



# The Compromise Nature of Property Rights in Action – Tolerating Neighboring Nuisances?

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## ABSTRACT

This article explores the evolving conception of property rights as individual entitlements and socially embedded institutions, emphasizing neighbor law and the duty of tolerance. While civil-law traditions traditionally conceptualize ownership as an exclusive and absolute right, modern legal systems increasingly recognize that property must serve a social function and coexist with the rights and interests of others. Using the Georgian legal framework (Article 175 of the Civil Code), the paper examines how legal norms mediate conflicts between neighboring property owners, particularly where environmental degradation or industrial activity undermines the peaceful enjoyment or economic use of property. The article emphasizes the role of regulatory mechanisms, such as environmental and construction standards, and highlights the judiciary's critical function in determining the permissible scope of interference on a case-by-case basis. Drawing upon the jurisprudence of the European Court of Human Rights, it analyzes how the Court balances individual property rights under Article 1 of Protocol No. 1 with broader concerns addressed under Article 8 of the European Convention on Human Rights. By integrating national legal norms with international human rights standards, the article aims to delineate a coherent framework for resolving property-related conflicts in a manner that respects both private autonomy and the public interest.

## INTRODUCTION

**As a foundational element of a free and democratic society, property rights underpin individual liberty and enable personal development.**<sup>1</sup> Far from being merely an economic asset, property provides a sphere of autonomy, continuity, and control in which individuals exercise self-determination, assume responsibility, and fully participate in social and economic life.<sup>2</sup> In civil-law traditions, ownership is traditionally conceived as an exclusive, absolute right:<sup>3</sup> the owner may use, enjoy, and dispose of the property at will, excluding others from interference and enforcing protection through remedies such as *rei vindicatio* and *actio negatoria*.<sup>4</sup>

However, property—though often portrayed as the archetype of individual autonomy—is neither a purely private nor an isolated institution. It is inherently linked to spatial context and embedded within a broader social milieu. As such, it serves as a medium through which individuals exert influence over their environment while remaining subject to regulations and constraints.<sup>5</sup> This duality underscores that ownership entails not only

control over resources but also responsibilities shaped by both legal norms and social expectations. Accordingly, the idea that property carries a **social function** has gained widespread recognition: the right to exclude is not absolute, and the use of property must not unduly infringe upon the rights of others or undermine the public interest.<sup>6</sup>

It is precisely this need to balance private and public interests that gives rise to the **state's positive obligation** in safeguarding property rights. Under constitutional frameworks, including that of **Georgia**, the right to property is protected not only from unlawful state interference (a negative obligation)<sup>7</sup> but also through the establishment of a legal and regulatory environment that ensures one owner's use does not disproportionately infringe upon others' rights or the public good.<sup>8</sup>

**Neighborhood law** exemplifies how legal systems balance competing private interests. The Civil Code of Georgia establishes a general obligation of mutual respect among neighbors, requiring property owners to exercise their rights in ways that recognize and accommodate the rights of others.<sup>9</sup> Article 175 specifically recognizes that certain impacts—such as noise, emissions, or vibrations—must be tolerated within reasonable limits.<sup>10</sup> This duty of tolerance reflects the inherently social nature of property rights and the necessity of coexistence in densely inhabited spaces.<sup>11</sup>

- 1 Nordtveit, E. (2023). The changing role of property rights: An introduction. In Law 2023, Edward Elgar Publishing. pp. 2-3. Available at: <https://doi.org/10.4337/9781839100659.00006>; Totladze, L. (2018). Commentary on the Civil Code, Book II (Chanturia, L., ed.), Article 170, pp. 73-74. Tbilisi, Georgia.
- 2 Pushkar, P. (2012). Protection of property under the European Convention on Human Rights and the Georgian Constitution: Analysis of the judicial practice of balancing proportionality of interference with the individual property rights. *Georgian Constitutional Law Review*, (5), p. 143.
- 3 The emphasis on the absoluteness of property rights reflects the perspective of legal systems based on Roman law. In contrast, the common law tradition, exemplified by English law, adopts a different conceptual framework. Rather than recognizing property as an absolute right, English law views property as a relative right superior to, yet distinct from, mere possession. See. Meskhishvili, N. (2018). Bona fide acquisition of property from an unauthorized person (Doctoral dissertation, Caucasus University), pp. 36-37. Available at: <https://dspace.nplg.gov.ge/bitstream/1234/290150/1/Disertacia.pdf>.
- 4 Zarandia, T. (2019). Property Law (2<sup>nd</sup> ed.). Meridiani. p. 50.
- 5 Smith, J. C. (2012). Some preliminary thoughts on the law of neighbors. *Georgia Journal of International and Comparative Law*, 39(3), p. 758. UGA Legal Studies Research Paper No. 12-05. Available at: <https://ssrn.com/abstract=2054732>; Zarandia, T. (2019). Property Law (2<sup>nd</sup> ed.). Meridiani. p. 42.

- 6 Meskhishvili, N. (2018). Bona fide acquisition of property from an unauthorized person (Doctoral dissertation, Caucasus University), pp. 45-46. Available at: <https://dspace.nplg.gov.ge/bitstream/1234/290150/1/Disertacia.pdf>.
- 7 Eide, A., Krause, C., Rosas, A. (1995). Economic, social and cultural rights. Kluwer Law International & Raoul Wallenberg Institute of Human Rights and Humanitarian Law. In Meskhishvili, N. (2018). Bona fide acquisition of property from an unauthorized person (Doctoral dissertation, Caucasus University), pp. 45-46. Available at: <https://dspace.nplg.gov.ge/bitstream/1234/290150/1/Disertacia.pdf>.
- 8 Phirts Khalashvili, A. (2022). The legal dimension of the social function of property. *Journal of Constitutional Law*, (2), p. 24.
- 9 Zarandia, T. (2018). Law of Neighbouring Tenements and the Essence of Private-Law Obligation of Tolerance in Georgian Law. *Journal of Law*, (2), p. 7. Available at: <https://jlaw.tsu.ge/index.php/JLaw/article/view/2576>.
- 10 Comp. Bundesministerium der Justiz. (2024). German Civil Code (Bürgerliches Gesetzbuch, BGB). §. 912. Available at: [https://www.gesetze-im-internet.de/englisch\\_bgb/](https://www.gesetze-im-internet.de/englisch_bgb/).
- 11 Zahnow, R., Cheshire, L. (2023). Community neighboring norms and the prevalence and management of private neighbor problems. *City & Community*, 22(2), pp. 126-144. Available at: <https://doi.org/10.1017/S0263771523000000>.

**The European Court of Human Rights (ECtHR)** has developed a nuanced framework for resolving conflicts where environmental nuisances—often stemming from economic, industrial, or public interests—interfere with the rights of neighboring property owners. While **Article 1 of Protocol No. 1 (A1P1)**<sup>14</sup> protects the peaceful enjoyment of possessions, such cases are frequently examined under Article 8 of the **European Convention on Human Rights (ECHR)**,<sup>15</sup> which safeguards private and family life, home, and correspondence. This dual approach reflects the Court’s recognition that en-

**For Georgia, as a Contracting State, alignment with Strasbourg jurisprudence is essential.** Judicial oversight ensures proportionality in balancing individual property rights against evolving social, economic, and environmental needs. This article analyzes ECtHR case law to elucidate the legal principles underpinning the reconciliation of these competing interests in property law.

Article 1 of Protocol No. 1 to the European Convention on Human Rights guarantees the right to property. In *Marckx v. Belgium*, the European Court of Human Rights clarified that the provision, by referring to the “*peaceful enjoyment of possessions*” and the “*use of property*”, substantively secures property rights. This protection extends beyond formal ownership to encompass the ability to use, manage, and dispose of property, underscoring its essential role in individual autonomy and legal certainty (§ 63).<sup>16</sup>

A property right may be protected as a “possession” under A1P1 even if it is revocable or contested under domestic law, at least until the re-

17 Council of Europe/European Court of Human Rights. (2023, February 28). Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights (Updated). p. 7. Available at: <https://rm.coe.int/guide-article-1-p1-gts-english-update-28-02-2023-/1680ae370a>.

vocation takes effect.<sup>18</sup> The ECtHR also safeguards legitimate expectations, including *de facto* possession and contractual claims. In *Beyeler v. Italy*, the Court upheld a proprietary interest despite a void contract, emphasizing long-term possession, official recognition, and compensation, reflecting its pragmatic approach to both formal and practical property rights (§§ 104–105).<sup>19</sup> A1P1 sets out three rules: (1) a general principle of peaceful enjoyment of possessions, (2) conditions for lawful deprivation of possessions, and (3) the state’s right to control property use in the public interest.<sup>20</sup> When interference doesn’t fit the second or third rule, the first rule applies (the so-called catch-all formula).<sup>21</sup>

Interestingly, according to ECtHR’s established case law, interferences with property rights arising from environmental degradation or neighboring nuisances—such as noise, odors, vibrations, or pollution—are generally assessed under Article 8 of the ECHR, which protects private and family life, rather than under Article 1 of Protocol No. 1. (A1P1). The Court has clarified that **A1P1 does not guarantee enjoyment of possessions in a pleasant or pollution-free environment**. In *Flamenbaum and Others v. France* concerning airport expansion, the Court reaffirmed that such issues fall more appropriately within the scope of Article 8 (§184).<sup>22</sup>

In cases such as *Udovičić v. Croatia*<sup>23</sup> and *Surugiu v. Romania*,<sup>24</sup> where the Court identified a

breach of Article 8 due to nighttime noise from a bar or authorities’ failure to respond effectively to persistent neighborhood disturbances, it found no need to separately assess a potential violation of Article 1 of Protocol No. 1.<sup>25</sup>

Nevertheless, **the ECtHR recognizes that severe environmental degradation can violate Article 1 of Protocol No. 1 when it significantly impairs a property’s value, usability, or control, or imposes an excessive burden on the owner**. In *Öneryıldız v. Turkey*,<sup>26</sup> the Court found violations of Articles 2, 13, and A1P1 after a methane explosion at a state-run rubbish tip in Ümraniye, Istanbul, killed nine of the applicant’s relatives and destroyed his home. The dump, operated by the Istanbul City Council, lacked safety measures despite warnings about methane risks. The authorities failed to act, neglecting preventive measures like gas-extraction systems or resident warnings.

Despite the applicant’s home being built without authorization on Treasury land, the ECtHR rejected the government’s claim that it wasn’t a protected “possession”. The Court emphasized that even informal property may fall within the ambit of A1P1 when there is a sufficient degree of recognized occupancy and stability, especially where the State has tolerated the presence of such settlements and facilitated their integration. The destruction of the home, combined with the State’s negligence, breached the right to peaceful enjoyment of possessions, highlighting how environmental harm and government inaction can violate property rights when the State fails to balance private and public interests.

In *Öneryıldız v. Turkey*, **Judges Tümen and Mularoni dissented**, arguing that A1P1 did not apply because the applicant’s illegally built dwelling on Treasury land was not a protected “possession”. They highlighted the absence of a legitimate property right or enforceable claim and maintained that state tolerance cannot create a proprietary inter-

18 Ibid., p. 8.

19 *Beyeler v. Italy*, App. No. 33202/96, European Court of Human Rights. (2000, January 5). Judgment of the Court. Available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-58832%22\]}>](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58832%22]}>).

20 Council of Europe/European Court of Human Rights. (2023, February 28). Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights (Updated). p. 20. Available at: <https://rm.coe.int/guide-article-1-p1-gts-english-update-28-02-2023-/1680ae370a>>.

21 Ibid., p. 25.

22 *Flamenbaum and Others v. France*, App. No. 3675/04 & 23264/04, European Court of Human Rights. (2012, December 13). Judgment of the Court. Available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-115143%22\]}>](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-115143%22]}>).

23 *Udovičić v. Croatia*, App. No. 27310/09, European Court of Human Rights. (2014, April 24), Judgment of the Court. Available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-142520%22\]}>](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-142520%22]}>).

24 *Surugiu v. Romania*, App. No. 48995/99, European Court of Human Rights. (2004, April 20). Judgment of the Court. Available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-61714%22\]}>](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-61714%22]}>).

25 Council of Europe/European Court of Human Rights. (2023, February 28). Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights (Updated). p. 53. Available at: <https://rm.coe.int/guide-article-1-p1-gts-english-update-28-02-2023-/1680ae370a>>.

26 *Öneryıldız v. Turkey* [GC], App. No. 48939/99, European Court of Human Rights. (2004, November 30). Judgment of the Court. Available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-67614%22\]}>](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-67614%22]}>).



est. They cautioned that recognizing such claims could undermine town-planning laws, encourage illegal construction, and obstruct regulatory enforcement.

This case illustrates the ECtHR's broad and pragmatic interpretation of "possessions", extending protection to both tangible and intangible interests, including those not formally recognized under domestic law. While environmental nuisances are typically examined under Article 8 of the Convention, the Court acknowledged that, in exceptional cases where environmental harm severely impairs property use or value, A1P1 may also be engaged, particularly if the State fails to strike a fair balance between individual rights and public interests.

## 2. ARTICLE 8 OF THE ECHR AND ENVIRONMENTAL NUISANCES

Article 8 of the ECHR guarantees the right to respect for private and family life, home, and correspondence, forming a key basis for addressing environmental nuisances that impair the enjoyment of one's home. The European Court of Human Rights has repeatedly found that serious harms—such as noise, pollution, and toxic emissions—may violate this right, particularly where states fail to prevent or mitigate the disturbance.<sup>27</sup> This chapter examines the Court's approach to environmental nuisances under Article 8, focusing on how it balances individual rights with public interests and the implications for protecting property in cases of environmental degradation.

### 2.1. Noise disturbance and the right to enjoy one's home

Under the ECHR, the right to respect for one's home extends beyond the mere physical space to include the ability to enjoy it peacefully. This right imposes positive obligations on public authorities to take appropriate measures, including the en-

forcement of court decisions, to safeguard individuals from interference. Such interferences may be physical, such as unauthorized entry, or non-physical, including **excessive noise**, odors, or other environmental nuisances. When these disturbances—whether caused by private individuals, commercial activities, or public bodies—go beyond the level of ordinary neighborly inconvenience, they may violate the right to quiet enjoyment of the home.<sup>28</sup> However, an issue under Article 8 only arises if individuals are directly and seriously affected by the nuisance in question and are able to prove the direct impact on their quality of life.<sup>29</sup>

In *Moreno Gómez v. Spain*,<sup>30</sup> the ECtHR established that persistent noise pollution can violate Article 8 of the ECHR, which protects the right to respect for private and family life and home. Ms. Pilar Moreno Gómez, a Valencia resident since 1970, suffered chronic sleep disturbances and health issues due to excessive night-time noise from bars and discotheques authorized by the City Council since 1974. Despite reports confirming noise levels exceeded legal limits and the area's designation as an "acoustically saturated zone" in 1997, the authorities continued issuing licenses, including one for a discotheque in her building, later annulled. Ms. Moreno Gómez's claim against the City Council, alleging violations of her rights to physical integrity and home under the Spanish Constitution, was dismissed by domestic courts for lack of direct evidence linking the noise to her harm.

The ECtHR ruled that Spain's failure to enforce noise regulations breached its positive obligations under Article 8 to ensure a peaceful home environment. The Court rejected the demand for direct **evidence of noise inside her apartment as overly formalistic, given the authorities' acknowl-**

27 Council of Europe/European Court of Human Rights. (2023, February 28). Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights (Updated). p. 53. <https://rm.coe.int/guide-article-1-p1-gts-english-update-28-02-2023-/1680ae370a>.

28 Council of Europe/European Court of Human Rights. (2025, February 28). Guide on Article 8 of the European Convention on Human Rights: Right to respect for private and family life, home and correspondence. p. 123. [https://ks.echr.coe.int/documents/d/echr-ks/guide\\_art\\_8\\_eng](https://ks.echr.coe.int/documents/d/echr-ks/guide_art_8_eng).

29 Council of Europe/European Court of Human Rights. (2024, August 31). Guide to the case-law of the European Court of Human Rights: Environment. p. 32. [https://ks.echr.coe.int/documents/d/echr-ks/guide\\_environment\\_eng](https://ks.echr.coe.int/documents/d/echr-ks/guide_environment_eng).

30 *Moreno Gómez v. Spain*, App. No. 4143/02, European Court of Human Rights. (2004, November 16). Judgment of the Court. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%5B%22001-67478%22%5D%7D>.

**edgment of excessive noise levels through municipal reports** and the “acoustically saturated zone” designation.<sup>31</sup> This inaction, persisting over years, impaired Ms. Moreno Gómez’s well-being, leading to an award of €3,884 in non-pecuniary damages for mental anguish. The judgment set a landmark precedent, affirming that severe noise pollution, as an environmental nuisance, engages Article 8 when states fail to act. It underscored the state’s duty to enforce environmental regulations diligently, ensuring Convention rights are practical and effective, and established a standard for addressing noise disturbances across Contracting States.<sup>32</sup>

**Similar findings were reached by the European Court of Human Rights (ECtHR) approximately a decade later in the case of *Udovičić v. Croatia*.**<sup>33</sup>

In this case, the applicant, Ms. Udovičić, lodged a complaint against the Croatian authorities for their prolonged failure to address excessive noise and other disturbances originating from a bar located beneath her flat in Cubinec, Croatia—a property she had co-owned and inhabited since 1991. The disturbances began in August 2002 when construction commenced to convert the premises into a bar and retail shop. Over the following years, Ms. Udovičić filed numerous complaints raising concerns about the legality of the bar’s operating license, insufficient sound insulation, and persistently excessive noise levels. Despite initiating both administrative and civil proceedings, her efforts proved unsuccessful. Her civil claim, filed in 2006, was dismissed in 2007 on the grounds that the noise did not exceed legal thresholds. Subsequent constitutional and criminal complaints were similarly rejected in 2008.

The ECtHR found a violation of Article 8 of the European Convention on Human Rights. The Court

reaffirmed that environmental pollution, including noise, may constitute an infringement of Article 8 rights when it reaches a certain level of severity. Whether this threshold is met depends on factors such as the intensity and duration of the nuisance, and the degree of its impact on an individual’s health or quality of life (§ 139). In its assessment, the Court examined several expert reports. While some indicated compliance with regulatory noise limits, others showed exceedances. Significantly, the most recent expert assessment confirmed that noise levels exceeded permissible standards and that the soundproofing measures in place were inadequate. The Court also highlighted the bar’s continuous operation for over a decade and the high number of police interventions—87 in total, resulting in 42 administrative measures related to breaches of public order (§§ 141–149).

Despite Ms. Udovičić’s repeated appeals to administrative bodies, the authorities failed to adopt any effective remedial measures. This prolonged inaction reflected a lack of due diligence and a failure to appropriately balance the competing interests involved (§§ 152–160). The Court emphasized that although Article 8 does not impose specific procedural requirements, the decision-making process must be fair and must duly consider the interests protected by Article 8 (§ 151). Relevant procedural safeguards include the nature of the decision-making process, the extent of individual participation, and the availability of adequate remedies.

Ultimately, the Court held that the Croatian authorities had not fulfilled their positive obligations under Article 8. By allowing the disturbances to persist for over a decade without effective intervention, the state failed to protect Ms. Udovičić’s right to respect for her private life and home. This judgment underscores the importance of procedural fairness and proactive state measures in addressing environmental nuisances that interfere with Convention rights.

In ***Hatton and Others v. United Kingdom (2001)***,<sup>34</sup> residents near London’s Heathrow Airport challenged night flight restrictions, claiming excessive

31 See. Ribot, J. (2005). Spain. In H. Koziol & B. C. Steininger (Eds.), *European Tort Law 2004*. Springer, p. 542.

32 See Paradissis, J.-J. (2005). Noise nuisance and the right to respect for private and family life: The Moreno Gómez case. *Journal of Planning & Environment Law*, 2005(May), pp. 584–594. For an insightful analysis of the significance of this case in the development of environmental rights under Article 8 of the ECHR.

33 *Udovičić v. Croatia*, App. No. 27310/09. European Court of Human Rights. (2014, July 24). Judgment of the Court. Available at:

34 *Hatton and Others v. United Kingdom*, App. No. 36022/97, European Court of Human Rights. (2001, October 2). Judgment of the Court. Available at:

noise violated their Article 8 ECHR right to private and family life. Despite a 1993 UK quota system limiting noise from aircraft, particularly during 11:30 p.m. to 6:00 a.m., the applicants argued the measures were inadequate. Domestic courts upheld the policy's legality, exhausting remedies by 1996. The ECtHR Chamber found a violation of Article 8, citing insufficient research on noise-related sleep and health impacts, failure to explore less intrusive alternatives, and inadequate justification of economic benefits. The UK's quota system did not sufficiently balance residents' rights against economic interests, rendering the interference disproportionate. Additionally, a violation of Article 13 was found, as the UK judicial review was too narrow, focusing on procedural rationality rather than substantive proportionality. The ruling highlighted states' positive obligations to mitigate environmental nuisances like aircraft noise, ensuring a fair balance between the competing interests—those of the affected residents and those of the wider public economy.

Interestingly, the **Grand Chamber of ECtHR reversed the earlier judgement in 2003, ruling no violation of Article 8** of the ECHR.<sup>35</sup> The Grand Chamber emphasized the UK's "margin of appreciation", granting states discretion in balancing individual rights with public interests in complex policy areas like aviation and economic planning.<sup>36</sup> It noted the UK's extensive consultation process, progressive noise mitigation measures (e.g., refined quotas), and the economic importance of night flights for Heathrow's global competitiveness. The Court held that the UK's policy was reasonable and proportionate, not arbitrary, and within its discretion, as states are better positioned to assess technical and economic trade-offs, including sleep research and air traffic logistics. The Grand Chamber confirmed that Article 8 applies to environmental nuisances like noise when individuals are seriously affected, whether caused directly by the state or

through inadequate regulation of private activity. However, a fair balance must be struck, with states retaining flexibility under Article 8(2).

The *Hatton and Others v. United Kingdom* case (2001, 2003) is pivotal in debates over Article 8 ECHR's application to environmental nuisances, particularly noise pollution from Heathrow Airport's night flights. The 2001 Chamber ruling found violations of Articles 8 and 13, criticizing the UK's quota system for insufficiently protecting residents' right to a peaceful home. **Rhona K.M. Smith** praises the Chamber's rigorous scrutiny, which narrowed the state's margin of appreciation, independently assessed the policy's inadequacies, and rejected economic justifications without robust evidence, emphasizing that economic well-being under Article 8(2) does not automatically outweigh individual rights in environmental cases.<sup>37</sup>

Conversely, the 2003 Grand Chamber reversed this, upholding the UK's measures due to thorough consultations, noise mitigation efforts, and economic necessity, granting a wider margin of appreciation. It stressed that states, better equipped to handle complex policy, need only act reasonably, not perfectly, when balancing rights and public interests.<sup>38</sup> This shift from the Chamber's rights-centric approach to the Grand Chamber's deferential stance highlights ongoing tensions in prioritizing individual protections versus state discretion in environmental human rights law.

Similarly, in *Flamenbaum and Others v. France*,<sup>39</sup> the ECtHR addressed the conflict between individual residents' rights and public economic interests

35 *Hatton and Others v. United Kingdom* [GC], App. No. 36022/97, European Court of Human Rights. (2003, July 8). Available at: [<https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-61188%22\]}>](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-61188%22]}>).

36 Council of Europe/European Court of Human Rights. (2024, August 31). Guide to the case-law of the European Court of Human Rights: Environment. p. 48. Available at: [https://ks.echr.coe.int/documents/d/echr-ks/guide\\_environment\\_eng](https://ks.echr.coe.int/documents/d/echr-ks/guide_environment_eng).

37 Smith, R. K. M. (2002). *Hatton v. United Kingdom*. App. No. 36022/97. The American Journal of International Law, 96(3), pp. 692–699. Available at: <https://doi.org/10.2307/3062172>.

38 See *Murdoch v Glacier Metal Co Ltd* [1998] Env. L.R. 732, where the Court of Appeal addressed a claim of noise nuisance brought by Mr. and Mrs. Murdoch, who alleged sleep disruption caused by a nearby factory. Although the noise levels slightly exceeded WHO guidelines, the court found no actionable nuisance, emphasizing the character of the neighborhood, the presence of a nearby bypass, and the lack of complaints from other residents. The case illustrates that exceeding noise thresholds alone does not establish liability; contextual factors and the perspective of an average person are decisive.

39 *Flamenbaum and Others v. France*, App. No. 3675/04 and 23264/04, European Court of Human Rights. (2012, December 13). Judgment of the Court. Available in French. Available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-115143%22\]}>](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-115143%22]}>).

*Flamenbaum and Others v. France* exemplifies the ECtHR's pragmatic approach to environmental disputes, prioritizing proportionality and state discretion when mitigation measures are implemented.<sup>40</sup> The ECtHR's reliance on the "economic well-being of the country" as a legitimate aim under Article 8, even for primarily local economic benefits, mirrors its approach in *Hatton and Oth-*

In **López Ostra v. Spain**,<sup>44</sup> the European Court of Human Rights (ECtHR) examined whether the

44 López Ostra v. Spain, App. No. 16798/90. European Court of Human Rights. (1994, December 9). Judgement of the Court. Available at: <https://hudoc.echr.coe.int/eng/%22itemid%22:%22001-57905%22>>.



severe environmental pollution emanating from a **waste treatment plant—intended to process liquid and solid waste**—near Ms. López Ostra’s residence constituted a violation of Article 8 of the ECHR, which safeguards the right to respect for private and family life. The plant began operating without the necessary environmental license and quickly started emitting strong odors, fumes, and noise that rendered living conditions intolerable for nearby residents, including the applicant and her family.

The Court acknowledged that while Article 8 primarily aims to protect individuals from arbitrary interference by public authorities, it also imposes **positive obligations** on states to ensure effective respect for private and family life. This includes taking reasonable and appropriate measures to prevent serious environmental pollution from adversely affecting individuals’ well-being and enjoyment of their homes. The Court emphasized that even in the absence of serious health risks, severe environmental pollution could significantly impair individuals’ quality of life and enjoyment of their homes (§ 51).

The ECtHR found that the Spanish authorities failed to strike a fair balance between the town’s economic interest in operating the plant and the applicant’s right to respect for her home and private life. Despite repeated complaints from Ms. López Ostra and other residents, and several reports confirming the harmful environmental impact, local and national authorities did not take effective action to mitigate the nuisance or suspend the plant’s operation. As a result, the applicant and her family were forced to temporarily leave their home due to the persistent pollution.

The Court further noted that the plant operated without the required environmental license and that the authorities had failed to take timely and effective remedial measures. This amounted to a breach of the state’s **positive obligations** under Article 8. While the applicant also alleged a violation of Article 3 (prohibition of inhuman or degrading treatment), the Court concluded that, although the conditions were very difficult, they did not reach the required threshold for a violation. Although the ECtHR based its ruling primarily on Article 8, the implications of *López Ostra* extend to **property rights** as well. The applicant’s inability to enjoy

her home due to environmental pollution can be viewed as an interference with the peaceful enjoyment of her possessions—an aspect protected by **Article 1 of Protocol No. 1**, even though this provision was not explicitly addressed in the judgment.

In *Fadeyeva v. Russia*,<sup>45</sup> the ECtHR examined whether prolonged exposure to industrial emissions from the **Severstal steel plant**, one of Russia’s largest iron-smelting facilities, violated Ms. Fadeyeva’s right to respect for private and family life under Article 8. The applicant lived 450 meters from the plant in Cherepovets, within a “sanitary security zone” designated by Russian law as unfit for residential use due to hazardous emissions, including excessive levels of toxic substances like carbon disulfide and formaldehyde. Despite this, the authorities took no effective measures to relocate her or mitigate the environmental risks.

The Court reaffirmed that Article 8 imposes positive obligations on States to protect individuals from environmental hazards, whether caused by public or private entities, that significantly impair the enjoyment of their homes and private lives. **While some environmental risks may be tolerated for public interest, a fair balance must be struck between economic benefits and individual rights to a safe environment.** The Russian authorities failed to enforce environmental regulations or provide Ms. Fadeyeva with alternative housing, despite her placement on a general housing waiting list. This inaction constituted a serious interference with her rights, breaching Article 8. The ECtHR unanimously held that the State’s failure to regulate the privately operated steel plant’s emissions or offer effective remedies violated Article 8.

In *Giacomelli v. Italy*,<sup>46</sup> the ECtHR examined whether emissions, odors, and noise from a chemical waste detoxification plant operated by Ecoservizi, located just 30 meters from Ms. Giacomelli’s home, violated her right to respect for private and family life. The plant operated without compliance with environmental regulations, and despite Ital-

45 *Fadeyeva v. Russia*, App. No. 55723/00, European Court of Human Rights. (2005, June 9). Judgement of the Court. Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-69315%22%7D%3E>.

46 *Giacomelli v. Italy*, App. No. 59909/00, European Court of Human Rights. (2006, November 2). Judgement of the Court. Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-77785%22%7D%3E>.

ian administrative court orders to suspend its activity, the authorities failed to enforce these rulings or carry out a timely environmental impact assessment (EIA). Ms. Giacomelli argued that this regulatory inaction caused significant disruption to her daily life and posed health risks.

The ECtHR reiterated that Article 8 protects not only the physical space of a home but also the right to enjoy it free from serious environmental nuisances (citing *Hatton and Others v. the United Kingdom* [GC], 2003, § 96). States have a positive obligation to regulate environmental risks to prevent significant interference with private and family life. **The Italian government defended the plant's operation as lawful and beneficial to public health and regional development, but it failed to counter the applicant's evidence of harm.** The Court unanimously found a violation of Article 8, concluding that the failure to enforce court-ordered suspensions, apply environmental legislation, or conduct an EIA constituted a breach of procedural safeguards and permitted unlawful, ongoing interference with the applicant's home life. The judgment highlights that environmental degradation, combined with prolonged administrative inaction, can violate Article 8. It affirms the State's duty to enforce environmental regulations effectively and to provide remedies, reinforcing the link between environmental protection and human rights under the Convention.

Similarly, in *Dubetska and Others v. Ukraine*,<sup>47</sup> the ECtHR addressed serious environmental and human rights concerns arising from the State's failure to regulate industrial pollution and safeguard the living environment of nearby residents. The case involved **several families living adjacent to a coal enrichment plant and a thermal power station** in the Donetsk region. The applicants alleged that the **resulting pollution rendered their homes uninhabitable and posed significant health risks**, thus violating their rights under Article 8 of the European Convention on Human Rights. Despite repeated complaints and scientific reports confirming the presence of toxic substances in the air, soil, and drinking water, the authorities failed

to adopt effective measures either to curb pollution or relocate the families to safer housing.

While the Ukrainian government acknowledged the existence of pollution, it argued that the enterprises operated within legal limits and that various agencies were working to resolve the problem. However, the Court found that the authorities had not taken timely or adequate steps to mitigate the environmental hazards or to protect the applicants' private and family life.

The ECtHR held that there had been a violation of Article 8. It reaffirmed that, although economic development is legitimate, States must strike a fair balance between public interests and individual rights. In this case, the **prolonged inaction left families exposed to environmental harm for years, infringing on their ability to enjoy their homes and compromising their well-being.** The judgment underscores that mere recognition of environmental risks is insufficient under the Convention; effective remedial or protective action is required to satisfy a State's positive obligations under Article 8.

## CONCLUSION

The European Court of Human Rights (ECtHR) has developed a sophisticated jurisprudence addressing environmental nuisances under the European Convention on Human Rights, particularly through Article 8, which safeguards the right to respect for private and family life, home, and correspondence, and, in exceptional cases, Article 1 of Protocol No. 1, protecting the peaceful enjoyment of possessions. An analysis of the ECtHR's case law shows that **the Convention does not offer a direct mechanism for protecting property from environmental nuisances like noise or emissions. Instead, it serves as an auxiliary tool where such nuisances seriously impair quality of life, health, or use of one's home.** The legal status of the property is secondary; the key factor is the impact on fundamental rights.

Cases such as *López Ostra v. Spain* (1994), *Fadeyeva v. Russia* (2005), *Giacomelli v. Italy* (2006), *Dubetska and Others v. Ukraine* (2011), and *Öneryıldız v. Turkey* (2004) illustrate the Court's nuanced approach to balancing individual rights against public interests in the context of envi-

47 *Dubetska and Others v. Ukraine*, App. No. 30499/03, European Court of Human Rights. (2011, February 10). Judgment of the Court. Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-103273%22%7D%3E>

ronmental degradation. These rulings collectively affirm that **severe environmental harm—whether from noise, toxic emissions, or pollution—can significantly impair the enjoyment of one’s home**, engaging Article 8 when the State fails to act, whether through direct action or inadequate regulation of private entities.

**The ECtHR consistently underscores States’ positive obligations to implement and enforce effective environmental regulations, conduct timely impact assessments, and provide remedies such as mitigation or relocation to protect residents from serious nuisances.** In *López Ostra*, the Court found Spain’s failure to regulate a waste treatment plant’s emissions, which forced the applicant to relocate, breached Article 8 by neglecting the balance between economic interests and individual well-being. Similarly, *Fadeyeva* and *Giacomelli* highlighted regulatory inaction regarding industrial pollution, emphasizing that States must proactively address private-sector harms. *Dubetska* reinforced this, condemning Ukraine’s failure to mitigate or relocate families affected by coal plant pollution. These cases establish that mere acknowledgment of environmental risks, without effective action, fails to meet Convention standards, as States must ensure practical and effective protection of rights.

In exceptional cases, environmental harm may engage Article 1 of Protocol No. 1, as in *Öneryıldız*, where the destruction of the applicant’s home due to State negligence at a rubbish tip violated property rights. The Court’s broad interpretation

of “possessions” to include informal dwellings reflects its pragmatic approach, though dissenting opinions warned against encouraging illegal construction. Cases like *Moreno Gómez v. Spain* and *Udovičić v. Croatia* illustrate Article 8’s relevance to urban noise, confirming that **persistent disturbances require effective State intervention**. In contrast, *Hatton and Others v. United Kingdom* [GC] and *Flamenbaum and Others v. France* highlight the Court’s deference to State discretion under the margin of appreciation, especially where **mitigation efforts and public benefits are evident, underscoring the balance between individual rights and the public interest**.

**This jurisprudence underscores the interplay between environmental protection, property rights, and human rights.** The ECtHR’s approach ensures that States uphold fundamental rights by maintaining a fair balance between individual interests and public needs through effective regulation and oversight. For countries like Georgia, such rulings serve as important guidance for domestic courts in resolving property and environmental disputes with an emphasis on proportionality and fairness. **The Court’s focus on procedural safeguards—such as transparency and access to remedies—reinforces the rule of law and protects individuals from governmental inaction.** These decisions affirm that protecting the environment is integral to human dignity and require States to take proactive measures to prevent serious environmental harm.

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