

Urban Planning and Environmental Protection in the Mirror of the Case Law of the European Court of Human Rights

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ABSTRACT:

The objective of this study is to identify and analyse the most important positions of the ECtHR concerning construction activities and implementation of urban development policies by states, while ensuring the rights of citizens and protecting the environment from the negative impact of construction. This research is necessary, in particular, for the development of the urban planning law, as well as for the purposes of the urban planning reform in Ukraine.

In its decisions, the European Court of Human Rights promotes the idea of a crucial role of the state policy and state regulation of the urban development sector in protection and defence of human rights. In many decisions, the Court clarifies obligations of the state in this area, in particular, what they are in special situations such as construction in protected areas, unauthorised construction, and obligations to prevent natural disasters. The paper examines in sufficient detail various aspects of the relevant practice of the Court.

The array of the ECtHR case law on protection of environmental rights violated or threatened by construction activities and urban planning has been examined separately. The Court's conclusions regarding the priority of public interest in compliance with building regulations over private interest in ownership of illegally constructed property (but not housing) are noteworthy. Numerous decisions of the Court emphasize the primacy of environmental protection over many variations of private interests. This position of the ECtHR is a good example of the Court's support for the European trend towards establishing the sustainable development concept.

Keywords: urban planning, ECtHR case law, construction activity, sustainable development, environmental rights, unauthorised construction, natural disasters.

1. Introduction

Economic activities of enterprises in various sectors of the economy have a powerful impact on human rights and their implementation. This usually concerns the labour rights of citizens, but it may also concern the rights and legitimate interests of a wider range of entities. In the Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council in resolution 17/4 of 16 June 2011, this impact on the environment, on the rights of local communities and consumers is noted (Apanasenko, 2020, p. 37). In practice, in certain sectors or under certain circumstances, human rights have a higher risk of being threatened than others. The construction industry is among these spheres.

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The construction industry is one of the leading sectors in the economy of countries, and it is of great importance for achieving the goals of sustainable socio-economic development of the country (Seriogina et al., 2021, p. 63). Development of the construction industry can be a means of overcoming economic crises, as construction can have a certain multiplier effect in related sectors of the economy (Oliukha, 2015, pp. 4, 18–19; Shandryk, 2024, p. 165). With regard to Ukraine, experts from the National Bank of Ukraine identified construction as one of the most dynamic sectors of the Ukrainian economy, with growth rates reaching 20% per annum until 2022 (Zaderei, 2018). Due to the large-scale war with Russia, the construction sector was hit hardest, with production falling by 68% (Ustymenko, & Dzhabrailov, 2024, p. 11).

The post-war recovery of the Ukrainian economy and civil life is directly linked to the pace and effectiveness of urban reconstruction. The nature of legal regulation of the industry will also influence the relevant processes. The urban planning reform is currently underway in Ukraine, and the Urban Planning Code of Ukraine is being developed. This regulatory act should generalise and modernise urban planning rules in the country as much as possible, so it is important to incorporate relevant best practices into its provisions.

The latest comprehensive draft law on urban development (Reg. № 5655) provided for significant deregulation of the construction sector. Ukrainian researchers warned about the challenges resulting from this liberalisation of construction legislation, primarily those related to the safety of construction products and preservation of cultural heritage and water bodies (Kvasnitska, 2023, p. 126; Apanasenko, 2024). Given Ukraine's international and constitutional obligations, urban planning regulations must adequately protect human rights and safety, and take into account current environmental restrictions.

In view of the above, we consider it timely to examine the relevant practice of the European Court of Human Rights (hereinafter – the Court, ECtHR). The subject of the study is the Court's decisions in which, in the course of its analysis, it addresses issues of urban planning regulation and practice. The aim is to outline and analyse the most important positions of the Court concerning construction activity and implementation of urban development policies by states, while ensuring environmental rights of citizens and protecting the environment from the negative impact of construction.

Research methods. The study, which focuses on protection of human rights in urban planning, is based on the praxeological approach. In this work systematic structural analysis was widely used, which made it possible to identify decisions from the wide array of the ECtHR case law concerning protection of human rights and the environment from negative impact of construction. This method helped to conduct research on relevant practices in specific thematic areas and to structure the research in a way that allowed the set goal to be achieved. The comparative method was used to a limited extent (examination of the Court's positions on the conventionality of the demolition of housing and other property, comparison of the positive obligations of the state under Articles 8 and 2 of the Convention). Methods of deduction, induction and other scientific research methods were also used.

The impact of an economic activity on human rights and the ECtHR case law in the field of environmental human rights are the subject of many scientific works in recent years (Human rights and environmental protection, 2018; Ustymenko, 2019; Dzhyha,

2020, etc). However, the same cannot be said about the impact of urban planning on human rights, as the relevant practice of the ECtHR has not been sufficiently studied. Single publications on the subject analyze these issues superficially or too narrowly (Petretska, 2025; Dolianovska, & Hrybov, 2025). Scientific researches of ECtHR case law in a sphere of environmental rights does not highlight any case-law concerning the connection between construction and environmental human rights. Ukrainian scientists who conduct in-depth research into the legal aspects of construction activities (for example, Olha Kvasnytska, Olha Stukalenko), do not consider the impact of construction on human rights.

2. Research

2.1 Construction and sustainable development

The concept of construction is multifaceted. For our study, it is important to understand the construction activity as a process of creation and construction of objects (Kvasnitska, 2011, p. 414). We consider the definition of construction as an economic activity that includes forecasting, planning, designing, constructing urban development projects, landscaping, expanding, and technically re-equipping enterprises, which ensures the construction and reconstruction of residential, public, and industrial buildings and structures and creates a basis for development of all other sectors of the national economy, to be successful (Dmytrenko, 2020, p. 149). However, the issue of the interrelationship between construction, the environment, and human rights requires consideration of the Court's case law, which concerns not only construction as a type of economic activity, but also construction activities of non-professional builders. This concerns construction of private housing and farm buildings, summer cottages, and garages by individual citizens for their own family needs, as well as Court cases related to this construction and operation of buildings.

The construction industry is characterized by the Court as posing risks to human life and therefore requiring serious safety precautions (especially in residential areas) and special regulatory rules in view of the threats to construction workers and the public (*Cevrioglu v. Turkey* (№ 69546/12, 2016), paras. 57, 67; *Zinatullin v. Russia* (№ 10551/10, 2020), para. 27).

Due to the dangerous nature of construction activities, they are subject to significant regulatory influence by governments. State regulation of relations in the construction industry is usually defined as a set of various tools that establish requirements for industry participants or are aimed at ensuring the functions of state management of this industry for its sustainable development (Nakhkur, 2018, p. 113; Biletskyi, 2023, p. 17; Prav, 2019). The main focus of the paper is an issue of the Court's assessment of state regulation of urban development. State influence is decisive for the Court's conclusions on the conventionality of state actions.

Urban planning policy is implemented using various restrictive measures that are enshrined in legislation. This includes spatial planning and urban planning documentation, requirements for building materials, engineering support for construction projects, planning restrictions (protected areas, protective strips, etc.), restrictions on the selection of land plots, determination of the number of floors and density of development, and

more. States use legal instruments such as licenses and permits in the construction industry, carry out supervisory/control measures at construction sites, and hold guilty developers accountable. The New Urban Agenda, adopted by the UN Conference on Housing and Sustainable Urban Development in 2016, mentions the development of “... appropriate and enforceable regulatory requirements in the housing sector, including sustainable building codes, standards, building permits, subordinate legislation, and regulations on land use and urban planning standards” (para. 111).

According to environmentalists, construction is a striking example of human activity that has a serious negative impact not only on individual components of the environment and their preservation, but also on the stability of ecosystems as a whole (Stepaniuk, & Medvedieva, 2010, p. 299; Cheriyan, 2020). Construction is a source of waste and noise pollution, and a polluter of atmospheric air. The construction and operation of buildings and structures have a significant impact on greenhouse gas emissions and energy consumption throughout the entire life cycle of a building (Reshetchenko et al., 2023, p. 38).

The sustainable development concept is important for current and future generations in terms of balancing economic activity and environmental protection. Sustainable development is a general concept of social development based on a system of certain principles and management tools that ensure balanced socio-economic progress without destroying natural resources, adhering to social justice and accepting responsibility for preserving the development opportunities of future generations (Paliekhova, 2020, p. 225). A number of authors agree that sustainable development is harmonious, balanced development involving the interaction of three components: economic growth, social policy, and environmental protection (Kozhukhova, 2017, p. 24; Paliekhova, p. 225; Shandryk, 2024, p. 44). Sustainable development is based on a few basic requirements, and the following ones are important for our study: (1) economic growth shouldn't mess up natural capital and the environment; (2) for economic development, it's important for businesses and governments to be responsible and accountable to society (Schrijver, 2010; Emas, 2015).

Sustainable development is a global trend, including in the construction industry (Biletskyi, 2023, p. 13; Shandryk, 2024, p. 44). For the purposes of sustainable development, construction activities shouldn't, where possible, have a serious negative impact on the environment, or this impact should be minimized and balanced in a certain way.

In international documents, the sustainable development of settlements is primarily associated with environmental protection. For example, the European Urban Charter II (Manifesto for a new urbanity) (29 May 2008) declares that sustainable towns and cities protect the environment. The Leipzig Charter on Sustainable European Cities (May 24-25, 2007) writes about healthy environment as one of the dimensions of sustainable development.

The link between environmental protection and human rights is well reflected in the definition of a sustainable global society in the Earth Charter (2000). It is a society founded on respect for nature, universal human rights, economic justice, and a culture of peace. We must adopt models of production, consumption, and reproduction that preserve the Earth's regenerative capacity, human rights, and the well-being of

communities. And the Lugano Declaration, adopted at the International Conference on the Reconstruction of Ukraine in July 2022, states that Ukraine will be rebuilt in accordance with the sustainable development principle.

2.2 Environmental human rights and construction

Scientists propose a detailed classification of environmental human rights (Krasnova M., & Kransova Yu., 2021, pp. 21-26). Given the subject of the study, the paper may refer to the impact of construction/its connection only to certain types of environmental and social rights, namely: the right to life and health, which depends on the state of the environment, and the right to receive environmental information, as well as environmental protection rights, such as: the right to compensation for damage caused by violation of the right to environmental safety, and the right to appeal against decisions, actions, or inaction of authorities and their officials that violate or restrict environmental rights, and the right to access justice in environmental matters.

The need to protect and guarantee environmental human rights necessarily follows from such fundamental human rights as the right to life (Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the ECHR, the Convention)) and the right to respect for private and family life (Article 8 of the Convention) (Dzhyha, 2020, p. 173). In the context of hazardous activities (which include construction activities), positive obligations of the states under Articles 8 and 2 of the Convention are substantially similar (*Kohyadenko and Others v. Russia*, (№ 17423/05, etc., 2012), paras. 212, 216). Emphasis is placed on the need to prevent harm and inform the public (Guide to the case law of the European Court of Human Rights. Environment, 2025, p. 68). Other obligations of the state in this area include organisation of the necessary legislative and administrative framework and regulation of hazardous activities, also licensing, supervision of the activity etc. (*Öneryıldız v. Turkey* (№ 48939/99, 2004), paras. 71-72, 89-90).

To make decision in a sphere of environmental and economic policy issues it is necessary a proper investigation and research to assess the environmental impact of activities, ensuring a fair balance between competing interests [i.e. individual and public interests] (*Hatton and Others v. The United Kingdom* (№ 36022/97, etc., 2003), para. 128). This process should ensure public access to research results and information about potential risks; provide interested parties with the opportunity to lodge appeals (*Tătar v. Romania* (№ 67021/01, 2009), para. 118; *Grimkovskaya v. Ukraine* (№ 38182/03, 2011), para. 69). For example, when examining the actions of the authorities in the case of *Maatschap Smits and Others v. Netherlands* (dec., №39032/97, etc., 2001), which concerned the planning of a railway line, the Court established that authorities were looking for harmful effects throughout the planning process; public received the preliminary planning decision for comment; the applicants had access to the courts, etc. Similarly, measures for the fulfillment of state's obligations under Article 8 of the Convention were assessed positively in the following cases: *Hardy and Maile v. The United Kingdom* (№ 31965/07, 2012, paras. 191-192, construction and operation of gas terminals); *Flamenbaum and Others v. France* (№ 3675/04, etc., 2012, paras. 155-160, permit to extend the main runway at an airport); *Fieroiu and Others v. Romania* (dec., № 65175/10, 2017, paras. 24-29, permit to build a temporary waste treatment and storage site).

Many cases involving environmental violations resulting from construction activities/works or environmental restrictions in the construction sector are examined for compliance with Article 1 of the First Protocol to the Convention. In a number of cases in this category, the Court proceeded from the assumption about public importance of the protection of the environment, forests, coastlines, fauna and flora, and therefore such protection can be defined as a legitimate purpose of the interference with the property rights (Guide..., 2025, pp. 94-96). Here are some examples of such cases:

cases concerning restrictions and prohibitions on development: on an island where sea turtles lay eggs (*Z.A.N.T.E. Marathonisi A.E. v. Greece*, №14216/03, 2007); on land in a fully protected area (*Anonymos Touristiki Etairia Xenodocheia Kritis v. Greece*, № 35332/05, 2008); in the vicinity of a national park (*Matczyński v. Poland*, № 32794/07, 2015); on a forestry plot (*Ansay and Others v. Turkey* (dec., № 49908/99, 2006);

cases concerning refusal to grant or revocation of a building permit: *Saarenpään Lomakey v. Finland* (dec., № 54508/00, 2006) (coastal land); *Tarım v. Turkey* (dec., № 54948/07, 2010) (land designated as a nature conservation area); *Consorts Richet and Le Ber v. France* (№ 18990/07 and 23905/07, 2010) (Porquerolles Island); *Pine Valley Developments Ltd and Others v. Ireland* (1991, Series A № 222) (land zoned for the purpose of preserving a green belt);

cases concerning the demolition of buildings: *Depalle v. France* (№ 34044/02, 2010) (building located on the coast); *Yıldırım v. Turkey* (№ 21482/03, 2009) (house in a groundwater protection zone); *Hamer v. Belgium* (№ 21861/03, 2007) (house in a forest area); *Tumeliai v. Lithuania* (№ 25545/14, 2018) (summer residence).

The rights to appeal against decisions, actions or inactions of public authorities and to obtain compensation for environmental damage are the subject of the Court's analysis in cases under Article 6 of the Convention. In such cases of the analyzed group, the Court applies a number of general approaches to interpreting the right to a fair trial. It is worth emphasizing only this aspect. Claims by individuals for the cancellation of building permits, suspension/ stoppage of construction, etc. quite often acquire the character of *actio popularis*, and this aspect is assessed in the decisions of the Court. The general position here is that the Court considers disputes that are “directly decisive” for the civil rights of the applicants (Guide..., 2025, p. 27). Thus, in the case of *Ümver v. Turkey* (dec., № 36209/97, 2000), the Court concluded that Article 6 of the ECHR is not applicable for the cancellation of a building permit which were initiated for the preserving of nature. The decision in these proceedings had not direct important consequence for the applicant. But in the case of *Gorraiz Lizarraga and Others v. Spain* (№ 62543/00, 2004, paras. 45-46), which concerned proceedings for the annulment of the decree about permit of the construction project of a dam, the Court defined that the proceedings were aimed at protecting the public interest and the specific interests of several individuals living in the valley that was to be flooded. Therefore, the proceedings were of an “economic” and civil nature. Similarly, the application of a local non-profit environmental association with a complaint about the decision to permit the expansion of a technical waste landfill was not considered an *actio popularis*. The Court took into account the limited purpose of the association and the fact that its founders and management lived in the relevant area and the contested decision could directly affect their rights and interests (*L'Erablière A.S.B.L. v. Belgium*, № 49230/07, 2009).

As we can see, the decisions of the ECtHR in the environmental sphere, which concern construction issues, focus on the importance of regulating of construction activities for the purpose of ensuring human rights. As the Court recognizes, the effective implementation of the preventive, regulatory, and informative functions of the state is of significant law enforcement importance in urban planning.

2.3 Urban planning and the environment

The Guide of the ECtHR case law on environmental protection, produced by the Court's experts (2025), demonstrates that in these cases, the fact of violation of the right to private life and housing is rarely established in cases concerning the actual conduct of construction work. These violations more often occur due to improper (illegal) urban planning work. A striking example is the case of *Dzemiuk v. Ukraine* (№ 42488/02, 2014), in which the Court, analyzing the circumstances, pointed to environmental violations as a direct consequence of urban planning deficiencies: the village did not have an approved general plan for building, and the village council allowed the location of a cemetery on a land plot near the applicant's house in violation of state sanitary regulations (paras. 87, 91). It is worth mentioning the case of *Solyanik v. Russia* (№ 47987/15, 2022, paras. 50-53) with similar circumstances: a cemetery plot that did not have a sanitary protection zone was allowed to be expanded to the territory near the applicant's residence, and this zone was not established despite court decisions.

Territorial planning is one of the main elements of state regulation of the urban planning sphere. Rational urban planning is a guarantee of ensuring various human rights. Violations in this area of economic management can result in the death of citizens, harm to personal health, and property damage. They can be a significant factor in the development/course of natural disasters (*Kolyadenko*) with all the negative consequences for humans. Therefore, the state must responsibly fulfill its responsibilities in the urban planning sector.

At the same time, the Court understands that in such complex and difficult area as regional/rural/urban planning states should enjoy a wide margin of appreciation in order to implement their town-planning policy (*Sporrong and Lönnroth v. Sweden*, № 7151/75, 7152/75, 1982, para. 69; *Anonymos Touristiki Etairia Xenodocheia Kritis v. Greece*, para. 42; *Housing Association of War Disabled and victims of war of Attica and Others v. Greece*, № 35859/02, etc., 2006, para. 37; *Elia s.r.l. v. Italy*, № 37710/97, 2001, para. 77; *Terazzi srl v. Italy*, № 27265/95, 2002, para. 85). For example, states have the right to independently determine the procedure for regulating the construction of railways, which is a political decision (*Karin Andersson and Others v. Sweden*, № 29878/09, 2014, para. 68).

When examining the Court's practice on issues related to urban planning, one cannot ignore certain decisions that affect public participation. The Court recognizes the right of the public (a group of citizens, public organizations, etc.) to participate in such processes, protecting this right, depending on the context, under the provisions of Articles 6 or 8 of the Convention. For example, these are cases concerning:

- the impossibility of an appeal to the court with a complaint against the decision to permit the construction of a railway on or near the applicants' property (*Karin Andersson*);

- ignoring by the authorities of appeals from citizens who complained about noise pollution from the redirection of traffic during the construction of the highway (*Kapa and Others v. Poland*, № 75031/13, etc., 2021).

The importance of urban planning activities in the context of the state's obligations to ensure the human rights to life and health is defined in the case law of the ECtHR concerning the consequences of natural disasters. Therefore, it is appropriate to dwell on this issue separately.

2.4 Urban planning policy and the fight against natural disasters

Human life has been accompanied by wars, natural disasters, and man-made catastrophes for centuries. In the context of global warming, fires, tsunamis, floods, and other natural phenomena have become significantly more frequent, and this requires an appropriate and timely response from the state. The New Urban Development Program of 2016 indicates the need to include in the processes of urban and territorial development and planning issues and measures related to disaster risk reduction and adaptation to climate changes and mitigation of its consequences (para. 101).

In cases of human rights violations related to natural disasters, the Court has repeatedly found that inadequate urban planning is a significant factor determining the negative outcome of events. Thus, in the case of *Kohyadenko* the issue arose of the state's responsibility for the consequences of flooding caused by heavy rains and, as a result, the unannounced release of water from a reservoir in Vladivostok in 2001. The Court concluded that a combination of factors led to inadequate protection of human lives (paras. 172-173, 185). This is an inadequate legal framework that would allow identifying risks and implementing urban development policy in compliance with technical standards, and inadequate urban planning (ill-conceived general plan of the city of Vladivostok, failure to establish flood zones, water protection zones), as well as the absence of a coherent supervisory system and lack of coordination and interaction between authorities in implementing these measures and their inaction.

The ECtHR has defined a set of measures that authorities must implement in the event of a threat of natural disasters and to prevent their destructive consequences. This includes regulatory measures (including measures to effective protection of citizens living at risk), information obligations, and appropriate investigation of events. In the case of *Budaeva and Others v. Russia* (№ 15339/02, etc., 2008, paras. 128-132, 137), the Court defined a scope of the state's obligations, and later confirmed this when considering the case *M. Özel and Others v. Turkey* (№ 14350/05, etc., 2015, paras. 171-172).

In specific circumstances, positive obligations of the state are different depending on the type of the threat and its severity, as well as the possibilities for mitigating its consequences. They apply to the extent that the circumstances indicated the inevitability of the natural phenomenon, especially if it concerned recurring events. The choice of specific measures necessary to protect human life remains with the state due to the complexity of providing emergency assistance in the event of meteorological phenomena (*Budaeva*, paras. 134-135).

Considering the limits of the state's positive obligations and its responsibility in the event of earthquakes (*M. Özel*, paras. 173-175; *Erdal Muhammet Arslan and Others v. Turkey* (№ 42749/19, etc., 2023), paras. 128-133), the Court defines them as follows: these

may be measures aimed at mitigating the consequences of natural disasters, measures to strengthen the state's capacity to cope with unexpected and severe earthquakes. In this regard, the Court points to the need for proper state regulation of the economic activity. In particular, this refers to proper territorial planning and controlled urban development, as well as state supervision of construction works.

States also have procedural obligations. In the event of natural disasters, the same principles apply as in the case of incidents caused by hazardous activities (*M.Özgel*, para. 189; *Budaeva*, paras. 142-145; *Öneriyıldız*, paras. 93-95).

With regard to the protection of property against natural disasters under Article 1 of First Protocol to the Convention, the Court distinguishes between the relevant positive obligations and the positive obligations under Article 2 of the Convention. Accordingly, the duty to protect the right to peaceful enjoyment of property cannot exceed what is reasonable in the circumstances. In particular, compensation for the full market value of the destroyed property is not required. States have not obligation to protect private property in all situations and on all territories of the potential disasters. However, the obligation to ensure proper spatial planning and controlled urban development to prevent disasters remains relevant (*Atasagün v. Turkey* (dec.), № 24621/21, 2024). The procedural obligation under Article 2 is much more significant than under Article 1 of Protocol № 1 in relation to destroyed property (*Budayeva*, paras. 174-175; *Hadzhibyska v. Bulgaria* (dec.), № 20701/09, 2012, paras. 15-16).

2.5 Building permits and unauthorized construction: the Court's assessment

To ensure human safety from the risks of construction activity, the state may use various instruments to influence participants in the construction market. One of the main constraints on the economic activities of any developers—whether entrepreneurs or citizens—is obtaining permits. The purpose of applying such instruments of the state regulation of the economy as the issuance and revocation (suspension) of permits in the construction industry is to ensure the safety of consumers of construction products and citizens in general, to create a full-fledged environment for living, to promote the sustainable development of towns and cities, and ultimately to maintain legal and economic order in urban development and ensure economic efficiency (Apanasenko, 2020, p. 351). According to the Court's interpretation, this legal instrument may contribute to the economic well-being of the country (*Kaminskas v. Lithuania*, № 44817/18, 2020, para. 52), and also serve the legitimate purpose of protecting the environment.

In European countries, including Ukraine, cases of unauthorized construction are uncommon. Unauthorized construction is an abuse of rights, unlawful, socially harmful, and unethical activity (behavior) of the owner or user of a land plot in exercising their right to build in a not moral and illegal manner which entails legal consequences established by law (Nikitenko, 2025, p. 26). As a result, in many countries the practice of demolishing illegal buildings is being formed, and construction amnesties are being applied. Complex issues of property rights and housing rights relating to these objects are also resolved by the Court. The ECtHR understands requests for the demolition of buildings as regulation of an use of property in the public interest (*Depalle*, para. 80).

The most illustrative example of the Court's legal positions regarding the state's actions in combating unauthorized housing construction is the decision in the case *Ivanova*

and *Cherkezov v. Bulgaria* (№ 46577/15, 2016). The circumstances of this case are as follows. The applicants had renovated the house without planning permit, so the local authorities issued a demolition order for the building. The applicant defended her right to ownership of the home in a Bulgarian court, but the domestic courts decided against her. The Court analyzed the actions of the Bulgarian authorities for compliance with two articles of the Convention: Article 8 and Article 1 of the Protocol № 1 to the Convention. No violation of the latter article was found, as the implementation of the warrant did not upset the balance between the private interest in the inviolability of property and the general interest in combating unauthorized construction, and in general the state has wide discretion in matters of spatial planning and urban development (*Ivanova*, paras. 71-76; *Saliba v. Malta*, № 4251/02, 2005, para. 45).

As regards compliance with Article 8 of the Convention, the Court compared the present case to cases concerning the eviction of tenants from public housing or land or from property previously owned by the applicants which had been lost as a result of civil proceedings. Accordingly, the Court pointed out the need for the national authority (court) in every case concerning the loss of a single home to examine the balance of interests (paras. 52-54). When deciding on the demolition of a dwelling, courts should take into account the following factors: the legality of the construction of the dwelling, the awareness of the violations by the offenders, the nature and degree of illegality; the nature of the interest to be protected by the demolition; the availability of alternative housing for the persons affected by the demolition; and the availability of less severe methods of resolving the case. The person must also have procedural guarantees: the possibility of judicial review of the administrative decision regarding the loss of housing; the possibility of appealing the decision precisely on the grounds of its disproportionality. The Court found that the Bulgarian legislature did not take into account the appropriate balance of interests but only the legality of the construction of the house and the proceedings in the case did not meet the above procedural requirements.

The Court's legal positions in similar situations were confirmed later, for example, in the case *Simonova v. Bulgaria* (№ 30782/16, 2023, para. 48). A violation of Article 8 of the Convention was detected in connection with the demolition of the applicant's house solely on the grounds of illegality of construction (partly on a neighbour's property and on agricultural land), despite the fact that the house was the only dwelling for her and her four minor children. The court considered that the demolition order should be upheld, in particular because the building could not be brought into compliance with building regulations. However, the demolition should have taken measures to alleviate the hardship caused by the loss of the applicant's family's home (paras. 51, 53).

The Court's positions in the case of *Ivanova* are also used in cases concerning the unauthorized demolition of non-residential real estate. Thus, the ECtHR declared inadmissible the application *Cesare Longo v. Italy* (dec., № 35780/18, 2024) which concerned the demolition of an agricultural warehouse, confirming the above approaches (paras. 79-88). At the same time, it is emphasized that there is no need to individually assess the application of planning measures. Similar conclusions in the case of the demolition of the warehouse were expressed back in 2005 in the case *Saliba v. Malta* (paras. 45-48).

We should also consider the decisions on admissibility in cases *Galena Vramiškoska v. The former Yugoslav Republic of Macedonia* (dec., № 30844/06, 2011, demolition of a dacha,

garage and house of prayer) and *Vagnola s.p.a. & Madat s.r.l. v. Italy* (dec., № 7653/04, 2010, demolition of the villa). In the last case, the general interest that was taken into account when analyzing the balance of interests – the protection of archaeological heritage – draws attention. Obviously, for the Court this became one of the important arguments for not accepting the applicants' complaint. No violation of property rights regarding a villa, which was illegally completed by commercial companies, due to the refusal to apply the “construction amnesty” was found, taking into account the significant public interest in preserving the archaeological heritage and even despite the retrospective designation of the relevant site as a protected archaeological area.

However, state should bear in mind that achieving a goal of protection the objects of natural and cultural heritage does not release it from the obligation to compensate individuals if the interference with their property rights is excessive (*Anonymos Touristiki Etairia Xenodocheia Kritis*, para. 45). For example, in the last case, the applicant company, having purchased a plot of land for development in the early 1970s, applied to the authorized bodies with a project to build a hotel complex. Only in 1984 the Ministry of Culture declared the impossibility of approving the construction project, since it was planned in an area designated as an archaeological monument and which has special natural beauty. The applicant's request for expropriation of the land or compensation for its value due to the impossibility of construction was denied in 1993. The court assessed the actions of the authorities as inconsistent (paras. 5-17, 48-49). In another case, *N.A. and Others v. Turkey* (№ 37451/97, 2005) the applicants did not receive compensation for the demolition of an unfinished hotel on the seashore, which was being built with the permit of the authorities on inherited land. These actions of the authorities clearly violated the applicants' property rights, although they pursued the legitimate aim of preserving the public zone - the property of the state.

The court strictly assesses unauthorized construction activities that pose threats to the safety of citizens. In the Case *Zhidov and Others v. Russia* (№ 54490/10, 2018) it found an interference with property in the form of an obligation to demolish housing built near a gas pipeline to be proportionate. During the final stages of construction, the applicant was aware of the peculiarities of the location of his land and ignored the authorities' request to stop construction, which bore all the hallmarks of illegality (paras. 104-107).

Therefore, according to the Court's position, unauthorized constructions may be demolished in accordance with the requirements of Article 1 of Protocol № 1 to the Convention for the purposes of maintaining building regulations. This legitimate aim covers various public interests, such as the safety of citizens, the protection of the environment or cultural heritage. However, if we are talking about illegally constructed housing, by virtue of the principle of proportionality, the state must solve the housing problem of the violators before demolishing their illegal housing.

These legal positions of the Court, when implemented in municipal management practice, pose real challenges for the authorities. In our opinion, these challenges are due to:

- 1) the need to resolve housing issues for violators of construction legislation in circumstances where housing resources are always limited. After all, as we know, the problem of housing affordability is a global problem for humanity (Komnatnyi, 2023, p. 134). At the same time, given the fundamental nature of the right to housing and its

connection to the establishment of a decent standard of living (Article 25 of the Universal Declaration of Human Rights), the problem of unauthorised housing construction cannot always be solved in a single, radical way;

2) the potential accumulation of private housing that does not comply with building standards and cannot be demolished. The Ukrainian Civil Code (Article 376) is less lenient towards violators than the Court, allowing for the demolition of unauthorised construction, for example, in cases of significant violations of building standards and regulations. Obviously, the law ignores the fundamental human right to housing here.

So, as we have seen, the protection of citizens' housing rights is of priority for the Court compared to public interests in compliance with urban planning regulations. According to researchers, the only exceptions are cases of encroachment on the environment by unauthorized buildings (Cherny, 2019), which can be agreed with.

The Court has established the legitimate goal of preserving the environment (coastal zones, forests) in a number of cases in the analyzed group. The case is important in terms of completeness and accessibility of conclusions, *Kaminskas v. Lithuania*, under the circumstances of which a house was built on the forest plot. When examining the necessity in the democratic society of measures to demolish the house, the Court was guided by the following: the illegality of the construction of housing on a site protected by environmental legislation, emphasizing the impossibility of giving priority to the right of an individual to housing - so as not to encourage others to carry out illegal construction to the detriment of the environmental rights of others; the conscious unlawfulness of the actions of the homeowner in carrying out construction work on a forest plot; state's actions to improve applicant's situation (paras. 56, 58-59, 63-64).

The position of the ECtHR described above is particularly evident in cases where the burden of unauthorized construction is borne by its new owner, who is not involved in this construction. For example, in the case of *Hamer v. Belgium* the legality of the demolition of a residential building, illegally built by the applicant's parents in a forest area, was assessed. Despite the circumstances of the long-term (about 37 years) use of the house by the parents, and then by the applicant, the payment of taxes for it, and the obvious awareness of the authorities about the unauthorized construction, the Court decided to demolish the house to be lawful and proportionate.

Or the case of *Depalle v. France* (2009), which concerns the demolition of the property of the infringer's successor, namely a building in the coastal zone built over a century ago. The French court found the possession illegal given the specific nature conservation status of the coastal area and despite the applicant being granted temporary permits to use it. There are such important arguments in favor of recognizing the interference with the applicant's right to peaceful enjoyment of possessions as proportionate: temporary validity of permits regarding public lands; the legislative possibility of the authorities to change or revoke the permit if there is a beneficial purpose; the applicant's lack of the right for compensation or reparation for damage and his obligation to attribute the area as it was in its original state (to demolish the erected buildings) as indicated in the prefect's permits. The applicant always knew that the permits could be revoked and cancelled (para. 86). The Court's findings that the applicant's long peaceful enjoyment of public land and the authorities' corresponding doubts belong to an era when «development and environmental concerns had not yet reached the degree

witnessed today» are very contemporary (para. 86). The court emphasizes the general interest in free access to the coastline, its protection, the need to comply with building regulations, and points to the state's discretion in urban planning policy and territorial development (paras. 81, 87, 89).

In general, the ECtHR in its case law recognizes a wider margin of appreciation for states in the sphere of territorial development and environmental protection than in the case when regulating exclusively civil rights (*Gorraiz Lisarraga*, para. 70; *Depalle*, para. 84). In the well-known case *Chapman v. The United Kingdom* (№ 27238/95, 2001), the Court recognized the superiority of environmental interests in the use of land plots of the so-called “Green Belt” over the private interests of individual Roma families in placing their mobile homes/caravans in any place without building permits. It should be noted that this case is one of a group of cases considered by the Court, which assess the actions of state authorities in the demolition of buildings/eviction from housing/ vacation of illegally occupied plots of land by representatives of the Roma nationality (for example, the cases *Bagdonavicius and Others v. Russia*, №19841/06, 2016; *Yordanova and Others v. Bulgaria*, № 25446/06, 2012; *Winterstein and Others v. France*, № 27013/07, 2013).

Therefore, when the Court examines the proportionality of interference with human housing rights, and the right to housing and the environmental rights of a wide range of citizens priority is given to environmental rights. In these cases, we're usually talking about the environmental property right to use natural resources, as well as the right to a clean, sustainable, and safe environment – an absolute right that ensures the natural existence of a person (according to a decision by the UN Human Rights Council (48th session, 2021) as an inalienable human right, which has been proven for some time in environmental law science (Environmental law: lecture course, 2022, p. 23)). It is noteworthy that scientific literature considers the right to housing to be one of the rights most closely related to the right to a clean environment, since safe living conditions for humans include an environmental component (Korchevna, & Levenets, 2023, p. 11). However, while the right to housing is a personal right, the aforementioned environmental right is an inalienable right that is exercised in relation to a single object by an indefinite number of persons.

We would like to emphasize that there is a direct link between housing rights and environmental safety and human environmental rights. Environmental safety is a crucial for human habitation in a particular place (Korchevna, & Levenets, 2023, p. 11). The right to healthy housing requires consideration of the environmental characteristics of the area when planning residential development, which will have a positive impact on human health (Komnatnyi, 2023, p. 162). At the same time, unauthorised construction, which negatively affects or may affect environmental safety, in turn affects the housing and environmental rights of other citizens. Therefore, we consider the conclusions in the above-cited ECtHR decisions on the priority of environmental protection to be fair.

When deciding the legal fate of unauthorized buildings, it is important that building rules are clearly established by law and identified as mandatory for specific owners, otherwise it is impossible to assert that the buildings are illegal (*Baykin and Others v. Russia*, № 45720/17, 2020).

For the purpose of implementing the analyzed legal positions of the Court into Ukrainian legal practice, considering Ukrainian realities, the Court's assessments of the

state's actions to demolish property built on the base of *construction permit issued illegally* are also important. The reality shows numerous cases of forest, park, and waterfront developments being built with illegal permits or without proper government oversight of construction works.

Researchers aptly note that the cancellation of property rights in connection with unauthorized construction includes an element of state guilt. Or there were no permits for the development – and the state is to blame for not stopping the development immediately, creating the illusion of consent to the developer's actions (for example, *Öneriyıldız*). Or the state issued construction permits that were canceled – and the state is guilty of issuing them incorrectly (*Sud Fondi srl and Others v. Italy*, № 75909/01, 2009) (Cherny, 2019). Or, let's add, there were other shortcomings in the urban planning process, made by the developer, which were not promptly identified or stopped by the state (*Odeska buterbrodna kompaniya, TOV v. Ukraine*, № 59414/15, 2024).

The Court resolves such situations by relying on the concept of good governance and on its own conclusions based on that concept. A reference point for relevant practice in recent years can be the case of *Tumeliai v. Lithuania* (№ 25545/14, 2018). The central issue for the Court here was the state's compliance with the principle of good governance when deciding to demolish buildings constructed on a forest plot on the basis of a permit issued illegally. The proportionality of the demolition was not confirmed by the Court. It was unable to ascertain the good faith and timeliness of the state's actions to provide a forest protection. In essence, the state authorities shifted the burden of their error onto the applicant, acting belatedly and ignoring the circumstances of the case (paras. 75, 77-80). Similarly, in the case of *Zhidov* (paras. 108-114), some of the applicants were granted permits to build in an area where this violated building codes. Therefore, the subsequent decision to demolish the buildings could not meet the requirements of Article 1 of Protocol № 1 to the Convention. Or the situation with construction that began with preliminary permits, but continued in the absence of legalization of the developer's rights to the land plot. Then the construction site was not put into operation and was sold to the next owner (*Odeska buterbrodna kompaniya, TOV*). In this case, the Court explains in detail the essence of the violation of the principle of good governance in the deprivation of property of the developer's successor (paras. 26-31); the approach applied is established in the Court's case-law.

The case *Zela v. Albania* (№ 33164/11, 2024) demonstrates the Court's assessment of the actions of the state and the developers in the event of errors by both parties to the construction legal relationship. In the circumstances of the case, at a certain point in time there were legal grounds for declaring the applicant's building to be an illegal construction, and a decision was made to demolish it. However, this decision had a number of flaws: it did not specifically concern the applicant or his building; it did not assess the legality of the applicant's building; the applicant did not take part in the proceedings of his case. The applicant occupied the building without hindrance for many years, although he had to apply for a renewal of the building permit after the first year of construction. However, the building was registered as the applicant's property. It is clear that the domestic authorities acted and failed to act in relation to the applicant's building in error. At the same time, the Court took into account that the applicant had used the building for business purposes, although he had obtained a permit for the construction of a residential

building, and that he had not applied for the renewal of the permit. As a result, the burden of the circumstances which led to the decision to demolish the applicant's building should have been apportioned between the authorities and the applicant.

In the analyzed case law, the Court expresses its opinion on sanctions for illegal construction and methods of their application. The following positions are important. First, developers must enjoy proper procedural guarantees: have an adequate opportunity to present their case to competent authorities, and effectively challenge measures that violate the law. Demolition or confiscation of illegally constructed buildings should be applied exclusively through judicial procedures (*G.I.E.M. S.r.l. and Others v. Italy*, № 1828/06, etc., para. 302; *Kooperativ Neptun Servis v. Russia*, № 40444/17, 2021, para. 99; *Zela*, paras. 83-84).

Secondly, the ECHR denies the conventionality of the automatic confiscation of illegal construction, even if it is provided for by national law (*G.I.E.M. S.r.l.*, para. 303). It does not allow courts to compare the legitimate purpose of punishment with the person's rights affected by this sanction, the proportionality of the sanction, and the degree of guilt of the offenders.

Thirdly, on the issue of the severity of sanctions for illegal construction work, the Court leaves a wide margin of appreciation for states, traditionally requiring a fair balance between private and public interests. For example, the Court justified the inadmissibility of complaints of *Valico s.r.l.* (№ 70074/01, 2006) regarding a violation by Italy of Article 1 of Protocol № 1 to the Convention by the lawfulness of the fine imposed on the applicant in the amount of 100% of the cost of the construction works, the aim of environmental protection and the observance of the balance of interests. After all, the applicant seriously deviated from the urban planning task, the construction was large-scale, and at the same time, it was not decided to demolish the object.

3. Conclusions

Using established algorithms, tools, and approaches to analyzing legal situations, in the studied category of cases, the Court formulated a number of positions regarding the conduct of construction activities, urban planning work and their consequences for the environment and human rights, as well as positions on the interaction of participants in construction legal relations - developers, state urban planning authorities, and the interested public. Given the types of rights negatively affected by violations in urban planning, relevant cases are considered for compliance with Articles 2, 6, 8 and Article 1 of Protocol № 1 to the Convention.

In particular, the Court has clarified the state's responsibilities in the urban planning sector in numerous decisions. Including positive obligations in such special situations as construction in protected areas, unauthorized construction, obligations to prevent natural disasters, etc. At the same time, the idea of the decisive role of state policy and state regulation, as well as their competent implementation in the issue of protecting and defending human rights, is clearly defined. The complexity of the urban planning sphere requires a sufficiently wide discretion for the state to protect public interests when

making various decisions, including in urban planning work, when determining sanctions for construction violations.

As for the Court's assessments of the developers' actions, they are significantly fewer compared to the analysis of the actions or inaction of states. These are mainly the Court's conclusions about the priority of the public interest in compliance with building regulations compared to the private interest in owning illegally constructed property (but not housing). The Court's position on the distribution between the developer and the state of the burden of the consequences of construction in the event of the illegal issuance of building permits is noteworthy. These are also positions on the primacy of environmental interests over private interests when deciding the legal fate of buildings that pose a threat to the environment.

In general, the priority of environmental protection over many variations of private interest have been emphasized in numerous decisions of the Court. This position of the ECtHR is a good example of the Court's support for the European trend of implementing the concept of sustainable development. The relevant decisions of the Court are elements that form a legal roadmap to sustainable development for European countries. For Ukraine, the positions of this authoritative institution as the ECtHR, researched in the work, can be a weighty argument in the discussion of construction industry stakeholders about the role of the state in managing the construction sector of the economy. At the same time, we are aware that urban planning and environmental protection regulations may vary across European countries. So the issue of implementing the Court's legal positions in these countries should be studied further. In particular, further consideration is required regarding the practical implementation of sustainable development commitments in Ukraine's post-war reality, as reflected in the Court's positions.

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