that the dispute over this right is "genuine and serious." However, like in *Athanassoglou and Others v. Switzerland* (*see* previous case), the Court held that the Federal Council's decision to renew the operating licence was not "directly decisive" to the rights in question; rather, the connection is too tenuous or remote to trigger Article 6 protections.

Although the applicants attempted to differentiate this case from *Athanassoglou and Others v. Switzerland* by arguing that the Institute for Applied Ecology report established a "specific and immediate danger," the Court disagrees, reasoning that the report does not establish an *imminent* danger. As evidence, the Court notes the generally favorable safety findings of the operator, the HSK, and the KSA. Thus, the Court concludes that Article 6 is again inadmissible.

The Court also rejects the applicants' argument that only an adversarial court can unearth the true deficiencies of the nuclear power plant to make an informed decision regarding its safety. The Court reasons that each State may independently decide how to make decisions about nuclear power, and if Article 6 is inadmissible, then the Court is in no place to tell a sovereign nation what to do.

[27] While the Court deemed Article 13 (right to an effective remedy) to be inadmissible because there was no arguable violation of Article 2 or Article 8, this toolkit does not discuss this particular issue.

C. LESSON LEARNED –

This case again reaffirms the difficulties in making an Article 6 claim when it comes to nuclear power plants. While the applicants in this case presented stronger evidence of the dangers of the nuclear power plant in question than presented by the applicants in *Balmer-Schafroth and Others v. Switzerland*, the Court again stresses that the outcome of the dispute must *imminently* affect the civil rights and obligations of the applicants. The Court seems to take the existence of both favorable and unfavorable reports about the safety of the nuclear power plant as insufficient to establish the imminence of a danger to the applicants' right to life, to physical integrity, and of property.

This case also has a strong dissent, which argues that there must be a procedure for appeal of the Federal Council decision in order for the nuclear power plant's safety to fully emerge in an adversarial process and to fully gauge the danger. The dissent argues that the European Court of Human Rights was, in effect, the court of first instance to consider a hugely technical and complicated set of facts, which is contrary to the spirit of the preamble.

KYRTATOS V. GREECE

SUMMARY	The procedure to develop swamps violated Article 6.
APPLICATION NUMBER	41666/98
DATE OF JUDGMENT	22 May 2003

A. FACTS –

The applicants, who own property on a Greek Island called Tinos, challenged decisions made by the prefect of Cyclades in 1985 and 1988 to redraw certain settlement boundaries. In 1995, the Supreme Administrative Court ruled in favor of the applicants and quashed the building permits, concluding that the concerned areas are protected swamps under Article 24 of the Greek Constitution. Nonetheless, the prefect excluded the buildings concerned from demolition and continued to issue permits in the same area. The applicant alleges that noncompliance with these judgments amounts to a violation of Article 6, and that the resulting harm to the environment constitutes a violation of Article 8.

Meanwhile, there were several drawn-out court cases related to the same set of facts. First, a civil suit against an applicant's neighbor, "M.," for unlawfully taking her land began on 31 January 1991 and was still ongoing as of December 1999. Second, another case involved a demolition notice for the applicants' homes, to which an appeal was rejected in September 1994 and, as of June 2000, was still being heard. The applicant alleges that the excess length of the proceedings amounts to a violation of Article 6 § 1 of the ECHR.

B. COURT'S RULING –

The Court unanimously ruled that there was a violation of Article 6 (right to a fair trial).[28]

First, the Court reasoned that the right to a fair trial implies that court judgments must be upheld; otherwise, the right to a fair trial is meaningless. Thus, the failure of authorities to uphold the decisions that required an end to the development of the swamps on Tinos constituted a failure to comply with Article 6.

Second, the Court ruled that the drawn-out judicial proceedings (unrelated to the building permits) violated the duty under Article 6 § 1 to conduct public hearing within a reasonable time. A "reasonable time" is determinable on a case-by-case basis depending on the case's complexity, the conduct of the parties, the conduct of the authorities, and the stakes of the dispute. Here, the two cases are over twelve years old and over eight years old, and neither is notably complex. Furthermore, the applicants are not responsible for the delay. Thus, the length is not reasonable.

C. LESSON LEARNED –

If a case falls within the scope of Article 6, public authorities must be able to enforce their decisions; otherwise, there is likely a violation of Article 6. Furthermore, such cases must be decided within a "reasonable" period of time, and this case shows that eight years or above for a relatively simple case is clearly not reasonable.

[28] The Court also ruled, 6 votes to 1, that there was not a violation of the right to private and family life and home under Article 8 (*see* Article 8 section).

STEEL AND MORRIS V. THE UNITED KINGDOM

SUMMARY	No legal aid in complex trial violated Article 6.
APPLICATION NUMBER	32772/02
DATE OF JUDGMENT	15 February 2005

A. FACTS –

The applicants are members of London Greenpeace (unassociated with Greenpeace International), which led an anti-McDonald's campaign in the mid-1980s. This campaign distributed leaflets that generally alleged that McDonald's is deadly (e.g. causes cancer and heart disease), greedy, and environmentally devastating (e.g. destroys rainforests to raise cattle), and also that they torture animals, exploit poor countries, manipulate children, and have poor working conditions.

In September 1990, McDonald's issued a writ against the applicants that sought damages for libel (i.e. publishing false information that damages a reputation). The applicants applied for legal aid, but were repeatedly refused, which they allege hampered their ability to sufficiently defend themselves, although they sometimes had volunteer lawyers. The applicants also could not afford daily transcripts of what became the longest trial in English history at 313 court days.

The court ruled in favor of McDonald's, finding several parts of the pamphlet to be untrue or unproven, like that the food cases cancer or is to blame for third world starvation, although they found other parts to be true, such as the cruel animal practices. An appeal failed aside from damages being reduced to GBP 40,000 from GBP 60,000. The applicants contend that unfair proceedings and the ruling against them for exercising free speech violates Article 6 and Article 10 respectively.

B. COURT'S RULING –

The Court unanimously ruled that there was a violation of Article 6 (right to a fair trial).[29]

The Court reasoned that under Article 6, a litigant in criminal proceedings must to be able to present a case before the court in an effective manner and without a substantial disadvantage. Based on this concept, the Court explained that legal aid is required under Article 6 as determined on a case-by-case basis and depending on the complexity of the case, the importance of the law, and the ability of a defendant to represent him or herself (including consideration of finances). Noting that the applicants faced serious legal charges, high potential damages, and a complex legal case with lengthy documents and an abundance of witnesses – all with only sporadic help of volunteer lawyers – the Court determined that the applicants were not able to fully represent themselves. Thus, the failure to grant the applicant's request for legal aid violated of Article 6 § 1.

C. LESSON LEARNED –

This case demonstrates that in incredibly complex court cases brought by large multinational corporations, there may be a duty to grant an individual's request for legal aid when failing to do so compromises the fairness of the court case. Furthermore, even if such a person has occasional help from volunteer lawyers, having *any* sort of legal aid whatsoever is not sufficient to satisfy Article 6; rather, the legal aid must be adequate or sufficient under the circumstances of the case. This is part of the principle of "equality of arms," whereby two opponents in a court case should have an equal opportunity to present their case to the court.

[29] The Court also unanimously ruled that there was a violation of the right to freedom of expression under Article 10 (*see* Article 10 section).

OKYAY AND OTHERS V. TURKEY

SUMMARY	Non-enforcement of court decision violated Article 6.
APPLICATION NUMBER	36220/97
DATE OF JUDGMENT	12 July 2005

A. FACTS –

The applicants are lawyers who live about 250 kilometres from three thermal power plants (hereinafter "plants") that cause significant pollution. The applicants requested that the relevant agency shut down the thermal power plants, but they received no response. The applicants then initiated domestic proceedings, arguing that the thermal power plants interfered with the right to live in a healthy and balanced environment under both the Constitution and the Environment Act. The domestic administrative courts ruled that the plants did not have the requisite licenses and that they caused harm to human health and the environment. The courts ordered one plant to shut down and two plants to suspend operations, which was to be enforced within 30 days.

Despite this decision, the Council of Ministers – composed of the Prime Minister and other cabinet members – ordered the plants to continue operating, citing their importance to local employment and electricity production. The applicants attempted to pursue a criminal complaint against the Council of Ministers and administrative authorities for failing to uphold the court's decision to shut down or suspend the plants, but public prosecutors declined the case. The applicants allege that the failure to enforce the decision of the administrative court violated Article 6 § 1.

B. COURT'S RULING –

The Court unanimously held that there was a violation of Article 6 (right to a fair trial).

First, the Court determined that Article 6 is admissible. The Court reasoned that there was a "genuine and serious" dispute over the constitutional right to live in a healthy and balanced environment, which was threatened by the thermal power plants. And the outcome of the dispute – shutting down or suspending the plants – had a "direct effect" on the applicants' right to live in a healthy and balanced environment because the hazardous emissions from the thermal power plants reached well beyond their homes.

On the merits of the case, the Court recognized that Article 6 requires effective enforcement of judicial decisions. Otherwise, the Court reasoned, the right to a fair and public hearing would be rendered meaningless. Thus, the Court concluded that the administrative authorities violated Article 6 by failing to enforce the decision of the administrative courts within the prescribed time limit of 30 days. The Court also recognized that the decision by the Council of Ministers to keep the thermal power plants open was "obviously unlawful" and ran afoul of the notion of a law-based state that is founded on the principle of legal certainty.

C. LESSON LEARNED –

This case demonstrates that if a dispute falls within the scope of Article 6, and the domestic judicial decision regarding this dispute is not enforced, then there is a likely violation of Article 6. This case is notable because even the vital authority of the Council of Ministers – composed of the Prime Minister and other cabinet members – did not have the authority to negate the decision of the judicial branch without violating Article 6. This case is also notable because while the effect of hazardous pollution originated a relatively long distance away from the applicants (250 kilometres), the Court still found that the outcome of decision to either shut down the plants or not had a "direct effect" on the applicants' civil rights and obligations. The Court places a significant amount of merit on the domestic court ruling that indeed the pollution, albeit originating far away, had a direct effect on the applicants' right to live in a healthy and balanced environment.

EKHOLM V. FINLAND

SUMMARY	Proceedings lasting 15 years violated Article 6.
APPLICATION NUMBER	36220/97
DATE OF JUDGMENT	24 July 2007

A. FACTS –

The applicants have a secondary residence on the Åland Islands in Finland. Their neighbor had a "dog yard" located on their common boundary. The applicants applied to the local Health Board in 1991 to have the dog moved, claiming that the noise constituted a private nuisance. The Health Board disagreed, but the applicant appealed, and the administrative courts sided with the applicant and returned the case to the Health Board. The Health Board ordered the neighbor to install insulation to reduce sound and to create a yard for puppy litters, but without setting a time limit. The applicant considered these measures to be insufficient and appealed. Again, the administrative courts sided with the applicant and ordered the Health Board to impose a time limit and to order more effective measures.

This same basic pattern – the Health Board ordering the neighbors to mitigate the sound in various ways, the applicant appealing, and the administrative courts finding the orders of the Health Board to be insufficient – occurred for 15 years over eight rounds of proceedings. While the Health Board finally ordered the neighbor to move the dog yard, the dispute is still ongoing. The applicants allege that the Health Board's failure to enforce the administrative court judgments, the lack of precise instructions from the Health Board on lowering noise, and the excessive length of the proceedings constitute a violation of Article 6.

B. COURT'S RULING –

The Court unanimously held that there was a violation of Article 6 (right to a fair trial).[30]

First, the Court determined that the length of the proceedings – almost 16 years – was *not* reasonable in light of the circumstances when considering the complexity (a relatively minor noise issue), the conduct of the applicants, the conduct of relevant authorities (a failure of the Health Board to order proper remedies for the problem), and what is at stake for the applicants. Thus, this constituted a violation of the duty under Article 6 § 1 to provide a hearing "within a reasonable amount of time." Note that the Court considers all eight different sets of proceedings together to determine that the length of proceedings was not reasonable.

Second, the Court determined that the failure of the Health Board to comply with the decisions of the administrative courts for almost 10 years – only until word was given about the applicant's ECHR submission did the Health Board truly comply, the Court notes – was excessive enough to constitute a separate violation of Article 6 § 1. The Court reaffirmed that the "right to court" under Article 6 includes the obligation to implement the result of legal proceedings; otherwise, Article 6 protections would be hollow.

C. LESSON LEARNED –

The case shows another example of an unreasonable length of time for judicial proceedings. The case was relatively simple, and the conduct of authorities caused an incredible amount of delay in implementing the decision of the administrative courts. There is also evidence of bad intentions on the part of the Health Board, who made negative public statements regarding the applicants and who seemed primed not to enforce the decisions of the administrative courts.

[30] The Court also held that it was unnecessary to make a ruling regarding Article 1 of Protocol No. 1.

HAMER V. BELGIUM

SUMMARY	Slow proceedings regarding a home violated Article 6.
APPLICATION NUMBER	21861/03
DATE OF JUDGMENT	27 November 2007

A. FACTS –

The applicant is the current owner of a holiday home in Belgium that her mother built without planning permission in, according to some accounts, 1967. The applicant remodeled the home, cut down some trees, and hooked the home up to a drainage system between 1993 and 1994. In 1994, a police report noted that the applicant did not have the proper planning permission, and authorities subsequently ordered the applicant to restore the property to its original condition.

The applicant resisted this order, and criminal proceedings against the applicant began in May 1999, five years after investigations started. The court did not make a judgment until 2003, when the Court of Cassation dismissed the applicant's appeal of an order to restore the land to its original condition. The applicant argues that the failure of authorities to initiate criminal proceedings within a reasonable amount of time, as well as the unreasonable length of those proceedings, constitute a violation of Article 6. The applicant also alleges a violation of her property rights under Article 1 of Protocol No. 1.

B. COURT'S RULING –

The Court unanimously ruled that there was a violation of Article 6 (right to a fair trial).[31]

The Court first determined that this is a criminal charge within the meaning of the ECHR based on the nature of the offense; the criminal classification of the offense under domestic law; and the degree of severity of the penalty, which requires demolition of the house. While Belgian authorities argued that demolishing the house was a "remedial order" rather than a penalty, and thus this order should not constitute a "criminal charge," the Court considers this to be a penalty.

The Court then determined the proceedings for the criminal charges against the applicant failed to occur within a reasonable amount of time as required by Article 6 § 1. The Court notes that measurement of a "reasonable time" began with the police report that first noted the unlawful building in 1994, at which time the applicant was officially subject to criminal proceedings. Observing that proceedings lasted somewhere between eight to nine years for three levels of jurisdiction, and that investigation lasted over five years for a relatively simple topic, the Court found a violation of Article 6 § 1.

C. LESSON LEARNED –

This case helps establish what constitutes a "reasonable time" within the meaning of Article 6. For a relatively fact-simple case involving a lack of proper planning permissions, five years for the investigatory stage and another four years for the judicial proceedings is not reasonable. In making this decision, the Court generally considers the proceedings taken as a whole, as opposed to whether each small delay in the proceedings was reasonable.

[31] The Court also unanimously ruled that there was not a violation of the right to protection of property under Article 1 of Protocol No. 1 (*see* Article 1 of Protocol No 1 section).

DEÉS V. HUNGARY

SUMMARY	Failure to mitigate traffic noise violated Article 6.
APPLICATION NUMBER	2345/06
DATE OF JUDGMENT	9 November 2010

A. FACTS –

This dispute is over noise, pollution, and smell in relation to a road with heavy traffic, as well as the associated court proceedings. Traffic increased significantly on a certain street in the town of Alsónémedi, where the applicant lives, because drivers avoided a new toll on another road. The applicant began to notice damage to his walls in 1997. The applicant described his home as almost uninhabitable because of the noise from the traffic and the pollution from fumes.

To mitigate the problem, beginning in 1998, the Government built three bypass roads, lowered the speed limit, installed traffic lights, put up signs to limit the maximum truck weight, and bolstered police presence. However, the applicant did not think that these measures were effectively enforced. The toll on the private road was also lessened and made more convenient. Overall, Hungary spent over one billion Hungarian forints (about 4,000,000 euros at the time) on these traffic mitigation strategies. Still, two tests of the noise levels at the applicant's home showed that noise was 12 and 15 percent above the limit.

The applicant initiated various proceedings for compensation, but the courts found no causal relationship between traffic vibrations and cracked walls. The applicant alleges violations of Article 6 and Article 8.

B. COURT'S RULING –

The court unanimously ruled that there was a violation of Article 6 (the right to a fair hearing).[32]

Article 6 ¶ 1 guarantees the right to a hearing within a reasonable time. The two levels of court proceedings took six years and nine months, which the Court decided is not a reasonable amount of time. While this amount of time could, in some circumstances, be reasonable, Hungary did not submit any information to justify this length.

C. LESSON LEARNED –

This case shows that six years and nine months is not a reasonable time to conclude what seems to be a relatively straightforward case, especially if the government does not have a justification for this length. The burden is on the government to at least submit reasons for such a long length of proceedings to avoid a breach of Article 6.

[32] The Court also unanimously that there was a violation of the right to private and family life and home under Article 8 (*see* Article 8 section).

IVAN ATANASOV V. BULGARIA

SUMMARY	Tailings pond reclamation did not violate Article 6.
APPLICATION NUMBER	12853/03
DATE OF JUDGMENT	2 December 2010

A. FACTS –

The applicant is a farmer who lives about one kilometer and farms four kilometers from a 98.3 hectare tailings pond from a copper-ore mine. To clean up pollution, authorities accepted a reclamation scheme that would use sludge from a wastewater treatment plant. While environmental authorities, the local mayor, and experts gave this reclamation scheme a negative opinion because the sludge could be hazardous and the effectiveness was questionable, the relevant authorities still chose this scheme because of other benefits. An environmental impact statement was never completed. Testing of the sludge in May 2000 recorded illegal levels of toxic substances, and 2007 water tests showed heavy metals above allowable levels.

The applicant also had issues with his ability to challenge a license. In February 2000, the Minister for the Environment and Water granted a license to carry wastewater sludge to the tailings pond. While the applicant challenged the license in the Supreme Administrative Court for interfering with his constitutional right to a "healthy and favourable environment," the Court found that the applicant lacked standing. By the time an appeal court ruled in favor of the applicant, the license was expired. This process lasted roughly two years, during which time requests for an injunction of the reclamation failed. The applicant alleges violations of Article 6 § 1, Article 8, and Article 1 of Protocol No. 1.

B. COURT'S RULING –

The Court unanimously ruled that Article 6 (right to a fair trial) claim was inadmissible.[33]

While the Court determined that the right to a "healthy and favorable environment" is a civil right that is protected by Article 6, the Court determined that the proceedings did not have a "direct effect" on the applicant's right to a "healthy and favourable environment," in which case the claim is not admissible under Article 6. In question is a license to carry wastewater sludge, and, according to the Court, the applicant failed to establish that granting the permit would affect his right to a healthy environment. According to the Court, the applicant relied on hypothetical health hazards as opposed to concrete ones. The Court differentiated this from another case where a license would indisputably pollute the well of the applicant.

C. LESSON LEARNED –

This case also shows that a successful Article 6 claim regarding the "right to a healthy environment" must establish a causal link between the applicant's individual environmental rights and the proceedings in question. In this case, the applicant needed to show concrete evidence that the decision regarding the permit would in fact affect his right to a healthy environment for the case to be admissible. Instead, the applicant merely demonstrated the *potential* risks of granting the permit in question.

[33] The Court also unanimously held that there was not a violation of the right to private life and family life and home under Article 8 or the right to protection of property under Article 1 of Protocol No. 1 (*see* Article 8 section and Article 1 of Protocol No. 1 section respectively). Furthermore, while not discussed in this toolkit, the applicant's Article 13 (the right to remedies of ECHR violations) claim failed because the Court determined that violations of Article 6 and 8 were not even "arguable."

THE RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE AND HOME ARTICLE 8

OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

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 human rights or freedoms of others.

– COMPLIANCE WITH ARTICLE 8 –

Article 8 establishes the right to respect for private and family life, home, and correspondence (hereinafter "right to private and family life and home"). Article 8 is perhaps the main avenue for environmental cases under the ECHR because it can protect individuals and their homes from impairment arising out of poor environmental conditions. Typically, this takes the form of nuisance-related claims that involve, for example, hazardous waste, airborne pollutants, or excessive noise and vibrations.

The Court considers the following factors when determining whether a State complied with Article 1 of Protocol No. 1 in an environmental issue:

- **There must be an interference with an individual's right to respect for private and family life and home that reaches a level of sufficient severity to trigger Article 8.**

The Court will look at a number of factors to determine if there is an interference with the right to respect for private and family life and home that is severe enough to trigger Article 8. Environmental nuisances that exceed norms set by domestic law or international standards likely reach such a level of severity, but not interferences that are "inherent to life in a modern town." Furthermore, the Court will look at the intensity and duration of an environmental nuisance as well as the "physical and mental effects on an individual's health or quality of life." The burden of proof is on an applicant to establish the likelihood of an interference of a sufficient severity to trigger Article 8.

Article 8 can still be triggered if a State does not directly interfere with the right to respect for private and family life and home. Article 8 imposes a positive duty on the State to take the necessary steps to protect such rights, foremost by enacting adequate laws and regulations. This may also include an obligation to disseminate relevant information, such as medical information about an individual.

- **A significant interference with the right to respect for private and family life and home complies with Article 8 only if the interference is (1) in accordance with law, (2) pursues a legitimate aim, and (3) is necessary in a democratic society.**

(1) "In accordance with law"

The interference must be in accordance with domestic and international law, amongst other binding sources of law. The law must also be accessible and formulated with sufficient precision such that individuals may reasonably foreseeable the consequences of their actions, which is meant to protect individuals from arbitrary actions of the government.

(2) "Pursues a legitimate aim"

The interference must pursue one of the legitimate aims listed in Article 8, para. 2, which includes "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 human rights or freedoms of others."

(3) "Necessary in a democratic society"

In simple terms, this requires that authorities adequately justify any interference. To elaborate, interference with an Article 8 right is "necessary in a democratic society" if the interference constitutes a fair balance between the protection of an individual's Article 8 rights and meeting the general interest of the community. There is *not* a "fair balance" if an individual bears an "excessive burden." Authorities have positive duty to take reasonable and appropriate steps to strike this fair balance.

POWELL AND RAYNER V. THE UNITED KINGDOM

SUMMARY	Airport noise did not even arguably violate Article 8.
APPLICATION NUMBER	9310/81
DATE OF JUDGMENT	21 February 1990

A. FACTS –

The applicants, who live near Heathrow Airport, claim that airplanes flying near their homes cause significant noise disturbance. Noise is measured through a Noise and Number Index (NNI) contour, which considers both the level and the frequency of the noise. One of the applicants falls within the 60 NNI contour, which is classified as "high noise-annoyance."

There are several laws that could possibly control airplane noise, but they do not apply to the applicants. However, the 1982 Civil Aviation Act, for example, permits claims of excessive noise if airplanes violate flight orders, regulations, or fly unreasonably low. While Heathrow Airport took steps to reduce noise levels, such as decreasing night flights, installing noise-monitoring equipment, requiring noise certification for aircrafts, and providing noise-insulation grants for households within the 60 NNI contour, the applicants still contend that the government failed to provide an effective remedy in violation of Articles 6, 8, and 13.[34]

B. COURT'S RULING –

The Court unanimously ruled that they do not have jurisdiction to consider Article 8 (right to respect for private and family life and home).[35] They also ruled that there was not a violation of Article 13 (right to an effective remedy) in conjunction with Article 8.[36]

Article 13 only applies if there is another "arguable" ECHR complaint, and while the European Commission of Human Rights ruled that the Article 8 claim was "manifestly ill-founded," the Court may still determine if it meets the separate, unique standard of "arguable." However, the Court did not find the Article 8 claim to be arguable. The Court reasons that the State took various measures to mitigate the interference with the applicants' right to respect for his private life and home – including the possibility for nuisance claims under the 1982 Civil Aviation Act – and that the interference is far outweighed by the mammoth economic and transportation-related interests of the community in the airport.

C. LESSON LEARNED –

While the European Commission of Human Rights, whose decision was central to this case, is now defunct, there are still important lessons to learn from this case. Perhaps foremost is that the Court seems to consider the community interest in major international airports to be monumental on both a social and economic level, so a State is given a large amount of discretion in implementing measures that balance this interest with an individual right to respect for private and family life and home. In this case, authorities seem to have made a good faith effort to mitigate the effects of the noise, and while some laws excluded airport noise from their provisions, there were still available pathways to nuisance claims. This case is also important because it shows a situation in which an Article 8 claim is not even "arguable."

[34] The applicant also alleged a violation of Article 1 of Protocol No. 1., which the Court did not consider.
[35] The European Commission of Human Rights (now defunct) considered the Article 8 complaint to be "manifestly ill-founded," which precludes consideration by the Court.
[36] The Court also unanimously found there to be no violation of Article 13 in conjunction with the right to a fair trial under Article 6 (*see* Article 6 section).

LÓPEZ OSTRA V. SPAIN

SUMMARY	No help with fumes from treatment plant violated Article 8.
APPLICATION NUMBER	16798/90[37]
DATE OF JUDGMENT	03 December 1994

A. FACTS –

The applicant, a resident of the town of Lorca, resides only twelve meters from a liquid and solid waste treatment plant (hereinafter "plant") that was operating without the proper license beginning in July 1988. An accident at the plant caused gas fumes, "pestilential" smells, and other environmental problems, which resulted in various nuisances and health problems and even a three-month evacuation of the town (July – September 1988).

Authorities shut down one of the plant's several activities after this accident, but various experts testified that the levels of several pollutants were still illegally high. These pollutants were linked to health problems with the applicant's daughter. And while an administrative court ordered the plant to be closed until they obtained the proper license, this decision was stayed on appeal and is still being considered by the Supreme Court. Other attempts at judicial action were unsuccessful. Based on these facts, the applicant alleges a violation of Article 8 because the authorities failed to prevent the illegal smells, noise, and polluting fumes caused by the plant, which resulted in unbearable living conditions that seriously affected her family's health.

B. COURT'S RULING –

The Court unanimously ruled that there was a violation of Article 8 (right to private and family life and home).[38]

First, the Court found that the plant constitutes a serious interference with the rights to home and private and family life under Article 8. Next, the Court ruled that authorities failed to take reasonable and appropriate measures to protect the applicant's Article 8 rights. In this regards, the Court notes that local authorities allowed the plant to be built on government land, subsidized construction, failed to correct persisting pollution problems after the plant reopened, and delayed and appealed legal attempts to shut down the illegal plant – all the to detriment of the applicant's Article 8 rights. The Court concluded these burdensome measures on the applicant did not strike a "fair balance" with the legitimate aim of the community in the economic benefits of a waste-treatment plant.

C. LESSON LEARNED –

One important concept this case stands for is that an environmental nuisance that is severely burdensome on certain individuals can outweigh a significant economic interest of the community as a whole. While the plant was certainty important to the community interest, the Court found that the significant interference with the applicant's rights and the failure of the government to uphold its domestic environmental laws outweigh these interests. Of course, the government is hard-pressed to argue that the applicant's interests were sufficiently considered when the plant was operating without a license.

[37] Application numbers for the European Commission on Human Rights, which referred the case to the European Court of Justice.
[38] The Court also did not find a violation of Article 3.

This dispute is also important because the applicant won this case despite not having submitted evidentiary damage to his health. This demonstrates that a severe environmental nuisance may violate Article 8 whether or not there is hard evidence that it seriously endangers health.

GUERRA AND OTHERS V. ITALY

SUMMARY	Failure to inform public about factory violated Article 8.
APPLICATION NUMBER	116/1996/735/932
DATE OF JUDGMENT	19 February 1998

A. FACTS –

The applicants are residents of the town of Manfredonia that is located one kilometer from a chemical factory that produces fertilizer and caprolactam. The chemical factory released a slew of dangerous substances, including nitric oxide, ammonia, arsenic trioxide, and inflammable gas that could cause an explosion. Local atmospheric conditions also caused emissions to regularly drift directly over Manfredonia. For these reasons, the chemical factory was deemed to be "high risk" based on an EU Directive (Directive 82/501/EEC, the "Seveso" Directive) that establishes standards to protect local populations from major industrial accidents. The chemical factory was also designated as a "dangerous factory" under DPR 175/88.

Meanwhile, the applicants were unable to access information regarding the risks of the chemical plant. While the Ministries of the Environment and Health adopted conclusions based upon on the factory's internal reports, they were not disseminated to the public. This is despite the authorities' obligation under DPR 175/88 to provide information to the local community about the chemical factory, including its safety measures and emergency plans. Only in 1994, when the plant had stopped producing both caprolactum and fertilizer, did authorities disseminate such information to the public. The applicant contends that the failure of authorities to reduce the risk of pollution or an accident at the plant and their failure to provide information about the hazards of the plant amount to violations of Articles 8 and 10 respectively.

B. COURT'S RULING –

The Court unanimously ruled that there was a violation of Article 8 (right to private and family life and home).[39]

First, the Court decided that the chemical plant's harmful toxic emissions constituted a significant interference with the right to respect for private and family life and home under Article 8. The Court then determines that authorities failed to take reasonable and appropriate measures to protect the applicants from the toxic emissions. Considering that the reports on safety were never transmitted to the local population, and that information about the fertilizer plant was not received until production ceased in 1994, the applicants were unable to assess the risk the plant posed to their health. The Court thus finds that authorities failed to secure to a sufficient level the Article 8 rights of the applicant.

C. LESSON LEARNED –

This case demonstrates that when there is a major industrial activity that puts the health of the local population at serious risk (both through its toxic emissions and through the possibility of a disaster), there may be a positive obligation on the government under Article 8 to ensure that the public has sufficient information to understand the risk. This case also highlights a contrast between Articles 8 and 10. While Article 8 places a positive obligation on the government to protect individuals from interferences with the right to respect for

[39] The Court also found, 18 votes to 2, that the access to information claim under Article 10 (the right to freedom of expression) was inadmissible (*see* Article 10 section). Furthermore, while this issue is not discussed in this toolkit, the Court also did not find a violation of Article 3.

private and family life, there is no positive obligation on the government to actively disseminate information under Article 10 (which is why the Court did not find a violation of Article 10).

MCGINLEY AND EGAN V. THE UNITED KINGDOM

SUMMARY	Access to documents process did not violate Article 8.
APPLICATION NUMBER	21825/93 and 23414/94[40]
DATE OF JUDGMENT	09 June 1998

A. FACTS –

The United Kingdom tested a series of nuclear weapons at Christmas Island in the Pacific Ocean in 1957 through 1958. The government ordered servicemen to stand in a line in an open area and look away from the blast. The government denies knowledge of any harmful effects. In 1993, the environmental monitoring programme released all available data related to the nuclear tests, including measurements of radiation levels.

The applicants both suffered various medical conditions that they contend resulted from the nuclear tests, including renal colic and infertility for Mr. McGinley and sarcoidosis for Mr. Egan. The applicants sought increased pension at various points for these conditions. Authorities denied the requested pension increases, so the applicants appealed to the Pensions Appeal Tribunal (PAT), which dismissed the appeals.

Authorities disclosed many military documents to the applicants, but the applicants still claim that the military is withholding certain medical examinations that would prove they were treated for conditions related to radiation after the blasts. The applicants contend that this violates Articles 6 and 8. The government counters that they released all available documents and that PAT Rule 6, which the applicants failed to use, ensures disclosure of these documents.

B. COURT'S RULING –

The Court ruled, 5 votes to 4, that there was not a violation of Article 8 (right to private and family life and home).[41]

First, the Court determined that access to information regarding the nuclear program served to either pacify the applicants' fears or provide them with important information regarding their health, which is sufficiently linked to their private and family lives to trigger Article 8. Second, noting that this information regards the health effects of potential exposure to hazardous materials, the Court finds that the State has a duty to establish effective and accessible procedures for individuals to access such information. However, the Court concluded that the United Kingdom met this obligation through Rule 6, and although there are doubts over the effectiveness of Rule 6, neither applicant even attempted to use it to access information.

C. LESSON LEARNED –

This case further demonstrates that there seems to be a preeminent right of access to information from the government when such information concerns serious health effects. The opinion of the Court made clear that the government has a positive obligation to set up effective and accessible procedures to obtain such information. The majority believed that Rule 6 satisfied this burden. On the other hand, the dissenting opinion argued that Rule 6 was insufficient because it could only be used in very narrow circumstances, namely when

[40] Application numbers for the European Commission on Human Rights, which referred the cases to the European Court of Justice

[41] The Court also found, 6 votes to 3, that there was not a violation of the right to a fair trial under Article 6 (*see* Article 6 section).

an individual was seeking a pension review, which the dissent argued was *not* "effective and accessible." However, the majority found it significant that the applicant did not attempt to use Rule 6, so a lesson of this case is that all modes of access to information should be attempted before claiming a violation of Article 8.

KYRTATOS V. GREECE

SUMMARY	The procedure to develop swamps did not violate Article 8.
APPLICATION NUMBER	41666/98
DATE OF JUDGMENT	22 May 2003

A. FACTS –

The applicants, who own property on a Greek Island called Tinos, challenged decisions made by the prefect of Cyclades in 1985 and 1988 to redraw certain settlement boundaries. In 1995, the Supreme Administrative Court ruled in favor of the applicants and quashed the building permits, concluding that the concerned areas are protected swamps under Article 24 of the Greek Constitution. Nonetheless, the prefect excluded the buildings concerned from demolition and continued to issue permits in the same area. The applicant alleges that noncompliance with these judgments amounts to a violation of Article 6, and that the resulting harm to the environment constitutes a violation of Article 8.

B. COURT'S RULING –

The Court ruled, 6 votes to 1, that there was not a violation of Article 8 (right to private and family life and home).[42]

While the swamp was damaged, an Article 8 claim requires a "harmful effect" rather than just the "general deterioration of the environment," and the Court determined that this set of facts falls under the latter category because the environmental damage did not affect the applicant's property. Furthermore, the Court determined that the noise, lights, and other effects of the illegal urban developments were not serious enough to violate Article 8.

C. LESSON LEARNED –

This case is important because it reaffirms that Article 8 does not protect the environment as such. Rather, there must be a direct effect on the rights of an *applicant* – not the environment that the applicant happens to enjoy – to successfully claim the protections of Article 8. Had the destruction of the protected swamps affected the applicant in some negative manner, then perhaps the protections of Article 8 would have been implicated. Furthermore, if there is light and noise interference, such interference must reach a certain threshold of severity to fall within the scope of Article 8.

[42] The Court also unanimously ruled that there was a violation of the right to a fair trial under Article 6 (*see* Article 6 section).

HATTON AND OTHERS V. UNITED KINGDOM

SUMMARY	Noise from airport did not violate Article 8
APPLICATION NUMBER	36022/97
DATE OF JUDGMENT	08 July 2003

A. FACTS –

The applicants, who lived about 12 kilometers from Heathrow Airport, claim that noise from night flights cause significant disturbances to their sleep. In 1993, the Secretary of State for Transport adopted a quota system of night flying restrictions ("1993 Scheme") aimed at striking a proper balance between the local residents and the economic interest of maintaining a 24-hour international airport.

In 1995, local authorities sought judicial review of the decision to implement the 1993 Scheme. The High Court ruled that the scheme was contrary to domestic law, but after the Secretary of State amended the scheme, the High Court reversed its decision. This decision was subsequently held up on two levels of appeal. The applicants alleged that their interests were not properly considered in the 1993 Scheme in violation of Article 8 of the ECHR.

B. COURT'S RULING –

The Court ruled, 12 votes to 5, that there was no violation of Article 8 (right to private and family life and home).[43]

The Court concluded that the interests of the applicants were properly taken into consideration when deciding to implement the 1993 Scheme. The Court relied on statistical information to conclude that the noise disturbances to the applicants surrounding Heathrow Airport were "negligible," and therefore did not outweigh the substantial economic community interest of maintaining a 24-hour international airport. The Court also noted that the applicants could have found new residences without a significant loss. Thus, in evaluating the competing interests of the individual and the community as a whole, the Court believed that the national authority (here, the Secretary of State for Transport) should be given a wide margin of appreciation in taking measures to mitigate the noise from the airport.

C. LESSONS LEARNED –

This case shows the difficulties is bringing a lawsuit based on noise pollution, particularly when this is balanced against an economic interest as significant as a major international airport. While Article 8 does not require the applicants to establish that noise pollution poses a serious danger to their health, it does appear from this case that the plaintiff must prove that any direct or adverse effect to him must be greater than negligible in degree. Also, the fact that the plaintiffs' homes did not suffer a reduction in value weakened their claim.

[43] The Court did rule, however, that there was a violation of Article 13 (right to an effective remedy), and awarded the plaintiffs monetary compensation.

TASKIN AND OTHERS V. TURKEY

SUMMARY	Poor procedural rights for mining site violated Article 8.
APPLICATION NUMBER	46117/99
DATE OF JUDGMENT	10 November 2004

A. FACTS –

The applicants, who lived in and around the village of Bergama, all resided within 10 kilometers of a mining site. In February 1992, authorities granted a mining company rights to operate a gold mine, which included authorization to use cyanide leaching to extract the gold. Then, in 1994, the Ministry of Environment issued an operating permit for the gold mine after reviewing an environmental impact report.

In November 1994, concerned residents of Bergama (including the applicants) applied to the Izmir Administrative Court for judicial review of the decision to issue the operating permit. In 1997, the Supreme Administrative Court ruled that the permit should not be issued, citing the dangers that the mining operation posed to the surrounding area.

However, the Prime Minister intervened in 1999, instructing a research facility to reassess the risks of the mining operation. The assessment concluded that the potential risks were no longer a threat to the community. In January 2000, the Ministry of Environment approved the mining operation in light of the more recent report, issuing a three-year permit in 2001. When the Council of Ministers affirmed this decision, they did not publicize their judgment.

The applicants were unsuccessful in challenging the decision of the Ministry of Environment and Council of Ministers, and further appeals were denied. The applicants allege that granting to license to mine gold with cyanide and the related procedures violates Article 8.

B. COURT'S RULING –

The Court unanimously ruled that the State violated Article 8 of the ECHR (right to private and family life and home).

The Court held that the 1997 decision of the Supreme Administrative Court created a binding and enforceable judgment against the issuance of the mining permits and operation of the mine. The failure of the mining company to cease its operations and the lack of a public announcement from the Council of Ministers regarding its 2002 decision deprived the applicants of their procedural guarantees under Article 8. The Court reasoned that authorities should have provided the applicants with the necessary information to assess the danger to their health. This constitutes a failure to take reasonable and appropriate steps to safeguard the interests of the applicant's right to private and family life and home and thus violates Article 8.

C. LESSONS LEARNED –

First, this case shows that an individual may establish a valid Article 8 claim in regards to procedural guarantees and access to information even if it is not certain that the individual will be exposed to the dangerous effects of a specific activity. Such a claim may be valid when the applicant can establish the *likelihood* of adverse exposure. Second, this case highlights the importance the Court places on involving individuals in the decision-making processes that affect their local environment.

MORENO GOMEZ V. SPAIN

SUMMARY	Noise from a nightclub violated Article 8.
APPLICATION NUMBER	41343/02
DATE OF JUDGMENT	16 November 2004

A. FACTS –

The applicant lived in an area that has several bars and nightclubs that caused a lot of noise and made it difficult for him to sleep. In 1996, the City Council adopted a bylaw that designated this area an "acoustically saturated zone," but noise levels continued to exceed the prescribed level of 45 decibels. The applicant lodged complaints with the Valencia City Council and several courts, but these claims were unsuccessful. Eventually, the Constitutional Court upheld a decision that concluded that a direct link between the noise and the alleged damage or nuisance was not sufficiently proven because, for example, the sound reading was taken at the building's entrance hall instead of in the home and medical reports were vague. That applicant alleges that the failure to enforce the allowable noise levels constitutes a violation of Article 8.

B. COURT'S RULING –

The Court unanimously ruled that there was a violation of Article 8 of the ECHR (right to private and family life and home).

The Court first reiterated that a breach of Article 8 can occur through nonphysical intrusions into a person's home, such as noise, emissions, and smells, so long as it is a "serious breach." Under the facts of the case, the Court noted that noise levels measured in the building's entranceway violated the maximum level in an acoustically saturated zone, which by definition means that the noise levels are excessive and cause disturbances. The Court considered this to be a serious breach.

Next, the Court concluded that authorities failed to strike a fair balance between the interests of the applicant in the peaceful enjoyment of her home and the interest of the community in the nightclub. The Court reasoned that the government had failed to enforce the nighttime noise levels that were significantly above the prescribed levels for many years, thus there was a violation of Article 8.

C. LESSONS LEARNED –

This case demonstrates that if noise levels are in excess of allowable levels but governmental authorities fail to remedy the situation, this may constitute a violation of Article 8. A failure to follow domestic noise laws is strong evidence of a failure to sufficiently consider the interests of an individual. This case also demonstrates some of the factors that make a disturbance "severe"– in this case, the court considered the level of the disturbance, the amount of years it lasted, and that it occurred during the night.

FADEYEVA V. RUSSIA

SUMMARY	Failure to relocate away from steel plant violated Article 8.
APPLICATION NUMBER	55723/00
DATE OF JUDGMENT	05 June 2005

A. FACTS –

The applicant is a resident that lived about 450 meters from the Severstal steel plant (hereinafter "steel plant"), Russia's largest iron smelter and employer of about 60,000 people. The applicant lived within the "sanitary security zone" (SSZ) – a 5,000 meter pollution buffer zone where, by law, nobody was supposed to live. Despite mandates from a 1974 relocation plan and a 1990 programme to reduce toxic emissions and build new housing for relocation, the applicant remained within the heavily polluted SSZ. Furthermore, while the government acquired ownership of the applicant's house after the steel plant was privatized in 1993, they still did not move the applicant. Meanwhile, the applicant's attempts to enforce her relocation failed in court. While the applicant was on a waiting list to be relocated, the government refused to move her up the waiting list as not to impinge the rights of other residents.

The steel plant caused about 95% of local air pollution, and several types of dangerous pollutants were many times above the limits established by law. An expert report linked the thirteen most toxic of these pollutants to an increased morbidity rate. Tests in 2001 and 2002 also show that the applicant suffered from various nervous system ailments, and a 2004 report reaffirmed threats to the applicant's health from the pollution. The applicant alleges that Russia violated Article 8 of the ECHR by failing to protect her from a severe environmental nuisance.

B. COURT'S RULING –

The court unanimously ruled that there was a violation of Article 8 (right to private and family life and home).

First, the Court found a causal link between the severe emissions from the steel plant and the applicant's health, citing reports of the health effects that dangerous levels of pollution had on the applicant. Also, emissions exceeded legal limits, which is an unsafe level by definition. The State therefore had a positive obligation to strike a fair balance between the rights to respect for the applicant's home and private life and the interests of the community in the steel plant. The Court ruled that Russia failed to meet this obligation, first because the steel plant violated domestic environmental standards that the State did not properly enforce, and second because the State failed to enforce laws that were supposed to relocate the applicant out of the SSZ.

C. LESSON LEARNED –

This case reaffirms a State's duty to take affirmative measures to protect individuals from dangerous levels of pollution. Relocating citizens from the most polluted areas is the type of measure that would strike a fair balance between the interests of the individual and those of the community as a whole, but such measures must be enforced in order to comply with the ECHR.

ROCHE V. UNITED KINGDOM

SUMMARY	Withholding military documents violated Article 8.
APPLICATION NUMBER	32555/96
DATE OF JUDGMENT	19 October 2005

A. FACTS –

The applicant is a British citizen who suffered from a series of medical conditions, such as hypertension, bronchitis, and bronchial asthma, that he alleges resulted from mustard and nerve gas tests undergone during his military service at Porton Down Barracks in England. The applicant was concerned, so he contacted the military to gain access to information about medical reports from his time at Porton Down Barracks beginning in 1987. The military only partially granted his request. The applicant thereafter made a request for military pension, which the Secretary of State denied on the grounds that the applicant did not show a causal link between his medical ailments and his military service. Various attempts to appeal this decision failed. While further medical records were eventually disclosed to the applicant, the Pensions Appeal Tribunal (PAT) still denied the applicant's pension claim because of a lack of evidence supporting a causal link between his conditions and his military service. The applicant alleges that the government's failure to provide him with his medical records caused him great anxiety and stress and constitutes a violation of Article 8.

B. COURT'S RULING –

The Court unanimously ruled that there was a violation of Article 8 of the ECHR (right to private and family life and home).[44]

The Court first acknowledged that Article 8 applies because granting the applicant access to information about the mustard and nerve gas tests would have either quelled his fears or provided him with information to gauge the danger the tests caused, which is "sufficiently closely linked to his private life" to trigger Article 8. The Court then determined that the government had a positive obligation to establish an effective and accessible procedure to grant the applicant access to "all relevant and appropriate information" regarding risks to his health from his military service without the applicant having to litigate. According to the Court, the government failed to do this. Instead, they withheld evidence from the applicant on many occasions without a valid reason. Furthermore, even though the applicant litigated extensively, he still only received partial disclosure of the relevant information.

C. LESSONS LEARNED –

The government has a positive obligation to create an effective and accessible system by which that person can access information that relates to serious health risks. While there are exceptions for documents that, for example, may compromise national security, the government must at minimum cite the exception they are using if they are to deny access to such information.

Furthermore, whether or not the information in question actually proves a causal relationship between the events in question and the health of a person is not determinant of an Article 8 claim because access to the documents may be a prerequisite to even conclude whether such a causal relationship exists. This case is different from other access to information cases under Article 8 in which various applicants claimed that the government withheld information that may or may not have even existed, and thus they were unable to establish an Article 8 violation (amongst other reason).

[44] The Court also ruled that there was not violation of Article 1 of Protocol Number 1 and Articles 6, 10, 13, and 14.

LEDYAYEVA, DOBROKHOTOVA, ZOLOTAREVA, AND ROMASHINA V. RUSSIA

SUMMARY	Not resettling people from polluted area violated Article 8.
APPLICATION NUMBER	53157/99, 53247/99, 53695/00, and 56850/00
DATE OF JUDGMENT	26 October 2006

A. FACTS –

The applicants live near Severstal steel plant (hereinafter "steel plant"), Russia's largest iron smelter and employer of about 60,000 people, which caused unsafe levels of certain dangerous substances to persist in the local area. In response to the pollution problem, authorities created a "sanitary security zone" (SSZ), an area with the worst pollution in which people, by law, are not permitted to live in. The applicants, however, continued to live in the SSZ as tenants in a plant-owned apartment.

Many forms of atmospheric pollution, including formaldehyde and benzopyrene, exceeded legal limits. Meanwhile, one expert report linked the pollution in the SSZ to an increased rate of several diseases, including respiratory infections and cancer.

The applicant initiated various domestic proceedings with scarce results. The courts refused to resettle one applicant, and orders to resettle other applicants were unenforced. Taken together, the applicants allege a violation of Article 8 because the government failed to protect them from this harmful environmental nuisance.

B. COURT'S RULING –

The Court unanimously ruled that there was a violation of Article 8 of the ECHR (right to private and family life and home).

The Court finds that the same factors are met under this set of facts as were present in the *Fadeyeva v. Russia* decision, namely that the applicant lives in an area where pollution exceeds safe levels, the applicant is not supposed to live in this area by law, and there is evidence of a significant effect on health. This created a positive obligation for the government to take appropriate measures to protect the applicants from this serious environmental nuisance, which they failed to do because they did not ensure the resettlement of the applicants, nor did they put in place a plan to significantly reduce pollution levels around the plant.

While one of the applicants eventually resettled anyway, the Court held that her case was still admissible because she lived in the unsafe conditions for several years. Also, while the SSZ was abolished at one point, the Court reasons that this de-facto abolishment does not reduce the health risk to the applicants (also noting that this abolishment may not have been legitimate).

C. LESSON LEARNED –

This case reaffirms that the government may have a positive obligation to move residents out of an area with pollution levels that are above allowable levels and in which they are, by law, not supposed to live. This case also shows that even if an applicant does not live in the polluted area in question when the Court decides the case, the Court will still make a judgment in regards to the time this person spent in unsafe environmental conditions prior to moving. Furthermore, this case is notable because the Court determined that the violation still existed when the SSZ was temporarily removed, which means that the merits of the case do not necessarily rely on the applicant's residence within the SSZ, but also just because the applicant lived in an area of heavy pollution that posed a serious health risk.

GIACOMELLI V. ITALY

SUMMARY	Illegal hazardous waste plant violated Article 8.
APPLICATION NUMBER	59909/00
DATE OF JUDGMENT	26 March 2007

A. FACTS –

The applicant is a resident of Brescia who lives 30 meters away from a plant that treats and stores "special waste," some of which is hazardous. The Lombardy Regional Council began to grant licenses in 1989 that permitted toxic waste treatment, eventually in the amount of 75,000 cubic meters annually. EIA decrees from the Ministry of the Environment found the potential for toxic groundwater contamination and violations of environmental regulations, but officials did not release these findings until 2000 and 2001 – more than a decade after hazardous waste treatment began. Furthermore, a 2002 report from a local health authority concluded that the plant might cause health effects in local residents.

The applicant brought proceedings throughout the years to review the licensing decisions of the Lombardy Regional Council. In 1998, the Regional Administrative Court dismissed the applicant's proceedings, and while subsequent court decisions in 2003 and 2003 ordered the plant to be suspended, authorities did not enforced these decisions. The government contends that the significant benefit of treating waste and boosting the economy justifies the plant's operations under Article 8 § 2. The applicant contends the government failed to take affirmative steps to protect the applicant from noise, odours, and emissions in violation of Article 8.

B. COURT'S RULING –

The Court unanimously ruled that there was a violation of Article 8 of the ECHR (right to private and family life and home).

The Court first decided that the hazardous waste treatment constitutes a serious interference of rights arising out of Article 8. Furthermore, the Court ruled that the government failed to justify this interference since they did not strike a fair balance between the interests of the individual and those of the whole community. The Court reasoned that while the law required an EIA to be conducted prior to licensing the toxic waste treatment, this did not occur until years after authorities granted the license. Even then, the EIA decree found violations of environmental regulations. The Court also noted that authorities failed to enforce an Italian administrative court decision to suspend the plant. Overall, authorities failed to take reasonable and appropriate steps to uphold Article 8.

C. LESSON LEARNED –

This case demonstrates that if the conditions required to grant a license for an environmentally harmful process are not met, and if individuals are unable to enforce this process, then this is strong evidence that authorities failed in their obligation to take reasonable and appropriate steps in securing Article 8 rights. Had the government enforced the relevant court orders and ensured the application of the mitigation measures to reduce pollution, perhaps the interference would have been justified.

BORYSIEWICZ V. POLAND

SUMMARY	Noise from a workshop did not violate Article 8.
APPLICATION NUMBER	71146/01
DATE OF JUDGMENT	1 July 2008

A. FACTS –

The applicant shares a building with a tailoring workshop in a residential area. Due to noise, the applicant made an application to the City Council in September 1993 to either shut down the workshop or require a reduction in noise. This application was apparently transferred to the Pabianice District Office, which concluded that the workshop did not have the necessary permissions to operate. To remedy the situation, the Pebianice District Office ordered the workshop to conduct an environmental impact assessment and preform "adaptation work."

However, various proceedings about the noise and legality of the workshop's operations occurred after this point, most recently a decision by the Łódź regional administrative court in October 2005 in regards to the applicant's attempt to get a noise inspection, and the matter is still ongoing. The latest proceedings occurred 12 years after the applicant's first actions. Citing the excessive length of the proceedings and the lack of adequate results in reducing the noise, the applicant alleges violations of Article 6 and Article 8.

B. COURT'S RULING –

The Court unanimously ruled that there was not a violation of Article 8 (right to private and family life and home).[45]

While excessive noise can breach the right to respect for the home, the breach must be *serious*. The Court ruled that the applicant failed to establish that this breach was serious. For example, two noise tests in 2003 were favorable enough to allow the continued operation of the workshop. While the applicant criticized these tests, she did not submit evidence to the court to refute them, nor did she arrange for alternative noise tests. Thus, the Court cannot determine whether the noise level exceeds domestic standards, international standards, or exceeds the environmental hazards inherent in modern town life. Similarly, the applicant failed to submit evidence she was negatively affected by the noise from the workshop.

C. LESSON LEARNED –

This case demonstrates that a successful Article 8 claim requires the applicant, at minimum, to submit hard evidence that the level of noise complained of is in violation of domestic or international standards. Otherwise, the claim of a severe nuisance is mere speculation.

[45] While the Court unanimously ruled that there was a violation of Article 6 of the ECHR (the right to a fair hearing) because the civil rights and obligations of the applicant were not heard within a reasonable amount of time, this toolkit does not analyze this part of the claim.

OLUIC V. CROATIA

SUMMARY	Noise from a nightclub violated Article 8.
APPLICATION NUMBER	61260/08
DATE OF JUDGMENT	20 May 2010

A. FACTS –

The applicant is a resident of Rijeka who lives in the same house as a bar called "F." On 01 May 2001, an expert measured levels of noise coming from the bar to be in excess of permitted levels. Although the Sanitary Inspection ordered the bar owner to reduce noise levels, the Ministry of Health quashed this decision in August 2001. After further tests showed excessive noise levels, in May 2002, the bar closed to install noise insulation at the request of the Sanitary Inspectorate. However, tests from September 2002 and then from February 2003 showed that at least the first floor of the bar still exceeded acceptable noise levels.

Subsequently, various judicial proceedings occurred at several levels, including an administrative order to reduce noise following an excessive noise measurement in 2008. A 2009 test showed acceptable levels of noise. The bar was still operating at the time of this judgment.

The applicant submitted medical records, including a document from a doctor stating that excessive noise caused risks to the applicant's hearing-impaired daughter, and documents involving the applicant's husband, who had heart disease. The applicant alleges a violation of Article 8 because the State failed to protect her from excessive noise levels from the bar.

B. COURT'S RULING –

The Court unanimously ruled that there was a violation of Article 8 (right to private and family life and home).

The Court first determined that the noise in question met the minimum level of severity for an Article 8 claim because measurements by independent experts over 8 years showed that noise levels from the bar were beyond allowable levels by domestic standards, international standards (set by the World Health Organization), and standards set by most European countries. Furthermore, the court also recognized that excessive noise could affect the health of the applicant's daughter.

Thus the State had a positive duty to take reasonable and appropriate measures to secure this Article 8 right. The Court ruled that the State failed to meet this obligation. The Court observed that from the beginning, the orders by authorities to reduce noise levels were ignored. Furthermore, the administrative court did not make a ruling regarding the applicant's complaint for four years, during which time noise levels were exceeded. The latest decision was eight years after the original proceedings. The Court concluded that this constitutes a failure by authorities to enforce the applicant's Article 8 rights.

C. LESSON LEARNED –

This case helps set the standard by which an excessive noise claim is successful under Article 8. First, the noise level must likely exceed domestic standards or international standard (perhaps also considering the standards of other European countries) to meet the severity threshold of Article 8. Unlike in *Borysiewicz v. Poland*, the applicant had specific measurements to prove this. Furthermore, the Court found it significant that the applicant submitted medical documents that showed a causal link between the excessive noise and the health of the applicant's daughter. Finally, this case showed that the State is likely in violation of Article 8 if authorities fail to remedy excessive noise that meets the requisite level of severity for a long period of time.

DEÉS V. HUNGARY

SUMMARY	Failure to mitigate traffic noise violated Article 8.
APPLICATION NUMBER	2345/06
DATE OF JUDGMENT	9 November 2010

A. FACTS –

This dispute is over noise, pollution, and smell in relation to a road with heavy traffic, as well as the associated court proceedings. Traffic increased significantly on a certain street in the town of Alsónémedi, where the applicant lives because drivers avoided a new toll on another road. The applicant began to notice damage to his walls in 1997. The applicant described his home as almost uninhabitable because of the noise from the traffic and the pollution from fumes.

To mitigate the problem, beginning in 1998, the Government built three bypass roads, lowered the speed limit, installed traffic lights, put up signs to limit the maximum truck weight, and bolstered police presence. However, the applicant did not think that these measures were effectively enforced. The toll on the private road was also lessened and made more convenient. Overall, Hungary spent over one billion Hungarian forints (about 4,000,000 euros at the time) on these traffic mitigation strategies. Still, two tests of the noise levels at the applicant's home showed that noise was 12 and 15 percent above the limit.

The applicant initiated various proceedings for compensation, but the courts found no causal relationship between traffic vibrations and cracked walls. The applicant alleges violations of Article 6 and Article 8.

B. COURT'S RULING –

The court unanimously ruled that there was a violation of Article 8 (right to private and family life and home).[46]

While the causal relationship between the damage to the applicant's house and the traffic was not sufficiently proven, the Court still concludes that the noise constitutes a "serious nuisance" that is significant enough to compromise the right to quiet enjoyment of the home under Article 8. Thus Hungary has a positive obligation to uphold Article 8, and while authorities have a significant margin of appreciation in balancing the interests of road users and the applicant, the Court concluded that measures to reduce noise levels were inadequate because noise levels remained, according to tests, 12 and 15 percent above the legal limit. Thus the applicant was disproportionately burdened and a violation of Article 8 occurred.

C. LESSON LEARNED –

If the government does not remedy noise problems that are in excess of statutory limits over a long period of time, then there may be a violation of Article 8 even if the government makes what seems to be a good faith effort to remedy to nuisance. This case is notable because, unlike many other violations of Article 8 because of noise, the government spent a significant amount of money to mitigate the effects of the traffic noise on local residents. However, the measures were apparently not enough, because the Court still concluded that the government's measures failed to strike a fair balance between the Article 8 rights of the applicant and the interest of the general community in the road. This seems to be more a testament to the severity of the noise-related nuisance than a criticism of the efforts of the government.

[46] The Court also unanimously that there was a violation of the right to a fair hearing under Article 6 (*see* Article 8 section).

MILEVA AND OTHERS V. BULGARIA

SUMMARY	Failure to stop noise from a gaming club violated Article 8.
APPLICATION NUMBER	43449/02 and 21475/04
DATE OF JUDGMENT	25 November 2010

A. FACTS –

This case is about the noise emanating from a computer gaming club (hereinafter "club") that operated 24 hours a day, 7 days a week on the floor below the applicants' flats. Many young people drank, smoked, and conducted other activities inside and outside of the club. This resulted in noise and vibrations in the building that violated residential buildings standards. The applicants allege that this caused negative health effects, including headaches, high blood pressure, and, in one case, sinus tachycardia that a doctor attributed to the club.

Efforts to ban the club through a resolution of the building residents went unenforced by police, even though the club did not have the proper license. And while authorities later required customers to use the club's backdoor only, this too was unenforced. The applicants initiated proceedings, and the Supreme Administrative Court ordered operations to be suspended, but authorities did not comply with the judgment.

Other developments include converting the computer gaming store into an electronic games store and the converting a different flat into an office in 2002. Requests for the government to investigate both were allegedly unsuccessful. The applicants contend that the failure of authorities to end the nuisance from the computer club and their passiveness concerning the electronic games club and the office both violate Article 8.

B. COURT'S RULING –

The court unanimously ruled that there was a violation of Article 8 (right to private and family life and home) in regards to the club but not the computer gaming store or the office.

First, considering the intensity, duration, effects and general context of the noise caused by the club, the Court determined that this constituted a severe interference with the right to respect for home and private and family life, thus triggering Article 8. In making this conclusion, the Court noted that the club ran non-stop and drew noisy crowds inside and outside of the building – all in a residential building. The noise from the office and the electronic games club, on the other hand, were not severe enough to trigger Article 8 because they operated during normal working hours and were inherent in what should be expected in a modern town.

Next, the Court ruled that authorities failed to meet their duty to implement measures to protect the applicants from the excessive noise from the club. The Court noted that the club did not have the necessary licenses and violated noise standards for residential buildings, yet authorities failed to remedy the situation or even enforce the condition that patrons use the back door. Furthermore, authorities failed to adhere to judicial decisions to suspend operations, and further judicial proceedings took an unreasonable amount of time. Thus public officials failed to effectively protect the rights of the applicants in violation of Article 8.

C. LESSON LEARNED –

This case contrasts the Article 8 violation resulting from the club, which operated non-stop and with substantial noise, with a non-violation of Article 8 resulting from an electronic games club and an office, which operated during the day and were not excessively noisy. Furthermore, while the applicants submitted evidence of a breach of noise standards in regards to the club, they did not submit any such evidence in regards

to the electronic gaming store or the office. This shows that a breach of domestic or international law and facts that demonstrate operations beyond what is inherent in a modern town are crucial to trigger Article 8.

IVAN ATANASOV V. BULGARIA

SUMMARY	Tailings pond reclamation did not violate Articles 8.
APPLICATION NUMBER	12853/03
DATE OF JUDGMENT	2 December 2010

A. FACTS –

The applicant is a farmer who lives about one kilometer and farms four kilometers from a 98.3 hectare tailings pond from a copper-ore mine. To clean up pollution, authorities accepted a reclamation scheme that would use sludge from a wastewater treatment plant. While environmental authorities, the local mayor, and experts gave this reclamation scheme a negative opinion because the sludge could be hazardous and the effectiveness was questionable, the relevant authorities still chose this scheme because of other benefits. An environmental impact statement was never completed. Testing of the sludge in May 2000 recorded illegal levels of toxic substances, and 2007 water tests showed heavy metals above allowable levels. The applicant thus alleges that the failure to properly regulate this pollution violates Article 8.

The applicant also had issues with his ability to challenge a license. In February 2000, the Minister for the Environment and Water granted a license to carry wastewater sludge to the tailings pond. While the applicant challenged the license in the Supreme Administrative Court for interfering with his constitutional right to a "healthy and favourable environment," the Court found that the applicant lacked standing. By the time an appeal court ruled in favor of the applicant, the license was expired. This process lasted roughly two years, during which time requests for an injunction of the reclamation failed. The applicant alleges violations of Article 6 § 1, Article 8, and Article 1 of Protocol No. 1.

B. COURT'S RULING –

The Court unanimously ruled that there was not a violation of Article 8 (right to private and family life and home).[47]

The Court reasoned that the pollution in question did not interfere with the applicant's enjoyment of family and private life and home to a significant enough level to trigger Article 8. Unlike other cases where an individual lived very close to a pollution source, the tailing pond was located 1 kilometer away from the applicant and 4 kilometers from his farmland, and there was no evidence that his land was significantly affected. There was also no potential for a sudden release of dangerous materials. While there were heavy metals in the water, the applicant failed to prove that this caused a sufficiently adverse health reaction.

C. LESSON LEARNED –

The Court reaffirmed that Article 8 does not protect the general deterioration of the environment, but rather requires a certain degree of direct effect on the applicant. This highlights the weaknesses of a case in which a landowner does not live right near a source of non-airborne pollutants and where there is not any evidence of a direct effect on the applicant. While in some cases the applicant can rely upon the chance of a significant environmental disaster, the Court did not find there to be such a chance in this instance.

[47] The Court also unanimously held that there was not a violation of the right to a fair trial under Article 6 or the right to protection of property under Article 1 of Protocol No. 1 (*see* Article 6 section and Article 1 of Protocol No. 1 section respectively). Furthermore, while not discussed in this toolkit, the applicant's claim Article 13 (the right to remedies of ECHR violations) claim failed because the Court determined that violations of Article 6 and 8 were not even "arguable."

DUBETSKA AND OTHERS V. UKRAINE

SUMMARY	Failure to relocate from polluted area violated Article 8.
APPLICATION NUMBER	30499/03
DATE OF JUDGMENT	10 February 2011

A. FACTS –

The applicants are residents of the village of Silets who live near a state-owned factory and mine. The factory and mine located two spoil heaps near the applicants. Studies showed negative environmental effects like ground water infiltration, toxic dust in the atmosphere and soil, and heavy metals in the water and soil resulting from the spoil heaps and other parts of the factory and mine. Air and water tests also showed pollutant levels exceeding maximum standards by several times. Meanwhile, the applicants suffered from serious health effects such as chronic bronchitis, emphysema, and cancer. These factory and mine also increased flooding.

Authorities attempted to implement regulatory measures to solve these environmental problems from 2000 to 2005, but they did not succeed because of insufficient funding or noncompliance. Various applicants initiated judicial proceedings that lasted between three to five years, but they all failed. A 1995 decision from the Sanitary Service to create a buffer zone was also ignored, and while a court ordered the applicant applicants to be relocated outside of the buffer zone, authorities never executed this decision. Governmental efforts to bring in clean drinking water were somewhat successful but sporadic, and promised measures to downsize the spoil heap never occurred. The applicants allege that the government's failure to protect them from these environmental conditions violates Article 8.

B. COURT'S RULING –

The Court unanimously ruled that there was a violation of Article 8 (right to private and family life and home).

First, the Court looked at the nuisance's intensity, duration, and effect on health of quality of life and determined that there was a significant interference with the right to private and family life and home. The Court reasoned that pollution exceeded allowable levels by law and that studies showed serious health risks. Also considering that the factory and plant were government owned, the Court found a clear duty of the government to secure the Article 8 rights of the applicants.

The Court then decided that, in securing the applicants' rights, the State failed to strike a fair balance between the interests of the applicant and the community as a whole. The Court reasoned that all of the government's attempts to mitigate the pollution largely failed: pollution reduction plans went unimplemented, authorities failed to resettle the applicants, the spoil heaps were never downsized, and operations were never suspended. Years of judicial proceedings did not remedy this failure of enforcement, either. Thus there was a violation of Article 8.

C. LESSON LEARNED –

This case again demonstrates that if a government is to sufficiently consider the interests of an individual under Article 8, then efforts to mitigate the effects of pollution must be successfully carried instead of being unenforced. Here, there was a legal framework to protect citizens from pollution, and the government created buffer zones, brought in water, attempted to resettle the applicants, and instigated penalties, but none of these measures were effective in mitigating the environmental problems. The bottom line is that a sufficient

legal framework or good intentions do not matter if there is a failure to actually reduce the effect of severe pollution.

GRIMKOVSKAYA V. UKRAINE

SUMMARY	Failure to adequately mitigate road noise violated Article 8.
APPLICATION NUMBER	38182/03
DATE OF JUDGMENT	21 July 2011

A. FACTS –

The applicant lives with her parents and son on K. Street in the city of Krasnodon. The applicant claimed that the M04 motorway was rerouted through K. Street beginning in 1998 and resulted in heavy traffic. Authorities did not conduct a feasibility study before rerouting the road. The applicant contended that the increase in traffic has made her house almost uninhabitable because of vibration, noise, air pollution, dust, and potholes filled with harmful materials.

The applicant had medical records attesting to health problems with her son and parents, including chronic poisoning from heavy-metal salts in her son. A children's hospital recommended that the applicant's son, having been in a polluted area his entire life (including before the redirected traffic), be resettled.

The applicant and her family pursued various legal remedies, including a nuisance complaint no later than 2000 and proceedings against the City Council for compensatory damages in 2001, but they failed. The court dismissed the latter proceedings because they found there to be insufficient evidence proving that the City Council was responsible for the damages.

Finally in May 2002 – when the regional sanitary department found that 55 percent of traffic emitted pollutants in excess of safety standards and that copper and lead in the dust exceeded safe levels by 2.3 times and 7.5 times respectively – authorities closed the road. The applicant alleges that the failure to remedy the problems arising from the traffic constitute a violation of Article 8.

B. COURT'S RULING –

The Court unanimously held that there was a violation of Article 8 (right to private and family life and home).

First, the Court found that the heavy traffic interfered with the applicant's right to private and family life to a sufficient level of severity to trigger Article 8. Although an expert never measured vibration levels, evidence still established the following: traffic probably caused the severe damage to the roadway, 55 percent of traffic emitted pollutants in excess of legal standards, copper and lead were above legal standards, and the copper and lead salts poisoning suffered from the son had no other explanation other than coming from the dust.

Next, the Court found that authorities failed to strike a fair balance between the interest of the community as a whole in using the road for transportation and the interest of the applicant. First, the Court noted that authorities failed to conduct an adequate feasibility study to assess the environmental impact and gather local feedback. They also failed to mitigate the harmful effects of the M04 motorway in an effective and meaningful matter until it was closed in 2002. Finally, the domestic court dismissed the applicant's claim against the City Council for lack of evidence that the City Council was were responsible despite it being apparent that they *were* responsible for decisions regarding the M04 motorway; thus the applicant did not have a meaningful opportunity to have her viewpoint considered by an independent authority.

C. LESSON LEARNED –

This case is an example of a dispute where the government failed to do enough to consider the environmental impact or sufficiently involve the public in making a decision about rerouting a major traffic route. Furthermore, while the applicant only proved some of her allegations with hard evidence – she proved that pollution levels were too high, but not that the vibrations caused cracks in her house, for example – the Court still considered this to be a "significant impairment" of her Article 8 rights when considering the cumulative effect of the various environmental impacts. This case is also notable because the Court considered circumstantial evidence, as opposed to a definitive expert report, linking the copper and lead in dust to the health of the applicant's son.

FREEDOM OF EXPRESSION
ARTICLE 10
OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

– COMPLIANCE WITH ARTICLE 10 –

The right to freedom of expression is a central feature of democratic societies. In relation to the environment, this right ensures that individuals can assemble and express themselves in matters that affect the environment. Article 10 protections apply to all forms of expression – including the freedom to hold opinions, freedom to impart information and ideas, freedom to receive information and ideas, freedom of the press, freedom of radio and television broadcasting – with only limited exceptions thus far for racism, Nazism, and incitement.[48] Still, Article 10, para. 2 allows interferences with the freedom of expression in some situations where the interference is sufficiently justified by the State.

The Court considers the following factors when determining whether a State complied with Article 10 in an environmental issue:

- **There must be an interference with the freedom of expression to trigger Article 10.**

An "interference" includes any "formality, condition, restriction, or penalty" of the freedom of expression from any State authority, such as police officers, governmental departments, and courts.[49] Furthermore, the term "expression" has been interpreted broadly to include written speech, spoken speech, paintings, film, electronic information, and so forth.[50] Note that there is also a duty on the State to affirmatively enforce the right to freedom of expression from non-State interferences like violence from other members of the public.

[48] Monica Macovei, *Freedom of Expression: A Guide to the Implementation of Article 10 of the European Convention on Human Rights*, EUROPEAN COUNCIL 7-8 (2003).
[49] *Id.* at 29.
[50] *Id.* at 15.

- **An interference with the freedom of expression is allowed only if the interference is (1) prescribed by law, (2) pursues a legitimate aim, and (3) is necessary in a democratic society.**

(1) "Prescribed by law"

The interference must be in accordance with domestic and international law, amongst other binding sources of law. The law must also be accessible and formulated with sufficient precision such that individuals may reasonably foreseeable the consequences of their actions, which is meant to protect individuals from arbitrary actions of the government.

(2) "Pursues a legitimate aim"

The interference must pursue one of the legitimate aims listed in Article 10, para. 2, which includes "national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

(3) "Necessary in a democratic society."

In simple terms, this requires that authorities adequately justify any interference. To elaborate, interference with an Article 10 right is "necessary in a democratic society" if the interference constitutes a fair balance between the protection of an individual's Article 10 rights and meeting the general interest of the community. There is *not* a "fair balance" if an individual bears an "excessive burden." Authorities have positive duty to take reasonable and appropriate steps to strike this fair balance.

STEEL AND OTHERS V. THE UNITED KINGDOM

SUMMARY	Arrest of some protestors violated Article 10, but arrest and imprisonment of other protestors did not.
APPLICATION NUMBER	67/1997/851/1058
DATE OF JUDGMENT	23 September 1998

A. FACTS –

This case involves various protestors (applicants) who were arrested and detained for breaching the peace. A breach of the peace occurs when there is violence or a threat of violence, including conduct that causes violence in others.

The first applicant attempted to obstruct a grouse shoot in Yorkshire in 1992. Authorities arrested her for breaching the peace and then detained her for forty-five hours. A trial court found her guilty of breaching the peace and ordered her to be "bound over," i.e. she would forfeit a certain amount of money if she failed to keep the peace or conduct herself in certain other ways for a set amount of time. She refused the order and thus was imprisoned for twenty-eight days.

The second applicant broke into a construction site and stood in the way of machinery. Authorities arrested her for breaching the peace and then detained her for seventeen hours. The court ordered her to be bound over, but she refused, and thus she was jailed for seven days.

The third, fourth, and fifth applicants handed out leaflets and held up banners in protest of a fighter helicopter sale. Authorities arrested them for breaching the peace and detained them for seven hours. The case was dismissed and the court did not order them to be bound over.

The applicants generally allege that they were deprived of their liberty by being arrested and, in some cases, imprisoned for refusing to be bound over. They argue that the "breach of the peace" standard is difficult to gauge and gives police too much discretion in arbitrary arrests. The applicants allege that this constitutes a violation of Article 5 and Article 10.

B. COURT'S RULING –

The Court unanimously ruled that there was a violation of Article 10 (right to freedom of expression) with respect to the third, fourth, and fifth applicants; by 5 votes to 4 that there was not a violation of Article 10 with respect to the first applicant; and by 7 votes to 2 that there was not a violation of Article 10 with respect to the second applicant.[51]

First, the Court reasoned that the all of the applicants' actions constituted expressions of opinion, and thus arresting them constituted interference with their freedom of expression. The Court also found that arrest and detention for breaching the peace is a "legitimate aim" to prevent disorder and the rights of others; holding over individuals a "legitimate aim" to prevent further breaches of the peace; and imprisonment for refusing such an order a "legitimate aim" to uphold the integrity of the judicial system.

[51] The Court also unanimously ruled that there was a violation of the right to liberty and security under Article 5 with respect to the third, fourth, and fifth applicants, but not with respect to the first and second applicants (*see* Article 5 section). While not discussed in this toolkit, the Court also ruled that there was no violation of Article 6 § 3, which, inter alia, requires that individuals receive a sufficient amount of information about a criminal charge against them.

Next, the Court ruled that there was no violation of Article 10 in terms of the first and second applicants. The Court determined that their arrest and detention was "prescribed by law." The Court also determined that the measures taken against the applicants – arresting them for walking in front of a loaded gun and blocking construction respectively, then detaining them to prevent further breaches of the peace – were proportionate to the aims pursued and thus "necessary in a democratic society." Likewise, imprisoning these applicants for refusing the order to be bound over was "prescribed by law" and was proportionate to the aims pursued because of the risk of a repeat breach of the peace.

On the other hand, the Court found that the measures taken against the third, fourth, and fifth applicants, who merely handed out pamphlets and then were arrested and detained for seven hours, were disproportionate to the aims pursued and thus not "necessary in a democratic society." Thus, there was a violation of Article 10 in regards to these applicants.

C. LESSON LEARNED –

In terms of whether there was a violation of the right to freedom of expression under Article 10, the Court places a significant amount of importance on whether, subsequent to their arrests, the domestic courts ruled that the applicants actually violated the law. For the first two applicants, the domestic courts ruled that they did violate the law, and the Court likewise found it reasonable that authorities arrested them according to the law and that they might repeat their breach of the peace and thus could be held over. However, for the third, fourth, and fifth applicants, because charges were dropped, there is no proof that the interference with their right to freedom of expression was prescribed by law, and the facts indicate that it was not likely reasonable to have arrested the applicants.

GUERRA AND OTHERS V. ITALY

SUMMARY	Non-disclosure about pollution did not violate Article 10.
APPLICATION NUMBER	116/1996/735/932
DATE OF JUDGMENT	19 February 1998

A. FACTS –

The applicants are residents of the town of Manfredonia that is located one kilometer from a chemical factory that produces fertilizer and caprolactam. The chemical factory released a slew of dangerous substances, including nitric oxide, ammonia, arsenic trioxide, and inflammable gas that could cause an explosion. Local atmospheric conditions also caused emissions to regularly drift directly over Manfredonia. For these reasons, the chemical factory was deemed to be "high risk" based on an EU Directive (Directive 82/501/EEC, the "Seveso" Directive) that establishes standards to protect local populations from major industrial accidents. The chemical factory was also designated as a "dangerous factory" under DPR 175/88.

Meanwhile, the applicants were unable to access information regarding the risks of the chemical plant. While the Ministries of the Environment and Health adopted conclusions based upon on the factory's internal reports, they were not disseminated to the public. This is despite the authorities' obligation under DPR 175/88 to provide information to the local community about the chemical factory, including its safety measures and emergency plans. Only in 1994, when the plant had stopped producing both caprolactum and fertilizer, did authorities disseminate such information to the public. The applicant contends that the failure of authorities to reduce the risk of pollution or an accident at the plant and their failure to provide information about the hazards of the plant amount to violations of Articles 8 and 10, respectively.

B. COURT'S RULING –

The Court ruled, 18 votes to 2, that Article 10 (the right to freedom of expression) is not admissible.[52] While Article 10 protects the right to freedom of information, the Court ruled that authorities did not have a positive obligation to disseminate such information. Because the government did not *restrict* the applicant's access to information, Article 10 was inadmissible.

C. LESSON LEARNED –

This case highlights the contrast between Articles 8 and 10. While Article 8 places a positive obligation on the government to protect individuals from interferences with the right to respect for private and family life, which may include the positive obligation to disseminate information regarding their health, there is no positive obligation on the government to actively disseminate information under Article 10. Unless the Court affirmatively restricts access to information, an Article 10 claim is inadmissible.

[52] The Court also unanimously found a violation of the right to private and family life and home under Article 8 (*see* Article 8 section). Furthermore, while this issue is not discussed in this toolkit, the Court also did not find a violation of Article 3.

HASHMAN AND HARRUP V. THE UNITED KINGDOM

SUMMARY	Imprecise freedom of speech restriction violated Article 10.
APPLICATION NUMBER	25594/94
DATE OF JUDGMENT	25 September 1999

A. FACTS –

In March 1993, the applicants attempted to disrupt the Portman Hunt (a fox hunt) by using a hunting horn and by shouting. Officers arrested the applicants. Gillingham magistrates then ordered that the applicants be bound over: they would forfeit 100 British pounds if they failed to keep the peace (violence or a threat of violence, including conduct that causes violence in others) or behaved *contra bonos mores* (against good morals) for a certain period of time. An appeal to the High Court ended when legal aid was refused. The applicants contended that being bound over for conduct that breaches the peace or is *contra bonos mores* does not have sufficient objective criteria such that the applicants were made aware of what conduct was lawful, which constitutes an Article 10 violation.

B. COURT'S RULING –

The Court ruled, 16 votes to 1, that there was a violation of Article 10 (right to freedom of expression).

The Court first established that authorities interfered with the applicants' right to freedom of expression because disrupting the hunt constituted an expression of opinion, thus triggering Article 10. The Court then determined that the interference was not "prescribed by law," which constitutes a violation of Article 10. The Court reasons that behavior *contra bonos mores* – subjectively described as behavior that is "wrong rather than right in the judgment of contemporary fellow citizens" – is not adequately defined or sufficiently precise within the meaning of Article 10 § 2 to offer sufficient guidance to the applicants on what behavior to refrain from conducting. Because this interfered applicant's freedom of speech without being "prescribed by law," this constituted a violation of Article 10.

C. LESSON LEARNED –

This case demonstrates that when a State interferes with the right to freedom of expression under Article 10, such interference must be adequately defined to be foreseeable as opposed to ambiguous or subject to interpretation. Behavior that is "wrong" rather than right is too imprecise to be considered a "law," thus the interference being subjected upon the applicant by the court is not "prescribed by law," which is a basic requirement of a valid interference with the right to freedom of expression under Article 10.

VEREIN GEGEN TIERFABRIKEN SCHWEIZ (VGT) V. SWITZERLAND (NO. 1)

SUMMARY	Refusing anti-meat industry commercial violated Article 10.
APPLICATION NUMBER	24699/94
DATE OF JUDGMENT	28 June 2001

A. FACTS –

The applicant, an animal protection group, tried to air a commercial about the pig meat industry, which included observations on poor living conditions of pigs and the heavy use of medicines. In January 1994, the Commercial Television Company refused to air the commercial on the television programs of the Swiss Radio and Television Company because they thought the commercial was too political. In August 1997, the Federal Court dismissed the applicant's administrative appeal to have the commercial aired. The legal basis of the Federal Court's decision was the Federal Radio and Television Act, which prohibits political advertisements.

B. COURT'S RULING –

The Court unanimously ruled that there was a violation of Article 10 (right to freedom of expression).[53]

First, the Court found that the refusal to broadcast the applicant's commercial constituted an interference with the freedom of expression that was "prescribed by law" under the Federal Radio and Television Act. Furthermore, the interference pursued a legitimate aim because the law attempted to prevent powerful financial groups from squashing public opinion and using financial resources to gain an unfair political advantage.

However, the Court determined that the interference was not "necessary in a democratic society." In this respect, the Court noted that the applicant was not seeking to broadcast the type of unfair political speech that the law purported to curtail. Neither was the applicant a powerful group using vast amounts of money to unduly gain a competitive advantage or interfere with public opinion. To the contrary, the applicant was part of an ongoing debate about the animal industry. Thus, the government did not sufficiently demonstrate that the legitimate aim of preventing political advertising was proportionate to the ban of the applicant's commercial.

C. LESSON LEARNED –

This case demonstrates that while seeking to prevent powerful groups from manipulating public opinion and political matters is a legitimate aim by which interference with the freedom of expression is justifiable – indeed, this may be necessary to protect a democratic public debate – the Court will scrutinize such laws for undue interference with the freedom of expression of less powerful groups, including groups that advocate strongly for a particular side of an issue. The Court also clearly established that environmental-related issues, such as the health of animals and the effect of the meat industry on human health, are issues of significant public interest.

[53] While the Court found no violation of either Article 13 (right to an effective remedy) or Article 14 (prohibition of discrimination), this toolkit does not discuss these particular issues.

STEEL AND MORRIS V. THE UNITED KINGDOM

SUMMARY	No legal aid in complex trial violated Article 10.
APPLICATION NUMBER	32772/02
DATE OF JUDGMENT	15 February 2005

A. FACTS –

The applicants are members of London Greenpeace (unassociated with Greenpeace International), which led an anti-McDonald's campaign in the mid-1980s. This campaign distributed leaflets that generally alleged that McDonald's is deadly (e.g. causes cancer and heart disease), greedy, and environmentally devastating (e.g. destroys rainforests to raise cattle), and also that they torture animals, exploit poor countries, manipulate children, and have poor working conditions.

In September 1990, McDonald's issued a writ against the applicants that sought damages for libel (i.e. publishing false information that damages a reputation). The applicants applied for legal aid, but were repeatedly refused, which they allege hampered their ability to sufficiently defend themselves, although they sometimes had volunteer lawyers. The applicants also could not afford daily transcripts of what became the longest trial in English history at 313 court days.

The court ruled in favor of McDonald's, finding several parts of the pamphlet to be untrue or unproven, like that the food cases cancer or is to blame for third world starvation, although they found other parts to be true, such as the cruel animal practices. An appeal failed aside from damages being reduced to GBP 40,000 from GBP 60,000. The applicants contend that unfair proceedings and the ruling against them for exercising free speech violates Article 6 and Article 10 respectively.

B. COURT'S RULING –

The Court unanimously ruled that there was a violation of Article 10 (right to freedom of expression).[54]

First, the Court acknowledged that the defamation proceedings constituted an interference with freedom of expression and that this interference was "prescribed by law." Second, the libel law also constitutes a "legitimate aim" of protecting commercially valuable companies like McDonald's from false and damaging statements.

However, the Court determined that the interference was not "necessary to a democratic society" and thus it violated Article 10. The Court reasoned that the court proceedings placed a disproportionate burden on the applicants because the proceedings were generally unfair – for example, the applicants were refused legal aid despite being faced with a complex case with heaps of documents, and they could not even afford transcripts of the court hearings – thus the State failed to properly consider the applicants' interests. Considering these factors, the Court reasoned that the burdensome court proceedings were not "proportionate" to the goal of preventing libel.

The Court also concluded that the damages did not bear a reasonable relationship of proportionality to the legitimate aim they served (i.e. to compensate for damage to reputation), so this also constitutes a violation of Article 10.

[54] The Court also unanimously ruled that there was a violation of the right to a fair trial under Article 6 (*see* Article 6 section).

C. LESSON LEARNED –

One the one hand, big multinational corporations may pursue libel lawsuits against individuals who disseminate information about them without violating Article 10, whether or not these individuals wrote such information themselves. However, in such cases, the Court made clear that the provisions of Article 10 require procedural fairness – which may require legal aid or other measures – and that damages in libel cases must be reasonable. The Court is interested in preventing both an "inequality of arms" in court cases and a "chilling effect" on the freedom of information regarding issues in the general public interest.

MAMÈRE V. FRANCE

SUMMARY	Penalty for remark about public official violated Article 10.
APPLICATION NUMBER	14/1997/798/1001
DATE OF JUDGMENT	07 November 2006

A. FACTS –

This case is about a court ruling against Mr. Tessier (the applicant), a politician and former journalist, for defamatory remarks about how a French official handled the Chernobyl disaster. The French official at issue, Mr. Pellerin, is the former head of the Central Service for Protection against Ionising Radiation (SCPRI), the governmental body responsible for monitoring radiation contamination in France. The applicant appeared in an October 1999 television interview and described Mr. Pellerin as a "sinister character" who "kept on telling us … that the Chernobyl cloud had not crossed [France's] borders," which the applicant said was not true – the cloud *had* crossed into France. Mr. Pellerin responded that he merely said that the increased radiation would not harm the public, but never that radiation would evade France.

Mr. Pellerin accused the applicant of aiding and abetting public defamation of a civil servant, and the Paris Criminal Court found the applicant guilty of this, reasoning that Mr. Tessier had not acted in good faith and had used "pejorative characteristics" about Mr. Pellerin on television. The court ordered the applicant to pay fines. The applicant contends that this constitutes undue interference with his right to the freedom of expression under Article 10.

B. COURT'S RULING –

The Court unanimously ruled that there was a violation of Article 10 (right to freedom of expression).

The Court first found that convicting the applicant for speaking on a television program constituted an interference with his freedom of expression that was prescribed by law under the 1881 Freedom of Press Act. The Court also found that the interference pursued a legitimate aim of protecting the reputation of others.

However, the Court then found that the interference was not "necessary in a democratic society." The Court reasoned that the applicant's remarks should receive a high level of protection because they involved a matter of broad public concern – the environment and public health – and were spoken in the applicant's capacity as a politician. The Court also believed that the applicant should have had a chance to validate his remarks, but instead, the Paris Criminal Court concluded that they were too old to prove. The Court was also unconvinced that the applicant lacked good faith in his statements, noting that for matters of general concern such as the environment and public health, individuals can make "immoderate" statements as part of the public debate. Considering these and other factors, the Court determined that the restriction of the applicant's freedom of expression was not "proportionate" to the goal of protecting the reputation of others.

C. LESSON LEARNED –

This case shows that that political opinions are granted significant protections under Article 10 of the ECHR. The Court clearly recognized the vast public interest in protecting politicians who wish to speak freely to constituents about possible risks to the environment and public health. This case also shows that when it comes to libel claims, individuals should be able to prove that their statements were true even when they involve environmental and health issues that occurred a long time ago, especially since such statements may

actually be easier to prove in the future as more information is gathered about environmental and health effects of a particular incident.

VEREIN GEGEN TIERFABRIKEN SCHWEIZ (VGT) V. SWITZERLAND (NO. 2)

SUMMARY	Fresh refusal to air commercial violated Article 10.
APPLICATION NUMBER	32772/02
DATE OF JUDGMENT	30 June 2009

A. FACTS –

The applicant, an animal protection group, won an Article 10 claim against Switzerland after a television station refused to air their commercial about the pig meat industry under the Swiss Federal Radio and Television Act, which violated the applicant's right to freedom of expression (*see VgT v. Switzerland* (No. 1)). After this decision, the applicant tried to air the same commercial, but the Commercial Television Company again refused their request.

The applicant sought to reopen a previous Federal Court review on the basis of the decision in *VgT v. Switzerland* (No. 1), but the Federal Court dismissed their application. The Federal Court reasoned that the applicant did not show that redress was possible because the commercial was now eight years "out of date" and thus the content was no longer in the public interest. The applicant alleges that, in light of *VgT v. Switzerland* (No. 1), the government failed to subsequently protect their freedom of expression and thus violated Article 10.

B. COURT'S RULING –

The Court ruled, 11 votes to 6, that there was a violation of Article 10 (right to freedom of expression).

The Court first noted that Article 1 places a positive obligation on a State to effectively implement judgments made by the Court. Article 46 also requires a State to make changes necessary to remedy an ECHR violation. With this in mind, the Court believed that Switzerland failed to fulfill its positive obligation to execute the previous judgment in good faith, which may require Switzerland to makes alterations to its legal system, including their judicial system. The Court found that the Federal Court refused the applicant's claim on insufficient grounds because they failed to provide sufficient reasoning about why the old commercial was no longer in the public interest. Thus, because the television station should have aired the commercial, and, if not, the domestic courts should have required them to, the Court finds a fresh violation of Article 10.

C. LESSON LEARNED –

This decision reaffirms the vast public interest in upholding free speech in matters that affect the environment and human health. Furthermore, this case shows that a failure to implement a previous Court decision, which may require changes to the law or even the judicial system, may result in a fresh violation of the ECHR that is in addition to the original violation, although the six dissenting judges disagree that there was a new issue to address in this case. Finally, if a Court is going to dismiss a freedom of expression issue because a certain amount of years have passed since the issue first arose, there seems to be at minimum a positive obligation to prove that the issue is no longer in the public interest in the issue rather than a mere assumption of such.

FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION ARTICLE 11

OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, 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. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

– COMPLIANCE WITH ARTICLE 11 –

Article 11, which guarantees the right to freedom of peaceful assembly and association, relates to the environment when individuals seek to exercise their freedom of peaceful assembly and association in matters related to the environment. Much like the right to freedom of expression under Article 10, the right to freedom of peaceful assembly and association under Article 11 is a benchmark of democratic societies. Still, Article 11, para. 2 permits interferences with the freedom of peaceful assembly and association in some situations where the interference is sufficiently justified by the State.

The Court considers the following factors when determining whether a State complied with Article 11 in an environmental issue:

- **There must be an interference with the right to freedom of peaceful assembly and association with others to trigger Article 11.**

(1) "Freedom of peaceful assembly"

Peaceful assembly includes private and public meetings by either individuals or groups. Interference with this freedom includes placing restrictions on a peaceful assembly or refusing to issue a permit. Note that there is also a duty on the State to affirmatively enforce the freedom of peaceful assembly.[55] One example of how a State could affirmatively enforce the freedom of peaceful assembly is to provide police protection to demonstrators.

(2) "Freedom of association with others"

Generally speaking, association with others constitutes a voluntary group that has a common goal and is "more formal and organized than an assembly."[56] Interference with this right includes various restrictions

[55] Donna Gomien, *Short Guide to the European Convention on Human Rights*, COUNCIL OF EUROPE 119.
[56] *Id.* at 119.

on the freedom of association and, because such associations are voluntary, instances where individuals are compelled to join an association against their will.

- **An interference with the right to peaceful assembly and association is allowed only if the interference is (1) prescribed by law, (2) pursues a legitimate aim, and (3) is necessary in a democratic society.**

(1) "Prescribed by law"

The interference must be in accordance with domestic and international law, amongst other binding sources of law. The law must also be accessible and formulated with sufficient precision such that individuals may reasonably foreseeable the consequences of their actions, which is meant to protect individuals from arbitrary actions of the government.

(2) "Pursues a legitimate aim,

The interference must pursue one of the legitimate aims listed in Article 11, para. 2, which includes "national security or public safety, 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. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

(3) "Necessary in a democratic society"

In simple terms, this requires that authorities adequately justify any interference. To elaborate, interference with an Article 11 right is "necessary in a democratic society" if the interference constitutes a fair balance between the protection of an individual's Article 11 rights and meeting the general interest of the community. There is *not* a "fair balance" if an individual bears an "excessive burden." Authorities have positive duty to take reasonable and appropriate steps to strike this fair balance. Generally the Court disfavors any governmental restriction on Article 11 right prior to their exercise.[57]

[57] *Id.* at 120.

CHASSAGNOU AND OTHERS V. FRANCE

SUMMARY	Hunting rules violated Article 11.
APPLICATION NUMBER	25088/94, 28331/95 and 28443/95
DATE OF JUDGMENT	29 April 1999

A. FACTS –

A 1964 law known as "Loi Verdeille" required landowners in 29 of the 93 *départements* (i.e. administrative divisions) in France to transfer the hunting rights on their land to an approved municipal hunters' association (*Associations communales de chasse agrees,* or "ACCAs"). Such landowners were also required to become ACCA members. The primary purpose of the law was to regulate hunting to manage game stocks, ensure safety, and control vermin. While there was a procedure to object to compulsory membership with the ACCA as well as the obligatory transfer of hunting rights, landowners had to have a minimum property size of either 60 or 20 hectares, depending on which *départements* they lived in, to utilize the objection procedure.

The applicants are members of various organizations that oppose hunting. They all own tracts of land less than the requisite amount (60 or 20 hectares) to object to the obligatory land transfer and ACCA membership. The applicants allege that forcing them to join the hunter's association is against their beliefs and thus violates Article 11, while forcing them to transfer their hunting rights to the ACCA violates Article 1 of Protocol No. 1.

B. COURT'S RULING –

The Court held, 12 votes to 5, that there was a violation of Article 11 (right to freedom of assembly and association).[58]

First, the Court determined that there was a "negative" interference with the applicants' right to freedom of association because of the compulsory membership with the ACCA, a hunting association that they ethically objected to. Second, while the Court recognized the legitimate aim of obligatory ACCA membership, which would encourage democratic participation in hunting issues, the Court found that the resultant interference with the right to freedom of association was not proportionate to this legitimate aim. The Court highlighted that the ethical convictions of the applicants are important, and also that the right to freedom of association is protected by the ECHR, whereas the freedom to hunt is not. The Court also noted that the mandatory ACCA-membership law only applied to 29 of the 93 *départements* and is only obligatory to some landowners, which is evidence that the law is far from a necessity.

The Court also held, 16 votes to 1, that there was a violation of Article 11 (right to freedom of assembly and association) in conjunction with Article 14 (prohibition of discrimination).

The Court reasoned that while owners of one size of land may object to compulsory membership with the ACCA, those of a lesser size of land (less than 20 or 60 hectares) may not, which constitutes discrimination of a right set forth in the Convention (Article 11) on the grounds of property and status as non-

[58] The Court also held, 12 votes to 5, that there was a violation of the right to protection of property under Article 1 of Protocol No. 1 and, 14 votes to 3, that there was a violation of Article 1 of Protocol No. 1 in conjunction with the prohibition of discrimination under Article 14 (*see* Article 1 of Protocol No. 1 section).

hunters. The government failed to sufficiently justify this discrimination because, if ACCA purports to "ensure democratic access to hunting," land size should not matter.

C. LESSON LEARNED –

This case demonstrates that the Court considers a "negative" interference with the right to association – i.e. being compelled to join a certain group – to give possible rise to a violation of Article 11. Unless the government can produce a compelling reason why obligatory membership of a group is necessary, the Court will likely find that the freedom of association outweighs some other interest that is not protected by the ECHR. Furthermore, if the government does not apply this particular "negative" interference on a widespread basis (in this case, these rules were only obligatory in a fraction of France), this is strong evidence that the measure is not "necessary to a democratic society." Finally, this case also shows that a violation of Article 14 can result from instances in which small landowners are disproportionately burdened in relation to large landowners.

MAKHMUDOV V. RUSSIA

SUMMARY	Interfering with peaceful assembly violated Article 11.
APPLICATION NUMBER	35082/04
DATE OF JUDGMENT	26 July 2007

A. FACTS –

The applicant was a "district councillor" who, in September 2003, demonstrated against the decision to build luxury flats in Moscow. Authorities originally authorized the demonstration, but they revoked authorization because, they alleged, public safety at the demonstration was jeopardized by a threat of terrorist activities. Despite the alleged terrorist threats, a three-day celebration of the "Day of the City" began the very next day in Moscow.

A modest demonstration of a few dozen people occurred without authorization, and police officers arrested the applicant for noncompliance with the lawful order of a police officer. Authorities detained the applicant for one night, and a district court found the applicant guilty of breaching the laws of organizing a public assembly. The applicant alleges that authorities interfered with his right to freedom of assembly and association under the false pretext of a threat from terrorism in violation of Article 11.

B. COURT'S RULING –

The Court unanimously held that there was a violation of Article 11 (right to freedom of assembly and association).[59]

The Court first determined that the authorities interfered with the applicant's right to freedom of assembly because authorities withdrew permission for the assembly the day before it was to occur, then dispersed the assembly and fined the applicant for his participation. Next, the Court ruled that authorities failed to justify the interference as being "necessary in a democratic society." While the government alleged that the interference was necessary to protect the public from a possible terrorist attack, the Court noted that the applicant and even the domestic courts were unable to access the "confidential" information regarding the terrorist threat. The Court also found the huge public celebrations without any governmental intervention on the three days subsequent to the applicant's protest to be strong evidence that a terrorist threat was not the true reason for interfering with the applicant's rights. Considering these factors, the Court found the interference to be arbitrary and thus in violation of Article 11.

C. LESSON LEARNED –

While authorities may interfere with the right to freedom of peaceful assembly if doing so is prescribed by law and is necessary in a democratic society, domestic authorities cannot arbitrarily interfere with this right. Had the alleged threat of terrorism been established in some way through evidence, perhaps the interest in public safety would justify interfering with the applicant's right to freedom of assembly. However, if the alleged information about the terrorist threat is in the possession of the government alone, then the government has a duty to produce the evidence. This case also shows that the Court will consider circumstantial evidence in gauging the authenticity of a government's alleged reason for interfering with the right to freedom of peaceful assembly. The massive celebrations that occurred the very day after police officers broke up the applicant's relatively small peaceful assembly is strong circumstantial evidence of an arbitrary interference by the government.

[59] The Court also found an Article 3 claim to be inadmissible because the applicant did not exhaust all domestic remedies. However, the Court found a Article 5 § 1 violation because the applicant was arrested without "reasonable suspicion," and an Article 5 § 5 violation because the Applicant "did not have an enforceable right to compensation"

THE RIGHT TO PROTECTION OF PROPERTY
ARTICLE 1 OF PROTOCOL NO. 1
OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. 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.

2. 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 1 OF PROTOCOL NO. 1 –

Article 1 of Protocol No. 1 protects an individual's right to property from arbitrary interference by the government.[60] This relates to the environment in instances where environmental issues interfere with a person's peaceful enjoyment of property. However, this right is not absolute, and para. 2 recognizes the need of the State to control property as part of the general interest.

The Court considers the following factors when determining whether a State complied with Article 1 of Protocol No. 1 in an environmental issue:

- **There must be interference with the peaceful enjoyment of a possession to trigger Article 8.**

The "possessions" protected by Article 1 of Protocol No. 1 includes both real property (i.e. immovable property, such as a house) and personal property. This generally includes all property that constitutes an asset, including intangible property (such as intellectual property rights).[61]

Furthermore, "interference" occurs if an individual cannot peacefully enjoy their possession. This does not require a total deprivation of that possession. For example, depriving an individual of certain property rights, such as the right to exclude others, may constitute an interference with the peaceful enjoyment of a possession.

Article 1 of Protocol No. 1 can still be triggered even if a State does not directly interfere with the peaceful enjoyment of a possession. This is because Article 1 of Protocol No. 1 imposes a positive duty on the State to protect the right to property. This typically requires the State to enact laws and regulations that ensure the protection of property to the extent that is legitimately expected by individuals. Thus interferences with the right to property by private parties may be indicative of a failure of the State to uphold Article 8.

[60] Aida Grgiæ, et. al, *The Right to Property Under the European Convention on Human Rights: A Guide to the Implementation of the European Convention on Human Rights and its Protocols*, COUNCIL OF EUROPE (2007).
[61] *Id.* at 7.

- **An interference with the peaceful enjoyment of a possession is allowed only if the interference is (1) prescribed by law, (2) in the general interest, and (3) necessary in a democratic society. Otherwise, there is a violation of Article 1 of Protocol No. 1.**

(1) "Prescribed by law"

The interference must be in accordance with domestic and international law, amongst other binding sources of law. The law must also be accessible and formulated with sufficient precision such that individuals may reasonably foreseeable the consequences of their actions, which is meant to protect individuals from arbitrary actions of the government.

(2) "General interest"

This requirement is met if the interference pursues a legitimate aim that is in the general public interest. For example, a law that prevents people from destroying a severely imperiled plant species that are located on their property might be in the general public interest of preserving endangered species. The Court generally give significant discretion to domestic governments on deciding what is in the public interest, thus the Court will abide by the domestic government's judgment unless it is manifestly unreasonable.

(3) "Necessary in a democratic society" (proportionality)

In simple terms, this requires that authorities adequately justify any interference. To elaborate, interference with an Article 11 right is "necessary in a democratic society" if the interference constitutes a fair balance between the protection of an individual's Article 1 of Protocol No 1. rights and meeting the general interest of the community. There is *not* a "fair balance" if an individual bears an "excessive burden." Authorities have positive duty to take reasonable and appropriate steps to strike this fair balance.

CHASSAGNOU AND OTHERS V. FRANCE

SUMMARY	Hunting rules violated Article 1 of Protocol No. 1.
APPLICATION NUMBER	25088/94, 28331/95 and 28443/95
DATE OF JUDGMENT	29 April 1999

A. FACTS –

A 1964 law known as "Loi Verdeille" required landowners in 29 of the 93 *départements* (i.e. administrative divisions) in France to transfer the hunting rights on their land to an approved municipal hunters' association (*Associations communales de chasse agrees,* or "ACCAs"). Such landowners were also required to become ACCA members. The primary purpose of the law was to regulate hunting to manage game stocks, ensure safety, and control vermin. While there was a procedure to object to compulsory membership with the ACCA as well as the obligatory transfer of hunting rights, landowners had to have a minimum property size of either 60 or 20 hectares, depending on which *départements* they lived in, to utilize the objection procedure.

The applicants are members of various organizations that oppose hunting. They all own tracts of land less than the requisite amount (60 or 20 hectares) to object to the obligatory land transfer and ACCA membership. The applicants allege that forcing them to join the hunter's association is against their beliefs and thus violates Article 11, while forcing them to transfer their hunting rights to the ACCA violates Article 1 of Protocol No. 1.

B. COURT'S RULING –

The Court held, 12 votes to 5, that there was a violation of Article 1 of Protocol No. 1 (right to protection of property).[62]

First, the Court found an interference with the applicants' right to peaceful enjoyment of their possessions because the law deprived them of the right to prevent people from coming onto their land to hunt. Next, the Court determined that there was not a "fair balance" between protecting the individual's right to property and the general interest of the community. The Court reasoned that the means employed – forcing only small landowners to give up a land right, including those who ethically oppose hunting – is not proportional to the general interest in regulating hunting and managing game stocks.

The Court also held, 14 votes to 3, that there was a violation of Article 1 of Protocol No. 1 in conjunction with Article 14 (prohibition of discrimination). Treatment under Article 14 is discriminatory if it "has no objective or reasonable justification." The Court believed that the government did not sufficiently justify why owners of a larger size of land may object to the transfer of obligatory hunting rights to the ACA while those of a lesser size of land (less than 20 or 60 hectares) may not.

C. LESSON LEARNED –

This case also shows that while taking land rights for reasons in the general interest of the community can be justified, doing so is difficult to defend when small landowners are disproportionately burdened and when only part of the county has to abide by this law. This case also shows that a violation of Article 14 can result from instances in which small landowners are disproportionately burdened.

[62] The Court also held, 12 votes to 5, that there was a violation of the right to freedom of assembly and association under Article 11 and, 16 votes to 1, that there was a violation of Article 11 in conjunction with the prohibition of discrimination under Article 14 (*see* Article 11 section).

ÖNERYILDIZ V. TURKEY

SUMMARY	Failure to prevent or remedy explosion violated Article 1 of Protocol No. 1.
APPLICATION NUMBER	48939/99
DATE OF JUDGMENT	30 November 2004

A. FACTS –

The applicant lived in the slum quarter of Kazım Karabekir in Istanbul, which was surrounded by a rubbish tip (i.e. a landfill). A 1991 expert report concluded that the rubbish tip did not conform to relevant regulations and thus posed a serious health risk, especially because of the potential for a methane explosion. Authorities did not act on this information, and a methane explosion in April 1993 destroyed ten houses, including the applicant's house, killing nine of his relatives. While two mayors were given criminal sentences for failures to prevent to accident, the court commuted their prison sentences to fines, which were unenforced.

The applicant initiated a claim, and an administrative court awarded the applicant about 2,207 Euros in non-pecuniary damages and 208 Euros in pecuniary damages. The pecuniary damages included payment for loss of household goods, but the court dismissed the applicant's claims involving lost financial support from killed family members. The applicant alleges that the failure of officials to prevent the explosion and the subsequent insufficient remedies constitute violations of Article 2, Article 1 of Protocol No. 1, and Article 13.

B. COURT'S RULING –

The Court ruled, 15 votes to 2, that there was a violation of Article 1 of Protocol No. 1 (right to protection of property).[63]

The Court reasoned that the State had a duty to take positive measures to protect the possessions of the applicant, which includes the applicant's dwelling. The Court concluded that the State breached this duty because, rather than implementing mechanisms to protect the applicant's dwelling, their gross negligence actually resulted in its destruction.

While Turkey argued that the applicant was not a "victim" because he court awarded him pecuniary damages and authorities provided subsidized housing, the Court disagreed because there was no indication that the subsidized housing was compensation for the violation of the applicant's right to protection of property, and pecuniary damages awarded to the applicant had not been paid.

C. LESSON LEARNED –

This case shows that if authorities are aware of a significant and imminent threat to property, their failure to take any actions may violate Article 1 of Protocol No. 1. This case also demonstrates that there may be a duty to protect the property of individuals even if they are living illegally in a slum, particularly if the government implicitly permits this living arrangement. Finally, awarding compensation for property damage may satisfy the obligations of Article 1 of Protocol No. 1 but only if the award is paid. In this case, the applicant never received payment, thus the award did not satisfy Article 1 of Protocol No. 1.

[63] The Court also unanimously ruled that there was a violation of the right to life under Article 2 (*see* Article 2 section). While the Court found a violation of Article 13 (right to an effective remedy), this toolkit does not discuss this particular issue.

HAMER V. BELGIUM

SUMMARY	Order to restore land to original condition did not violate Article 1 of Protocol No. 1.
APPLICATION NUMBER	21861/03
DATE OF JUDGMENT	27 November 2007

A. FACTS –

The applicant is the current owner of a holiday home in Belgium that her mother built without planning permission in (according to some) 1967. Between 1993 and 1994, the applicant remodeled the home, cut down some trees, and hooked the home up to a drainage system. In 1994, a police report noted that the applicant did not have the proper planning permission, and authorities subsequently ordered the applicant to restore the property to its original condition.

The applicant resisted this order, and criminal proceedings against the applicant began in May 1999, five years after investigations began. The court did not make a judgment until 2003, when the Court of Cassation dismissed the applicant's appeal of an order to restore the land to its original condition. The applicant argues that the failure of authorities to initiate criminal proceedings within a reasonable amount of time, as well as the unreasonable length of those proceedings, constitute a violation of Article 6. The applicant also alleges a violation of her property rights under Article 1 of Protocol No. 1.

B. COURT'S RULING –

The Court unanimously ruled that there was not a violation of Article 1 of Protocol No. 1 (right to protection of property).[64]

The court balanced the applicant's interest in preserving her home against the general interest in environmental protection and determined that requiring the applicant to restore the property to its original condition does not place an undue burden on the applicant. The Court noted that based on the relevant Belgian law, the applicant should have foreseen that proceedings could be brought against her at any time for possessing a house without the proper planning permissions. The Court also agreed that restoration is an appropriate remedy for this violation. Finally, the Court noted that "implicit acceptance" by authorities of a house that contravened land use laws did not create a right to keep the structure, whereas affirmative acceptance – such as a licence – may have.

C. LESSON LEARNED –

This case shows that the Court puts significant worth to the community interest in environmental preservation, which the Court determined outweighs the applicant's individual interest in preserving her house. Furthermore, this case shows that "implicit acceptance" of an illegal action related to the environment is less persuasive to the Court in justifying an individual's right to property than affirmative acceptance of such an illegal action.

[64] The Court also unanimously ruled that there was a violation of the right to a fair trial under Article 6 (*see* Article 6 section).

BUDAYEVA AND OTHERS V. RUSSIA

SUMMARY	Mudslide did not violate Article 1 of Protocol No. 1.
APPLICATION NUMBER	15339/02, 21166/02, 20058/02, 11673/02 and 15343/02
DATE OF JUDGMENT	20 March 2008

A. FACTS –

The applicants are Russian citizens primarily from the town of Tyrnauz. Several mudslides devastated Tyrnauz in July 2000. Russian authorities did not give any warning of the first mudslide. While there was an order to evacuate the area after the first mudslide, some of the applicants returned home prematurely because there were no barriers or officials to indicate that the evacuation was still active. Some noticed that their utilities were on again and took this to mean they could return home. The next day, there was an even larger mudslide, killing the husband of one of the applicants. Several more mudslides occurred over the next week.

The applicants believed that authorities inadequately maintained structures to protect them from mudslides. A 1999 warning from a state agency of an imminent disaster and a 2000 warning from the Prime Minister of KBR indicated the inadequate including a mud retention dam and a feed-through mud retention collector, but authorities never allocated any funds for repairs to these faulty structures.

After the mudslides, the government gave the applicants free housing and an allowance of what was worth about 530 euros. Furthermore, a domestic court dismissed a claim against the government on the grounds that the government took all reasonable measures to protect the applicants. The applicants allege that government authorities caused or exacerbated the effect of the mudslides and thus caused damage to their homes, possessions, and heath in violation of Article 2 and Article 3.

B. COURT'S RULING –

The Court ruled, 15 votes to 2, that there was not a violation
n of Article 1 of Protocol No. 1 (right to protection of property).[65]

The Court believed that authorities met their burden to do what is "reasonable" to protect the right to protection of property. The Court was not convinced that the damage to property from the incredibly strong mudslides would have been prevented if the mud-prevention infrastructure was in proper condition or if there was an early-warning system. The Court also reasoned that there is a lesser obligation on authorities when it comes to protecting property from natural disasters than from man-made risks.

While the applicants also claimed that there was not a proper enquiry or judicial consideration of their loss of property, the Court found that Russia's free replacement housing and allowance provided sufficient compensation to comply with Article 1 of Protocol No. 1. While this may not have been full compensation, the Court states that the objectives of the public interest – including economic, social, and humanitarian issues – may call for reimbursement that is less than full market value. The Court concluded that the reimbursement was not "manifestly out of proportion" and did not place a disproportionate burden on the applicants.

[65] The Court also unanimously ruled that there was a violation of the right to life under Article 2 (*see* Article 2 section). While the Court found a violation of Article 13 (right to an effective remedy), this toolkit does not discuss this particular issue.

C. LESSON LEARNED –

This case shows that the Court gives much more leeway to the State when it comes to protecting property than for protecting life (the Court found a violation of the right to life under Article 2 under the same set of facts). A State has to do only what is "reasonable" to protect the right to property, while they have to do "everything in their power" to protect the right to life. Another reason to explain the discrepancy in this case is that while an effective warning and evacuation system may have protected the lives of individuals, much of their property would still have been lost. Also, this case demonstrates that when it comes to natural disasters, as opposed to "man-made disasters," the Court lowers their expectations for to State to protect property.

IVAN ATANASOV V. BULGARIA

SUMMARY	Tailings pond reclamation did not violate Article 1 of Protocol No. 1.
APPLICATION NUMBER	12853/03
DATE OF JUDGMENT	2 December 2010

A. FACTS –

The applicant is a farmer who lives about one kilometer and farms four kilometers from a 98.3 hectare tailings pond from a copper-ore mine. To clean up pollution, authorities accepted a reclamation scheme that would use sludge from a wastewater treatment plant. While environmental authorities, the local mayor, and experts gave this reclamation scheme a negative opinion because the sludge could be hazardous and the effectiveness was questionable, the relevant authorities still chose this scheme because of other benefits. An environmental impact statement was never completed. Testing of the sludge in May 2000 recorded illegal levels of toxic substances, and 2007 water tests showed heavy metals above allowable levels.

The applicant also had issues with his ability to challenge a license. In February 2000, the Minister for the Environment and Water granted a license to carry wastewater sludge to the tailings pond. While the applicant challenged the license in the Supreme Administrative Court for interfering with his constitutional right to a "healthy and favourable environment," the Court found that the applicant lacked standing. By the time an appeal court ruled in favor of the applicant, the license was expired. This process lasted roughly two years, during which time requests for an injunction of the reclamation failed. The applicant alleges violations of Article 6 § 1, Article 8, and Article 1 of Protocol No. 1.

B. COURT'S RULING –

The Court unanimously ruled that there was not a violation of Article 1 of Protocol No. 1 (right to protection of property).[66]

While the applicant argued that the reclamation scheme had a negative effect on his agricultural practices and, due to publicity of the environmental problems, decreased his property value, the Court did not find a violation because the applicant did not submit any evidence of any reduction in value. The Court noted that the right to protection of property does not protect a general right to a pleasant environment, so without proof of decreased property value, the applicant did not have a valid claim.

C. LESSON LEARNED –

In terms of Article 1 of Protocol No. 1, this case demonstrates the importance of submitting solid evidence of an interference with a property right that is more than theoretical. If an individual claims that illegal environmental activity resulted in a decrease in property value in violation of Article 1 of Protocol No. 1, which may be a valid argument in certain situations, they *must* produce supporting evidence. Only then will the Court even analyze whether the interference with the right to property constitutes an excessive burden on the individual and thus violates Article 1 of Protocol No. 1.

[66] The Court also unanimously held that there was not a violation of the right to a fair trial under Article 6 or the right to private life and family life and home under Article 8 (*see* Article 6 section and Article 8 section respectively). Furthermore, while not discussed in this toolkit, the applicant's Article 13 (the right to remedies of ECHR violations) claim failed because the Court determined that violations of Article 6 and 8 were not even "arguable."

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