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Dr Michał Barański
Uniwersytet Śląski w Katowicach
ORCID: 0000-0001-6797-8124
e-mail: michal.baranski@us.edu.pl

Dr Anna Piszczek
Uniwersytet Łódzki
ORCID: 0000-0001-9967-6796
e-mail: apiszczek@wpia.uni.lodz.pl

Employees' Right to a Pollution-Free Working Environment in the Context of Articles 2 and 8 of the ECHR

Prawo pracowników do środowiska pracy wolnego od zanieczyszczeń w kontekście art. 2 i 8 EKPC

Abstract
The recognition that climate change is one of humanity's main problems justifies the search for mechanisms conducive to environmental protection at all possible levels. One is the employee-employer relationship and the related right to a pollution-free working environment. When considering the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), it should be noted that it does not contain provisions relating explicitly to environmental protection. However, this does not mean that environmental issues are outside its scope of interest. Over the years, the European Court of Human Rights (ECtHR) has issued several judgments concerning the environment, indicating that when environmental pollution directly affects an individual, there may be a violation of Article 2 of the ECHR. At the same time, on many occasions, the ECtHR has considered the human right to a pollution-free environment not only from the perspective of the right to life but also in close connection with the human right to respect for private and family life (Article 8 ECHR). In our opinion, some of the ECtHR's views formulated in the judgments on the interface between human rights (Article 2 and Article 8 ECHR) and environmental protection can be applied directly to the employer-employee relationship.

Keywords
climate change, human rights, pollution-free working environment, occupational safety and health (OSH) frameworks, right to information, labour-environment nexus

Streszczenie
Uznanie zmian klimatycznych za jeden z głównych problemów ludzkości uzasadnia poszukiwanie mechanizmów sprzyjających ochronie środowiska na wszystkich możliwych poziomach. Jednym z nich jest relacja pracownik-pracodawca i związane z nią prawo do środowiska pracy wolnego od zanieczyszczeń. Rozważając Europejską Konwencję o Ochronie Praw Człowieka i Podstawowych Wolności (EKPC), należy zauważyć, że nie zawiera ona postanowień odnoszących się wprost do ochrony środowiska. Nie oznacza to jednak, że kwestie środowiskowe pozostają poza zakresem jej zainteresowania. Na przestrzeni lat Europejski Trybunał Praw Człowieka (ETPC) wydał kilka wyroków dotyczących środowiska, wskazując, że gdy zanieczyszczenie środowiska bezpośrednio wpływa na jednostkę, może dojść do naruszenia art. 2 EKPC. Jednocześnie przy wielu okazjach ETPC rozpatrywał prawo człowieka do środowiska wolnego od zanieczyszczeń nie tylko z perspektywy prawa do życia, ale także w ścisłym związku z prawem człowieka do poszanowania życia prywatnego i rodzinnego (art. 8 EKPC). Naszym zdaniem niektóre poglądy ETPC sformułowane w wyrokach dotyczących styku praw człowieka (art. 2 i art. 8 EKPC) i ochrony środowiska można zastosować bezpośrednio do relacji pracodawca-pracownik.

Słowa kluczowe
zmiany klimatu, prawa człowieka, środowisko pracy wolne od zanieczyszczeń, bezpieczeństwo i higiena pracy (BHP), prawo do informacji, relacja praca-środowisko

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Introduction

Acknowledging that climate change is one of humanity's most pressing concerns justifies the ongoing search for mechanisms conducive to environmental protection at every possible level. One of these is the employee-employer relationship and the corresponding right to a pollution-free working environment. In our view, this relationship can be addressed from the perspective of the protection of human rights. Such an approach is substantiated by the significance of human rights as fundamental norms that derive their validity from the inherent dignity of human beings. These rights are universal, inherent, and inalienable. They are enjoyed by everyone and derive from the very fact of being human. They constitute a universal standard of a supranational nature, which makes them applicable irrespective of the (insufficient) shape of national legislation. At the same time, we notice certain shortcomings in linking environmental protection to human rights. In the traditional view, human rights are rights protecting the interests of individuals and not of whole societies, they are not communal in origin. The protective regime gets activated when phenomena that can be regarded as negative have a direct impact on the rights of the individual and when it is possible to identify the entity responsible for said adverse phenomenon – the State, as well as a private entity. On the other hand, however, in supervising States' compliance with their obligations under the Convention in specific cases, the Court also determines the importance of fundamental rights and sets the minimum level of protection that must be guaranteed in all States of the Council of Europe.

The ECHR does not include provisions that explicitly refer to the protection of the environment. This absence does not render the Convention weak but powerful. It indicates the Court's ability to use the Convention as a living instrument to be interpreted with reference to contemporary conditions (Judgement of the ECtHR of April 25, 1978, no. 5856/72), which ensures the timelessness of its provisions. Accordingly, the Convention should provide individuals with the protection that arises from current, contemporary social contexts (Judgement of the ECtHR of December 18, 1996, no. 15318/89). This indicated approach to interpretation is often referred to as 'dynamic and evolutionary'.[1] This evolutionary and dynamic approach of the Court to the interpretation of the Convention is grounded in the principle of effectiveness – failure to take into account social and technological advancements when interpreting the Convention would make it difficult to ensure effective protection of the rights thereunder (Gerards, 2019, p. 5).

In our opinion, some of the jurisprudential theses formulated by the ECtHR in its judgments touching the intersection of human rights (Article 2 and Article 8 ECHR) and environmental protection can be applied to the employer-employee relationship. In fact, the same happened in the past with the employees' right to privacy from the perspective of the ECtHR's rulings on monitoring in the workplace; not until sometime later did the existing jurisprudential theses begin to be used to demonstrate that an employee does not fully surrender his or her privacy in the work process. Since the activities of employers (companies) affect the local environment (e.g. residents), they consequently affect employees all the more.

A Right to a Pollution-Free Environment under the ECHR (Articles 2 and 8)

Article 2 ECHR is among the most fundamental provisions of the Convention. It essentially formulates a negative obligation consisting of the prohibition of deprivation of life with clearly defined and narrowly interpreted exceptions. The three exceptions do not involve permissible intentional killing, but the use of force, which is necessary to achieve legitimate aims, the use of which, however, may lead to deprivation of life as an unintended result (Schabas, 2015, p.123). It is difficult to imagine that any of these would be met on the grounds of environmental matters, which is why it could be tentatively assumed that the right would belong in this respect to the category of absolute rights, allowing no exceptions[2].

Nevertheless, the state's obligation under Article 2 does not limit itself to the above-mentioned negative obligation arising directly from the text of the Convention but also involves taking positive action (activity). The doctrine observes a considerable difference between positive and negative obligations related to absolute rights – positive obligations appear to be defined with a greater margin of discretion (Gerards, 2019, p. 132). It is this positive aspect that is evident in the ECtHR's judgments on environmental issues (Judgement of the ECtHR of June 9, 1998, no. 23413/94; Judgement of the ECtHR of November 30, 2004, no. 48939/99; Judgement of the ECtHR of March 20, 2008, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02; Judgement of the ECtHR of November 17, 2015, nos. 14350/05, 15245/05 and 16051/05).

The Court accepted that Article 2 does not only concern deaths resulting from the use of force by State officials but also imposes a positive obligation on States to take appropriate steps to protect the lives of persons under their jurisdiction, as expressed in the first sentence of its first paragraph. The Court argues that this obligation must be interpreted as being applicable in the context of any activity, public or otherwise, where the right to life may be compromised, and even more so in the case of industrial activities which are inherently dangerous. Special emphasis should be placed on regulations tailored to the characteristics of the activity in question, especially with regard to the level of potential risk to human life. Furthermore, Article 2 does not only cover situations in which a certain act or

omission on the part of the State has resulted in the death about which the complaint is made but also situations in which there was a clear threat to the life of the complainant, even though he or she survived (Judgement of the ECtHR of February 28, 2012, nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05). The State's positive obligations may apply not only to situations that involve a requirement for the personal protection of one or more persons who can be identified in advance as a potential target of lethal action but also in cases where a duty to ensure the general protection of the community arises (Judgement of the ECtHR of December 15, 2009, no. 28634/06; Judgement of the ECtHR of January 12, 2012, nos. 36146/05 and 42418/05). The public authorities' duty to take steps to guarantee rights under the ECHR also comes into effect when those rights are either threatened by private individuals or endangered as a result of acts beyond the control of any party (resulting from natural factors, forces of nature) (Judgement of the ECtHR of November 17, 2015, nos. 14350/05, 15245/05 and 16051/05).

At the same time, it should be noted that Article 2 cannot be interpreted in such a way as to subject the authorities to obligations that are disproportionate or impossible to fulfil (Judgement of the ECtHR of October 28, 1998, no. 23452/94). The State enjoys a considerable margin of appreciation in these matters, and it must take into account both the means and resources at its disposal and the need to respect the rights and freedoms of others when shaping its actions. The ECtHR expresses the view that the State cannot be held liable for unforeseeable events or emergencies.

The right to privacy under Article 8 of ECHR is designed primarily to protect the individual from arbitrary interference by public authorities (a negative obligation), but the ECtHR also derives several positive obligations from this provision. With the environmental protection perspective in mind, the ECtHR incorporates certain procedural obligations incumbent on the State into the catalogue of positive obligations under Article 8, i.e. the obligation to carry out relevant studies and research, the obligation to apply the precautionary principle in providing relevant information, the obligation to ensure participation in environmental decision-making[3]. Consequently, States are called upon not only to refrain from certain conduct under Article 8 but also to play an active role in putting all the necessary measures in place to enact appropriate national legislation and provide effective tools for protection. Article 8 allows for consideration of applications of such a character where the circumstances were not of such a nature as to engage Article 2, but clearly affected the family and private life of the applicant (Judgement of the ECtHR of December 5, 2013, nos. 52806/09 and 22703/10; Judgement of the ECtHR of February 19, 1998, no. 14967/89). Although it is the State's primary duty to put in place a legislative and legal framework, the ECtHR does not preclude the possibility that in certain specific circumstances, in the absence of appropriate legal provisions, positive obligations may be fulfilled in practice (e.g. through the distribution of appropriate protective masks) (Judgement of the ECtHR of July 24, 2014, nos. 60908/11, 62110/11, 62129/11, 62312/11, 62338/11). However, this type of activity should not be regarded as an indirect source of information about environmental risks.

In terms of the right to privacy, one can speak of the need for a fair (appropriate) balance between competing interests. In its judgment of 9 June 2005, where the applicant was a person living in the vicinity of the polluting factory, the ECtHR indicated that:

"the adverse effects of environmental pollution must attain a certain minimum level if they are to fall within the scope of Article 8 (…). The assessment of that minimum is relative and depends on all the circumstances of the case, such as the intensity and duration of the nuisance, and its physical or mental effects. The general context of the environment should also be taken into account. There would be no arguable claim under Article 8 if the detriment complained of was negligible in comparison to the environmental hazards inherent to life in every modern city. (…)" (Judgement of the ECtHR of June 9, 2005, no. 55723/00)[4].

Application to the Employee-Employer Relationship

Above all, certain standards emerge from ECtHR case law that must be reflected in national health and safety legislation. As the Öneryýldýz v. Turkey judgment indicates, regulations must be tailored to the characteristics of the activity in question, particularly with regard to the level of potential risk to human life. It is therefore necessary to develop standards that have to correspond to the different activities carried out by employers. Therefore, a certain catalogue of minimum guarantees should cover all operators, with the most far-reaching regulation aimed at employers engaged in hazardous activities. Importantly, the solutions introduced must be adapted to constantly changing environmental situations, such as, for example, working when exposed to increasingly high temperatures. It is important to note that environmental changes, awareness of these changes, and their impact on the human body (including the employee at risk) are dynamic matters, subject to constant evolution. Anticipating changes and introducing appropriate legislation in a preventive manner does not seem possible. Legislative action will only follow the environmental changes that have occurred but should be taken as soon as possible. Basing environmental issues on human rights means that the state can be required to introduce measures (legislative solutions) that take into account the state of knowledge available at the time.

There will only be a breach of the positive duty to protect life if the authorities have failed to put in place legislative solutions that are reasonably designed to prevent this threat. The question of state action is somewhat different when a certain type of activity is risky in itself; employees undertaking such activity are de facto deemed to accept the risk of side effects but cannot be deemed to accept the risk with unknown consequences. In that case, the legal solutions introduced by the states relate primarily to the obligation to provide information on risks, as will be further discussed in this paper when analysing Article 8 ECHR[5]. A circumstance that must also be borne in mind is the existence of a scientific consensus as to the long-term effects of the activity undertaken (Judgement of the ECtHR of December 5, 2013, nos. 52806/09 and 22703/10). When it comes to threats to human life resulting from climate change, the very real nature of the risks is confirmed by the Intergovernmental Panel on Climate Change (IPCC) reports (Stoczkiewicz, 2021, p. 250).

The relevance of ECHR case law becomes apparent in the strengthening of national health and safety legislation and, in particular, its effective application and enforcement (in line with the ECHR principle of effectiveness[6]). Introduction of appropriate labour legislation should always be accompanied by the implementation of measures to ensure its observance. Only then can there be effective deterrence of threats to the right to life (Judgement of the ECtHR of November 30, 2004, no. 48939/99). Therefore, what is required are institutions that can monitor employers on an on-going basis with regard to the fulfilment of the obligations imposed on them towards their employees, potentially making employers aware of the appropriate conduct and correcting undesirable behaviour. At the same time, it is not necessary for them to address environmental considerations exclusively. These may be entities whose role is to control the observance of basic or all employee's rights. In the context of the above considerations, it is crucial that their health and safety activities are effective. This effectiveness should be looked at through the prism of the scope of their powers, or the right proportion of inspectors to the number of controlled entities (high probability of control). However, it would be insufficient to control the employing entity only by employee representatives or a single employee who alerts about dangers in the workplace[7].

The application of the aforementioned measures (legislative and control) will not prevent the occurrence of all undesirable incidents resulting in the loss of life or the occurrence of a clear threat to the life of the individual employees. It should be pointed out, however, that the obligation to take positive action manifests also has a procedural aspect, including the State's obligation to investigate a death that may have occurred in violation of the Convention (Judgement of the ECtHR of September 27, 1995, no. 18984/91). Compliance with procedural requirements is assessed according to several parameters: the adequacy of the investigative measures, the promptness of the investigation, the involvement of the family of the deceased, and the impartiality of the investigation (Gerards, 2019, pp. 126–127). Unless the violation of the right to life or physical integrity was caused intentionally, the positive obligation to establish an 'effective judicial system' does not necessarily require the initiation of criminal proceedings[8] in every case and can be fulfilled if civil, administrative or even disciplinary remedies were available to the victims (Judgement of the ECtHR of November 30, 2004, no. 48939/99). In many legislations, it is adequate to establish the occurrence of an accident at work and to guarantee social security benefits, supported by the possibility of pursuing superior claims against the employer under civil law. The liability of the employing entity is usually linked to fault (intention). An employer's action is culpable when it has violated precise prevention and protection rules. In their absence – case law plays a key role in assessing the extent of the employer's liability (Ales, 2015, pp. 32–33).

Furthermore, the recognition that OSH legislation implements a fundamental human right is of symbolic value. In this context, it is worth noting that in June 2022, the International Labour Organization (ILO) decided to amend paragraph 2 of the ILO Declaration on Fundamental Principles and Rights at Work (1998) to include a safe and healthy working environment' as a fundamental principle and right at work[9]. The related conventions[10] have been given the status of fundamental conventions, which means that even if the members of the ILO have not ratified these conventions, they still have an obligation to respect, promote, and implement these principles in good faith. A safe and healthy working environment joined the other four core areas, existing since 1998: the abolition of child labour, the elimination of all forms of forced labour, the elimination of discrimination in relation to employment, and freedom of association and the right to collective bargaining. The contemporary problems facing humanity required the ILO to reinterpret its core mission towards the expansion of employee rights in the work environment with an emphasis on protecting the human right to a safe and healthy working environment (Hilgertt, 2013, p. 736).

Turning to a consideration of the applicability of Article 8 to the employer-employee relationship from an environmental perspective, it should be pointed out that under the European human rights protection system, the formal normative basis for the employee's right to privacy is derived from the general privacy framework (the issue of the employees' right to privacy has not been regulated separately). The protection of privacy in the broader sense, especially from the perspective of labour relations, is a relatively new aspect of international human rights protection, although it is emphasised that the initiation of a discussion on

fundamental rights in labour law scholarship has enabled the development of the right to privacy (Hendrickx, van Bever, 2013, p. 183).

The concept of private life is not limited to the 'inner circle' in which an individual can lead his or her personal life without outside interference but also includes the right to lead a 'private social life', i.e., the ability to establish and develop relationships with other people and the outside world, e.g., in the professional sphere (Judgement of the ECtHR of September 5, 2017, no. 61496/08)[11].

In our view, from the perspective of environmental pollution in the workplace, the employee's right to privacy should be closely linked to the duty to provide information about the risks posed by working in a polluted environment. The Court has emphasised on several occasions that 'the requirement of transparency and the ensuing right to information were fundamental in nature, particularly in the context of employment relationships, where the employer had significant powers with regard to employees' (Judgement of the ECtHR of October 17, 2019, nos. 1874/13, 8567/13).

It can be indirectly deduced from one of the judgments relevant to this study that denying an employee access to information as to whether his or her engagement in certain work has an adverse effect on his or her health constitutes a violation of the employee's rights under Article 8 – if the employee was being kept in uncertainty for a significant period of time as to whether he or she was exposed to the hazardous conditions (Judgement of the ECtHR of October 19, 2005, no. 32555/96)[12]. Here, the case concerned a soldier who had taken part in military experiments on chemical weapons. In another case concluded by the ECtHR, the applicants were people residing in the vicinity of a chemical plant, who had been waiting for a number of years for elementary information and guidance to help them assess the risks of continuing their residence in the area in question, which was particularly exposed in the event of an accident. The Court considered that, in this situation too, the serious environmental pollution was likely to affect the well-being of the applicants and prevent them from fully exercising their rights to respect for their private and family life. The Court found that the State had failed to fulfil its obligations to protect the applicants' rights in this respect (Judgement of the ECtHR of February 19, 1998, no. 14967/89)[13]. Again, the ECtHR's considerations remain valid when viewed through the prism of the employee's rights as a human being. If the residents of the neighbouring factory were able to request information on environmental risks, all the more so should the employees, who, after all, are even more exposed to these risks, since, as already established, they do not fully surrender their right to privacy in the working process, and should receive this information (the state should ensure effective protection of employees' rights in this regard)[14].

In our view, the positive obligation to provide information under Article 8 regarding the degree of environmental pollution in the workplace is generally absolute[15]. To some extent, the construction of a fair balance between the employee's interest and the public interest analysed here demonstrates similarities with the principle of proportionality developed by the ECtHR (also from the perspective of the right to privacy in employment) (Judgement of the ECtHR of October 17, 2019, nos. 1874/13, 8567/13). While in the case of employee monitoring, however, the duty to inform is one of the criteria for the correctness of the application of such a form of employee supervision, when it comes to environmental hazards, as long as the appropriate level of severity has been reached, this obligation should, in our view, be fulfilled in every case (given the strong link between the protection of Article 8 and the right to life in this case).

Reflections on the Labour-Environment Nexus

What is particularly interesting within the framework of the analysis of the considered right of employees to a pollution-free environment is that such a right combines two aspects of ECHR jurisprudence that, although not explicitly included in the text of the Convention, have in recent decades been recognized as aspects of the Convention's rights: fundamental rights relating to the workplace under Article 8 and fundamental rights relating to the environment (under Article 8, but also Article 2). This development of human rights norms seems to act as a bridge between labour and environmental regulation, which, we consider, requires further comment.

The review of the literature revealed that the long-standing links between environmental law and labour law have been given attention (at the level of national legislation). In some respects, labour law provisions are simultaneously environmental laws, with the most obvious example being occupational health and safety provisions (Doorey, 2016, p. 21). The authors also point to the parallels between the two branches of law, which essentially boil down to the pursuit of a state of equilibrium. At the same time, it is noted that labour law is not a natural ally of environmental law due to its different objectives. Labour law cares about striking a balance between the interests of employees and employers, which is often facilitated by increasing employee participation in profit and increasing production. Economic expansion and consumerism, on the other hand, do not coincide with environmental objectives, in the same way slowing down productivity and imposing new costs on employers to reduce environmental emissions may go against the objectives of labour law, at least in the short term (Doorey, 2016, p. 16). This may explain the lack of comprehensive research on the adaptation of labour law to emerging needs arising from climate change. Researchers

specialising in environmental law are not well qualified to address the issue of climate impacts on labour law, and labour law scholars do not address environmental issues in their writings, due to traditionally perceived labour law objectives.

Accordingly, we see some difficulties in linking environmental protection with human rights at work. Moreover, as already indicated at the beginning of this article, human rights are, by definition, rights that protect the interests of individuals, not entire societies – they are not collective in nature. However, the approach to human rights is evolving, with the formulation of views (sometimes criticized) on collective human rights as third-generation rights (Rhodes, 2020).

The concept of third-generation rights suffers from certain limitations. These are rights that demand active action by their addressees to be realised. The realisation of these rights requires the solidarity cooperation of individuals, states, organisations at regional and international levels. Solidarity is particularly important for the realisation of the third-generation human right to a clean environment. A single state can provide due process of law or adequate health care to its citizens, but it cannot comprehensively regulate air quality, water quality, and environmental hazards because these hazards transcend the jurisdictional boundaries of states (Downs, 1993, pp. 364–365). It is questionable how the state can be the subject of rights and, at the same time, the guarantor of the rights of individuals and whether this will not lead to politicisation, negation, or dilution of the idea of human rights (Riedel, 1990, p. 190). Sources of limitations to the implementation of the right to a clean environment as third-generation human rights can be found in the economic interests of states. Agreements on reducing greenhouse gas emissions into the atmosphere may serve as an example illustrating such optics. Third-generation rights are still in the realm of declarations, due to their inability to be effectively enforced. Indeed, however, third-generation rights represent the way forward for humanity, and the ECtHR's jurisprudence on individual human rights can indirectly lead to their realisation.

The relationship between work and the environment in the context of human rights can be seen on another level. Progressive climate change and the transformation of the environment affect not only the safety and health of employees in the workplace but also the ability to perform work itself. These trends will become increasingly apparent as average air temperatures rise. ILO noted that jobs are strongly linked to the services each ecosystem provides (e.g. jobs in agriculture, fisheries, forestry, and tourism), and climate change threatens the functioning of many of these vital services. Climate change could render entire regions unproductive and jobs excessively hot, resulting in migration, the spread of job precarity, informal work, and increased unemployment, with disadvantaged groups being the first to be affected by these threats (ILO, 2018). In this context, it is possible to reflect on the impact of the right to a pollution-free environment on the possibility/impossibility of realising a range of labour and human rights. It is also acceptable to reflect further – on the material scope of the right to a pollution-free environment, which includes labour rights. The second approach fits into the idea of using the Convention as a living instrument to be interpreted in relation to contemporary conditions, and current social contexts. The thesis signalled requires further research. Undoubtedly, however, in our view, labour law must take environmental issues into account, and environmental issues must also be pursued at the level of labour law. This is not a popular development of these branches of science, but it is necessary in today's challenging world.

Conclusion

Applying human rights to new realities is required in a world of precarious employment, increasingly disorganised work, and hazardous workplaces (Hilgertt, 2013, p. 735). Through the prism of the ECHR, the possibility of obliging the state to introduce measures to protect employees from environmental hazards in the workplace opens up. The Court has imposed numerous obligations on States in terms of drafting legislation and taking preventive or enforcement measures, such that private actors are increasingly obliged to respect the rights arising de facto from the Convention. Often, these entities voluntarily impose on themselves such (additional) obligations in corporate policies addressing human rights. These regulations are already quite commonly adopted by employers, who not only declare their adherence to human rights, usually enumeratively catalogued but at the same time introduce internal procedures aimed at both preventing and responding to any undesirable behaviour. Traditionally, these policies make references to the prohibition of slavery, child labour, and freedom of association and collective bargaining, freedom from discrimination and harassment. Nevertheless, there is nothing to prevent this catalogue from expanding, as employers become more aware of the environmental issues that fall under the human rights regime[16].

Not forgetting that the norms institutionalised in positive law (the ECHR) oblige states to respect them and the treatment of certain employers as agents of the state, it should be mentioned that States are obliged to ensure effective protection of Convention rights in relations between private actors (indirect horizontal effect). In such a situation, the state is accountable for its possible idleness or insufficient action in the face of violations of individual rights by de facto private actors located on its territory. In practice, therefore, it makes little difference whether the entity affecting the environment is a state-owned or privately owned factory. As a result, it is possible for the state to be

obliged to pay reparations to remedy monetary or non-monetary damage or to take measures to address systemic problems in the protection under the Convention at the national level. The Court's rulings also provide guidance to state authorities, helping them to determine how to construe domestic environmental legislation (interpretation of domestic law by national courts that is consistent with the provisions of the Convention) (Stoczkiewicz, 2021, pp. 257–258).

Our analysis of the case law on environmental issues has shown that the more significant potential among the provisions analysed is demonstrated by Article 8 of the Convention. In several judgments, although the applicants have alleged violations of Article 2 and Article 8 of the Convention in the proceedings, the Court has limited itself to finding a violation of the latter provision without seeing the need to consider whether there has also been a violation of the right to life. On the one hand, this is understandable, given that Article 8 allows for the recognition of state responsibility when the circumstances were not of a nature involving Article 2 but clearly concerned the applicant's family and private life. However, we consider that in labour cases involving environmental issues, the relevance of Article 2 of the Convention will be greater because of its translation into OSH frameworks.

Przypisy/Notes

[1] See also: Schabas, 2015, p. 48; Loucaides, 2007, pp. 13–14.

[2] As regards the typology of Convention rights according to the possibility of limiting their exercise see: Gerards, 2019, p. 19.

[3] The problem regarding the relation of Article 8 to Article 10 of the ECHR also needs to be signaled, given the positive obligations to provide the information described above. The ECHR reaffirmed that the independent right to information associated with Article 10 of the ECHR is essentially non-existent in the absence of an actor who wishes to provide information, which, from the perspective of the issues addressed here, does not preclude protection under Article 8 of the ECHR. Despite a number of critical voices raised in the literature, this interpretation has been upheld in subsequent decisions of the Court. The decision of the ECtHR of May 18, 2004, no. 42841/02; Decision of the ECtHR of September 13, 2005, no. 42639/04. See also: Kamiński, 2016, p. 18.

[4] See also: Judgement of the ECtHR of November 2, 2006, no. 59909/00.

[5] For example, according to Article 226 of the Polish Labour Code an employer shall: 1) assess and document occupational risks related to the performance of work and apply the necessary preventive measures to mitigate that risk; 2) inform employees of the occupational risks related to the performance of work, and of the principles of protection against hazards.

[6] See also: Serghides, 2017, pp. 1–16.

[7] Regarding this type of control, see: Ales, 2015, p. 37.

[8] Regarding problems with the application of criminal law, see: Ales, 2015, pp. 43–44.

[9] https://www.ilo.org/global/topics/safety-and-health-at-work/areasofwork/fundamental-principle/lang--en/index.htm.

[10] Occupational Health and Safety Convention, 1981, (no. 155) and Promotional Framework Convention for Occupational Safety and Health, 2006, (no. 187).

[11] See also: Barański, 2021, pp. 340–353; Barański, 2022, pp. 85–93; Otto, 2016, pp. 68–120.

[12] See also: Judgement of the ECtHR of June 9, 1998, no. 23413/94.

[13] See also: Judgement of the ECtHR of January 10, 2012, no. 30765/08.

[14] This is confirmed, as well, by recent ECtHR judgments closely related to the case that was finalized by the ECtHR judgment of January 24, 2019 (nos. 54414/13 and 54264/15). See also Judgement of the ECtHR of May 5, 2022, no. 4642/17; Judgement of the ECtHR of May 5, 2022, no. 48820/19; Judgement of the ECtHR of May 5, 2022, no. 45242/17; Judgement of the ECtHR of May 5, 2022.

[15] Of course, it should be remembered that the right to privacy under the ECHR is a qualified right. According to Article 8 sec. 2 of the ECHR, there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary for a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or the protection of the rights and freedoms of others.

[16] In this context, however, from the perspective of the Polish legal order and obligations of employees, see Barański, Jaworska, Piszczek, 2023a, pp. 329–356; Barański, Jaworska, Piszczek, 2023b, pp. 295–308.

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Michał Barański, assistant professor and leader of the Labour Law and Social Policy Research Team at the Institute of Legal Sciences at the University of Silesia in Katowice, attorney-at-law, editor-in-chief of the academic journal Z Problematyki Prawa Pracy i Polityki Socjalnej (Labour Law and Social Policy Issues). Author and co-author of over 65 publications, including labour law and social insurance law, intellectual property law, and contract law.

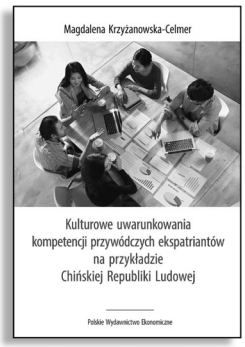
Anna Piszczek, assistant professor at the Department of Labour Law at the Faculty of Law and Administration of the University of Łódź, attorney-at-law, assistant to the Supreme Court judge at the Chamber of Labour and Social Insurance. Author and co-author of scientific publications in the field of labour law, including legal forms of employment, atypical employment, and termination of employment.

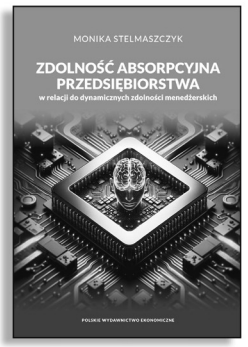
Michał Barański, adiunkt i lider Zespołu Badawczego Prawa Pracy i Polityki Społecznej w Instytucie Nauk Prawnych Uniwersytetu Śląskiego w Katowicach, radca prawny, redaktor naczelny czasopisma naukowego Z Problematyki Prawa Pracy i Polityki Socjalnej. Autor i współautor ponad 65 publikacji, w tym z zakresu prawa pracy i ubezpieczeń społecznych, prawa własności intelektualnej oraz prawa zobowiązań.

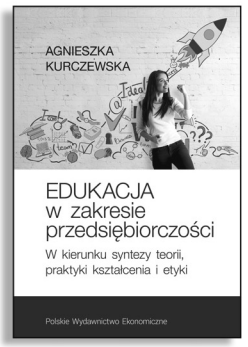
Anna Piszczek, adiunkt w Katedrze Prawa Pracy na Wydziale Prawa i Administracji Uniwersytetu Łódzkiego, radca prawny, asystent sędziego Sądu Najwyższego w Izbie Pracy i Ubezpieczeń Społecznych. Autorka i współautorka publikacji naukowych z zakresu prawa pracy, w tym prawnych form zatrudnienia, zatrudnienia nietypowego, ustania stosunku pracy.

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