



Trends in European human rights law and disasters

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Trends in European human rights law and disasters

In this lecture

- Why human rights law and disasters?
- Case-law on rights and obligations at the European Court of Human Rights
- European trends in climate-disaster cases



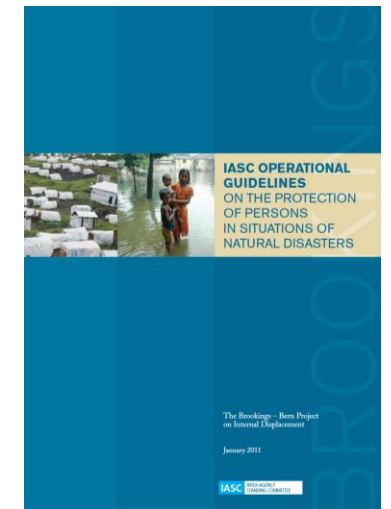
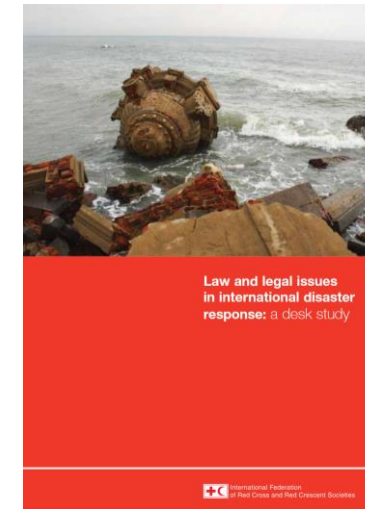
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ILC Draft Articles on Protection of Persons in Event of Disasters (2016)



Article 5:

“Persons affected by disasters are entitled to the respect for and protection of their human rights in accordance with international law.”



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UN Special Representative on Internally Displaced Persons, Kälin (2009)

II. ESTABLISHING A CYCLE OF PROTECTION

“The State is responsible for protecting the rights of its population in the context of all phases of a **natural disaster**. State responsibility covers not only the immediate response phase after a disaster has struck, but begins with preparedness before disaster strikes and extends to recovery, reconstruction, and reinforced preparedness measures on the basis of lessons learned”.

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European Convention on Human Rights (1950)

Article 2 ECHR - right to life

Article 8 ECHR - right to private and family life and home

Article 1 Protocol 1 ECHR – right to property



Council of Europe, 47 Member States

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Guerra v. Italy (2004)

access to information about hazardous risk and safety procedures at a factory

Öneryildiz v. Turkey (2004)

methane explosion at rubbish tip in Istanbul

Budayeva and others v. Russia (2008)

seasonal mud-slides

Tătar v. Romania (2009)

breach of dam releasing cyanide in river and environment

Kolyadenko and others v. Russia (2012)

heavy rainfall/emergency water evacuation from reservoir

Hazhiyska v. Bulgaria (2012)

flooding of basement (inadm.)

Özel v. Turkey (2015)

earthquake and collapse of apartments

Viviani v. Italy (2016)

preparation for eruption of Vesuvius volcano (inadm.)



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Öneryildiz v. Turkey (methane explosion)

According to the Court :

“Article 2 does not solely concern deaths resulting from the use of force by State agents but also [...] lays down a **positive obligation** on States to take appropriate steps to safeguard the lives of those within their jurisdiction.

The **positive obligation to take all appropriate steps to safeguard life** [...] entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide **effective deterrence against threats to the right to life.**”(paras. 71, 89)

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Öneryildiz v. Turkey (methane explosion)

This obligation *indisputably applies in the particular context of dangerous activities*, where [...] special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human lives.

They must **govern the licensing, setting up, operation, security and supervision of the activity** and must make it **compulsory for all those concerned to take practical measures** to ensure the effective protection of citizens whose lives might be endangered by the inherent risks.

Among these preventive measures, particular emphasis should be placed on the **public's right to information**, as established in the case-law of the Convention institutions.

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Budayeva and others v. Russia (seasonal mudslides)

...the fundamental importance of the right to life requires that the scope of the positive obligations under Article 2 includes a *duty to do everything within the authorities' power in the sphere of disaster relief* for the protection of that right, [...]

Cf. Kolyadenko v. Russia (heavy rainfall)

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Budayeva and others v. Russia (seasonal mudslides)

... the choice of means falls within the States margin of appreciation.

... no impossible or disproportionate burdens in light of operational choices which States must make in terms of priorities and resource

... this even more important in the sphere of emergency relief in relation to a meteorological event, which is beyond human control, than in the sphere of dangerous activities of a man-made nature.

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Budayeva and others v. Russia (seasonal mudslides)

In the sphere of emergency relief, where the State is directly involved in protection of human lives through mitigation of natural hazards, **positive obligations apply in so far** as circumstances of a particular case point to the imminence of a natural hazard that had been clearly identifiable, and especially where it concerned a recurring calamity affecting a distinct area developed for human habitation or use.

The scope of the positive obligations imputable to the State in the particular circumstances would depend on the origin of the threat and the extent to which one or the other risk is susceptible to mitigation (para 137).

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Özel v. Turkey (earthquake)

“Prevention of disasters and protection of the population from effects of disasters”

173. The Court observes that earthquakes are events over which States have no control, the prevention of which can only involve adopting measures geared to reducing their effects in order to keep their catastrophic impact to a minimum.

In that respect, therefore, the prevention obligation comes down to adopting measures to reinforce the State’s capacity to deal with the unexpected and violent nature of such natural phenomena as earthquakes.

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Key lessons from ECHR case-law

Positive obligations to do everything within power to mitigate disaster risk and impact:

- legislative and administrative frameworks, demand practical (preventive) measures
- access to information about disaster/hazard risk
- State must have oversight over dangerous situations
- no impossible or disproportional burdens, in light of priorities and resources
- choice amongst effective measures is for the state

Scope of obligations may depend on:

- imminence of hazard
- clearly identifiable hazard
- recurring calamities in specific inhabited areas
- origin of threat (i.e. meteorological, 'natural')
- risk susceptible to mitigation



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Two pending ECHR climate disaster cases...

Swiss seniors sue government over climate change at European court

by Umberto Bacchi | [@UmbertoBacchi](#) | Thomson Reuters Foundation
Tuesday, 27 October 2020 08:01 GMT



European court of human rights

This article is more than 1 year old

Portuguese children sue 33 countries over climate change at European court

Ground-breaking crowdfunding case demands that states make more ambitious emissions cuts

Jonathan Watts

[@jonathanwatts](#)

Thu 3 Sep 2020 14:51 BST



▲ A wildfire in Monchique in Portugal in 2018. The case was initiated in 2017 after devastating forest fires in Portugal killed over 120 people. Photograph: Filipe Farinha/EPA

A full cycle of protection...?



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Cf.: decision by Committee on Rights of the Child (2021)

The Committee considers that:

- It is generally accepted and corroborated by scientific evidence that CO2 emissions originating in the State party contribute to the worsening of climate change, [with] adverse effect on the enjoyment of rights within and beyond the territory of the State party.
- through its ability to regulate activities that are the source of these emissions and to enforce such regulations, the State party has effective control over the emissions.
- Children particularly impacted by the effects of climate change, both in terms of the manner in which they experience such effects as well as the potential of climate change to affect them throughout their lifetime, in particular if immediate action is not taken.



Thank you for watching.

For more information and sources: <https://www.rug.nl/staff/m.m.e.hesselman/>



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