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The Nest of Justice



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The Nest of Justice

The morning was absolutely quiet and sunny — only the storks clattering and my sister's weeping would break the silence. We were there saying goodbye to the person that loved us more than we could ever know. We were exactly there, and not in any other place, because we wanted to give back to this landscape what always belonged to it...

* * *

I was born in a big city. I think all the big cities are similar so you do not need to know the name of my city in order to understand the story that I want to tell. My family was an ordinary one. My father was a bricklayer and he worked for a construction company, mostly working in our city. My mother was a teacher. She worked in our local primary school. Our life was quite simple but perfect for us children. On school-days we would go to school with

mum and would be back at home at 6 pm when my dad was already there waiting for us. Weekends were very different. Every Saturday, early in the morning, we went to visit my grandfather. He lived in a small village, not far from the city, but still in the countryside. For us kids this was a kind of paradise. There we could play in the streets or in the fields. We could feed animals, look after plants, swim in the river in summer and skate over the ice in winter — and play “Robin Hood” games of course.

Grandpa was a curious person. He was a farmer all his life, like his parents and the parents of his parents. They had always lived and worked on this farm. But in the 70's my grandparents decided to sell part of their land in order to raise enough money to pay for education for my mother, their only daughter. They thought that she deserved more chance than they had ever had. They sold almost all their land except for the part where the house stood, the barn, and a little garden, all near the river. The rest of the land and the old farm house was bought by a small company that was trying to establish an intensive crop plantation. They really only wanted the land.

Since the day my grandma died my mother had been trying to get grandpa to live with us in the city. But he preferred to stay at his home where he could walk with no fear of traffic. My parents decided that we would visit him almost every weekend in order to “look after him”. Those weekends were our happiest moments. My grandpa would tell us his stories and tales about his life and the village and about many things and the changes that had happened during his long life.

* * *

One day we walked to the old farm next to the water. It was standing just behind grandpa's house.

‘This is our family’s sacred place,’ said my mum.

At that time I knew every log and tree-trunk on the farm from playing our war-games. There could not be anything that would make this place sacred; not unless there was a secret door or something. I smiled to myself.

‘Look.’ My mum pointed to the stork’s nest.

I looked up at the nest which I had seen hundreds of times before. It was there, empty. The nest was huge, sitting on the roof of the old farm-house. Well, really on what was left of the roof since the house was older than my grandpa probably. The nest was about two meters in diameter and big enough to hide a 6-year old boy.

‘What? It’s just a nest, there are several others around.’ I waved a semi-circle with my hand to show where they were. I said nothing about my “trips” with friends last spring to see the big white eggs.

‘It’s our stork’s nest.’

‘Yes, I know ...’ I paused. ‘What d’you mean by “our stork”, Mum?’

‘I mean we care about the nest,’ she said. ‘You’ll need to fix the roof tomorrow, your grandpa can’t do this anymore,’ she added.

Every year my grandpa would fix the roof and bits of the walls of the old farm even though he never used this building. The only reason he did this was the nest. I suggested several times to move the nest to any nearby tree or, even better, to the roof of his house.

‘Let’s just move the nest.’ I tried again to push my idea. It would be cool to have a stork living on our roof, I thought.

‘Just do it!’ she interrupted me, and went back to our house.

During the dinner I asked my grandpa what I could do at the farm house. I hoped he would reject my help and insist on doing the roof himself. My plans for the next day were quite different — going fishing on a boat seemed much more adventurous.

‘There’s no pair in the nest this year,’ my mother confirmed. ‘I thought he could help fix the building,’ she added with caution. My grandpa did not want to be considered old or weak.

‘There’s a young pair in the nest! They have been there for a few weeks, I could even hear their clattering when the female joined the male,’ grandpa replied calmly. ‘You can go fishing tomorrow, son,’ he said to me, smiling.

‘It’s strange they were not there when we came,’ my mum said. ‘They probably didn’t lay eggs yet,’ she concluded.

The next day, with the first rays of the sun on the horizon, I left the house. Passing through the old farm to the boat I noticed the nest was still empty. Curious to see whether the birds were sleeping there I climbed the ladder. But there were no birds, just a few broken eggs. Four white broken eggs. ‘Maybe an eagle? Maybe,’ I thought. ‘I’d better tell my mum about it.’ I got down and walked towards the small boat moored nearby.

* * *

Another weekend at grandpa’s was almost over. We were sitting outside listening to one of his numerous stories that we pretended to believe. While driving back my father would make jokes about the last story that was often contradicting some of the previous ones. But here at the house, sitting together, we did not laugh. There was something about that sitting together and hearing stories, something that mattered to us. We were not there

to mock grandpa. It was a kind of family spirit that we enjoyed no matter whether his stories were true or not. While thinking about this, I suddenly realised I was not following the story.

‘That’s why we care about the nest,’ my grandpa said. I understood his story was over.

‘Did you fix the old farm-house?’ I asked.

‘Yes, almost done! But next year, I think, I’ll need your help,’ he sighed.

‘You know what ... I saw broken eggs in the nest a few weeks ago. Sorry, I completely forgot to tell you.’

I saw my grandpa and mother leaning towards me with a question in their eyes.

‘No, it wasn’t me who broke them!’ I pleaded.

‘We are not saying it was you. Probably an eagle ate them. Well, it happens. I told you there was a pair.’ Grandpa turned to my mother. My mother nodded.

The image of the eggs flashed into my mind. ‘One more thing,’ I added, ‘the eggs were broken but they’d not been eaten.’

‘Really? That’s rare to happen,’ my grandpa said. ‘Well anyway I hope they will come back next year.’ He was tired by the end of the day. Story-telling seemed to take his last energy for the day.

‘I also saw kids around, playing with a dozen or so eggs. Maybe something or someone attacked most of the nests around,’ I said.

‘No, it can’t be! There’s no animal or bird that would merely destroy stork eggs. And someone would have noticed this — at least for one of the nests — storks wouldn’t let this happen easily,’ my mum suddenly rushed to say.

* * *

My mum dialled the number quickly and started to drum her fingers on a small shelf while waiting for a response.

‘Hi, Dad! They are not coming back, they are not,’ my mother cried. ‘Storks, storks are not coming... I just saw the news — hundreds of storks left the region this year and thousands in the last few years... They think it’s the weather or climate change... Yes, I can call you tomorrow. I know you are busy. OK, bye. Yes, see you soon!’

‘They are not coming, they are not coming back,’ she whispered again and looked at me. I could not remember when I had last seen her face like this, maybe never. If I hadn’t heard the conversation I would have thought someone had died.

‘It’s not the end. Maybe they moved, maybe they’ll come. You shouldn’t worry so much,’ I tried to say to her.

‘You don’t understand. Our nest will be empty. It is the first year they didn’t come. And they are not coming again, ever. You heard the story, right? It’s all true. So think about this.’ She suddenly fell silent.

But I hadn’t heard the story and, to be honest, I hadn’t much cared. But now when she told me to think about it I tried to remember... with no success. And I also realised my father hadn’t made jokes about the story when we were coming back. Jeez! Was this the only story I had to know and I missed it? How do I tell this to my parents and grandpa? I left the room thinking about a solution, storks, tomorrow’s football game and our family.

* * *

Next weekend, as always, we visited grandpa but mum was rarely with us. She said hello to her father and then

went to the village to talk with the neighbours. She started to ask some people whether they had seen or heard anything strange in the recent weeks, something that could explain why the storks had left.

No one could tell her much except for a man who lived near the crop plantation. That man told her that he was concerned about his health. Since the plantation was there he felt that the water was not as good as before. She said nothing to her father so as not to worry him. She was, however, quiet and thoughtful for several days.

Finally, on Wednesday, she asked her colleague, a science teacher, for advice. He told her that possibly the crop plantation was directly related to the problems that her father was facing. She had already thought about it. It was not easy to accept this idea for several reasons. First, it was unclear how a crop could make the birds leave. People had used the land for many years and the storks had been there. And second, she felt guilty. Her parents could have contributed to the problem when they sold the land — to pay for her education, the education that allowed her to be there and hear the answer that she already knew.

Worried about her father's health, she got two free days and on Thursday morning she went to grandpa's to keep searching. That was the first time that I was in charge of my brother; those days I was only 14 years old, and my brother Peter was just 6. My sister was not yet born. My mother was already carrying her without knowing it.

On Saturday, when we arrived at grandpa's, my mum had already talked with almost everyone in the village; actually, its population was rather small, just a few dozen families. She failed to talk with the plantation owners, however. We were getting out of the car when my mum asked us to help grandpa in the garden. She then start-

ed to talk to dad about her enquiries. She told him that people knew nothing about the crop plantation; at least that was that they told her. She asked dad to go with her to the plantation, aiming to talk to the owners, looking for an explanation. My dad went with her even though he thought that they were going to find no answers there. In fact, he wouldn't accept that four broken eggs was a big problem; at least, not enough to leave their children alone practically for two days!

When they arrived at the plantation they felt the owners were waiting for them. They were immediately shown some certificates proving that the plantation was absolutely environmentally friendly. It was enough to convince my dad that everything was OK there — and to convince mum exactly the opposite.

That Sunday evening my parents argued during the whole trip back — my dad trying to convince mum that she should forget it, and mum trying to involve my dad in the struggle that she was just starting; a struggle that was going to be a milestone in our life.

* * *

Mum would often ask us to wait for her, playing in the school yard while she met her colleagues or stayed at the school's library. Arriving home late was not the right way to invite dad to help with her struggle, I think now.

* * *

Next weekend we were on our way to grandpa's again. My dad thought that my mum had forgotten the issue — she had stayed in the city to meet an old friend coming from abroad and she was supposed to come later. But actually my mum had a meeting with a volunteer from an environmental citizens' organisation. One of her colleagues had put them in touch to learn about the environ-

mental and health impacts of intensive agriculture. She knew that dad would not like that; but she felt that she must keep going.

That meeting was crucial for my mum. It was the first time she thought that she could really do something to protect the area. For her it was not only an environmental problem but a personal one. She had grown up there, her children had enjoyed their best moments there; and she didn't forget that her roots were there. That land had allowed her to study, and to be the person that she was — her education had been paid for with the money from the sale of the land. She was trying not only to protect her father's remaining property but the environment itself and the story that a landscape tells us.

Mum talked with this guy for the whole morning and, for the first time, she heard words like “environmental impact assessment”, “organic pesticides”, “illegal use”, “legal claim”, “mass media campaign”. In other circumstances all those words would have been strange to her, but right at that moment they sounded like hope. They were words that suddenly became very common in mum's conversations.

* * *

When she arrived at grandpa's, she went directly to the plantation and asked for an interview with the owners. She told them that she wanted to see the environmental impact assessment of the plantation — they should have one since they had built several water reservoirs and an irrigation system in lands that had never been irrigated before. She saw some changes on their faces; maybe she was not as stupid as they thought. Of course they tried to convince her that they didn't need an environmental impact assessment, and they showed her the same certifi-

cates that they had shown during her first visit. But she kept on asking what permits they had, and finally they told her that she should forget them, and live quietly in the city. My mum didn't know then, but it was just the first threat of many that she was going to receive.

Of course, she told dad nothing about it, not even when he told her that she seemed very strange and asked why she was getting water in a plastic bottle directly from the river. The volunteer had told her that he knew someone who worked in the University, and he was sure that he could help by analysing some samples. Mum knew that laboratories were very expensive, so she wanted to take that chance to get the samples looked at for free.

The next weeks were absolutely normal. Nowadays we know that mum had not forgotten the problem but she was waiting for the results of the analysis.

* * *

The phone was ringing, and I held it up. Before I could say anything, I heard mum's voice; she was in her room.

'Hello, the Wolf residence.'

'Hi Anna; this is Robert, from Guardians of the Wetlands. We already have the results of the analysis. We should meet — can you come to our office this evening?'

'I will be there. Should I be worried?'

'Umm ... well ... let's talk about it later — when you come in.'

'OK, see you there.'

'Yes, see you.'

Something was happening, and I couldn't just say nothing. I was not so concerned about the problems in grandpa's village, but I started to be very concerned about

mum, and even about my whole family because a lot of things had changed since she started to work on the case. “The case”: these were the words that mum used when she told us about the village’s problems. “The case”... I have always thought that a case was always related to guns, or a bank robbery, or something ... so ... could a stork’s egg be a case?

I asked mum directly about her conversation with Robert, the environmentalist.

‘Mum, I heard your conversation with Robert.’

‘You shouldn’t have done that! Private conversations are ... they are private! Do you have no education? What about the good behaviour that dad and I have tried to teach you and your brother?’

‘Mum, everyone’s behaviour is changing since you started “the case” — we had a lot of shared time, we enjoyed each other a lot; dad and you were always caring of each other, and caring of us ... a lot of things are changing. You never have time for us now; you are always reading papers, surfing the internet, calling Robert ... “The case” is your life now; at least, share it with me. I miss you, Mum, but I know that “the case” is very important for you, so I think that you should share it with us if we want to remain together.’

Then mum started to cry. It was the second time that I had seen mum crying, but the first time was after her mother had died.

‘Honey, you are right. I thought that I could change the world, and that I could do it alone ... and I have forgotten that I am not alone. Do you know your father doesn’t agree with my struggle? He thinks that it is too big for me ... and I am starting to think that he is right. Maybe I should stop.’

‘Don’t do it, Mum! You can’t stop it right now. You should fight for grandpa; you should fight for the land, for the storks... you should fight for us, Mum, because that farmland is our paradise, don’t you remember?’

‘I know it, honey; I know it perfectly. But your dad...’

‘Mum, you should understand him. He is just concerned about you. You are fighting against important people; maybe if I fight on your side he will become less concerned.’

Of course, I knew that it was nothing more than a teenager’s bravado, but I wanted to be involved in this!

‘You are right; but you are already helping me a lot. You are looking after your brother!’

‘But I want to know more about the case. I want to know what you are doing while I am taking care of him.’

‘OK! Let’s do it this way. You promise me that you are going to take care of him, and I promise you that I am going to keep you up to date on the case, OK?’

‘It’s a promise, Mum. Don’t forget it.’

‘I won’t; don’t worry.’

That evening my mum went to the office of Guardians of the Wetlands while I stayed at home, looking after my brother. But from that moment, I was part of “the case”!

* * *

When mum arrived at Guardians of the Wetlands, Robert was waiting for her there. He was very serious, and mum knew that it was because of the results of the analysis.

‘Anna, the problem is bigger than we thought. We may be missing something even.’

‘Why do you say that? What about the analysis?’

‘That is it. The samples had high levels of pesticides. It may explain why the stork’s eggs were broken.’

‘I don’t understand.’

‘Well, it looks like the crop plantation is using a prohibited pesticide. Its name is DDT (Dichloro-Diphenyl-Trichloroethane). It kills insects and was discovered by a Swiss chemist who received the Nobel Prize in 1948 for this. But when DDT leaks into water, for example through rain falling on treated crops, it can contaminate other creatures living in the area. When it gets into birds — directly through water or through the food chain — it causes a shortage of calcium in their eggs. This is called the “thin egg shell” problem. When the storks sit on the eggs to hatch the chicks they can break the eggs.’

‘Oh my God! This could be a real source of the problem! Are you sure that they are the users of this “DDT”?’

‘Well, the water has a huge amount of it, and this is the biggest plantation in the region. But besides this, the plantation is owned by a local company called Green New Crops Limited — although this is not much more than a name.’

‘What do you mean?’

‘This company belongs to a bigger one — a multinational called Williams Crops Inc. And this company has already had problems with the authorities. They have used DDT in other countries.’

‘Umm, I see ... we have found the source of the problem!’

‘Well, maybe at least part of this problem.’

‘What do you mean?’

‘The samples had something more than pesticides. The water also has high levels of mercury, and we think that this is not related to the pesticides.’

‘But mercury is not very dangerous, is it?’

‘Oh, it is! Mercury is a heavy metal. It is very dangerous! It can pollute water, then the fish, the birds that eat the fish, the people that eat the fish or the birds ... and it remains for thousands of years!’

‘But, if it is not related to the pesticides, where is it coming from? Who is the polluter?’

‘Well, you said that there are no industries there, so ...’

‘And there are not!’

‘But the mercury levels that we found cannot be due to domestic pollution.’

‘Hmmm ... what about the old chlorine plant? But it was a long time ago.’

‘Did you say a chlorine plant? Are you sure?’

‘Oh yes — it was upstream from my father’s; my uncle worked there for a long time. In fact, it was right where part of the plantation is located now.’

‘Then we must investigate this. Can we talk with your uncle?’

‘Well, only if you are some kind of medium ... he died a long time ago.’

‘I am sorry; do you know anyone working at the crop plantation?’

‘A lot of neighbours are working there.’

‘Do you think that any of them will talk with us?’

‘Well, one of them is a friend of mine; in fact, he was my first boyfriend. But he will talk with us only if we convince him that it is a serious problem.’

‘Don’t worry about that. I can do it.’

* * *

‘Anna, we should start a campaign.’

‘A campaign? What do you mean?’

‘We need to explain to people what is happening there — the health impacts of the use of pesticides for example. We should show that agriculture can be harmful if you do not do it properly, if you don’t respect the rules. We should explain the impacts on the ecosystem, particularly on the storks.’

‘But I have never done a campaign.’

‘Don’t worry, we have done several. We should organise it, and we will make a presentation at the University explaining the problem.’

‘But none of the villagers study at the University; and they need to know about this problem.’

‘OK, we will also do a presentation in the local library. We will put up posters about it all over the village. And we will need to put out a press release, or even hold a press conference.’

* * *

Wow! The next weeks were absolutely frenetic! Presentations in the University, pasting posters in the city and in the village, presentations and meetings in the village ... Robert told mum that it is better when a directly affected person explains the problems, so mum did it. She held a press conference, and said that Green New Crops Ltd. was liable for the river pollution and human health problems because they use DDT. In the days after the press conference, the story appeared in several newspapers in the city, and in the village newsletter ... and my mum was on TV!

After that, people in the village started trusting in mum; suddenly, people started calling mum and told her that they had health problems, maybe related to the pollution. They had never thought that all these problems could be directly related to pollution but having heard my mum and Robert's explanations they started to be concerned about it.

Green New Crops Ltd. sent out several press releases saying that the allegations were false and that they did not use DDT but nobody trusted them. Mum and Robert told people about other cases where Williams Crops Inc. were involved and people became afraid.

* * *

My father came in with a letter in his hands. He showed the letter to my mother, she quickly looked through it and they left the room. I heard them quarrelling with each other in another room. They shouted so loud I went to see what was happening.

'Now we are brought to court! This is too much, too much, do you understand? What are you going to do now? Spend all your salary on a lawyer?' my father cried. Then he noticed me, pushed the door open and left.

My mother and Guardians of the Wetlands spent several days looking for a lawyer. Surprisingly, the lawyer that someone suggested was living almost next door. The building where he rented an apartment was across the street from our home. I first saw him in the courtroom a few weeks after my mum and he met. My mother was not very excited to have him defending her. He said he would not charge her at all because he considered her case to be "in the public interest". We did know what "public interest" meant but we didn't think he would be a good lawyer. We thought he was probably one of those free legal aid

lawyers paid by the government to help poor people, and who did not tend to care much about their clients.

* * *

‘Your honour, this case is about suppressing freedom of speech in this country. It is about my client, the mother of two children, who took the need to protect the environment as her obligation. It is about a group of people who stood to defend the public common good. It is also about all environmentally concerned groups and organisations that care about our environment and future generations.

‘Everyone including a citizen of this country has a right to freedom of expression. This right is duly recognised by several international treaties, including the European Convention on Human Rights and our own Constitution. It includes the right to hold opinions, to receive and impart information and ideas.

‘The plaintiff, Green New Crops Limited, claims it wants its reputation to be protected. It therefore asks the court to intervene into the exercise of this right by my client? What are the reasons? And what does the plaintiff want to achieve?’ John, our lawyer, paused to gather breath.

‘Let’s assume some of the facts are not true. Don’t you think a person should be punished for spreading lies?’ the company’s lawyer asked.

‘No, I do not think so. No one can be punished for exercising his or her right. Your honour,’ John turned to the judge, ‘the question just proves that the real intention of the plaintiff is not to protect its reputation but to punish my client and intimidate others. Punishment cannot be a legitimate goal of civil procedure in this country — unlike that of criminal or administrative responsibility.’

* * *

Williams Crops Inc., a big multinational company, sued my mother and her friends for defamation because of the posters and press events. They denied their responsibility for the pollution and argued that the information spread by my mum was false and damaged their reputation. They claimed damages of nearly 20,000 US dollars. They also requested the court to order my mum to retract the claims and offer an apology through the local newspaper. My mum could not respond to these requests. The amount of damages was huge; paying such money was just not out of the question for our family. John and my mum spent several weeks researching and preparing until they could finally submit a counter-testimonial. She was working hard and we felt her fears about the situation. Anxiety somehow filled our house; we all had that feeling. What was most depressing was her alienation from us. We saw her only in the morning. She would sit and read papers. All kinds of papers, maps, schemes, etc., were scattered around the house. There were even a few piles of documents on the floor in the bathroom. All these weeks she would sleep on the sofa in the living room. Most mornings we would find her sleeping, usually dressed as she came in.

* * *

When we left the last court hearing at appeal court I was one year older than when I had first entered a courtroom. Our friends were congratulating my mother, smiling and discussing how to celebrate the end of this story. My mum, however, was sad. And John did not share the joy of the group either. The court had ordered my mum to publish a retraction and to pay compensation. The amount was ridiculous — less than a dollar. But my mum took this as her defeat.

* * *

Before we arrived home an hour later, John was already planning.

‘We should sue them, Anna’

‘Who we? Sue who?’

‘The company. We should sue the company. Make a right turn here ...’

‘For what?’

‘For using DDT, for putting people’s health under risk, for damaging the environment, damaging the storks.’

‘We can’t prove that... what can the court do? And again “who we”?’

‘Red, red light. Don’t you see? “We” means you, the Guardians of the Wetlands, myself and... also I have good friends who will help us.’

‘But I never went to court.’

‘I did. We can make them accountable. Under the law. They’ll stop using DDT. They will apologise. All of them, including those who allowed this to happen. We can go to international tribunals, we can ...’

‘Let’s talk about this,’ my mum said, opening the door to our house.

* * *

Since the day John suggested starting a legal process mum and dad argued almost daily. When she was sued by the company in the defamation case he was absolutely disappointed but he understood that she should defend herself (and her family). But my dad could not think of mum going as a plaintiff to the court. They had never had any problem with justice, and now they were likely to be

involved in several cases, and it was not an easy situation for a modest family like ours.

But mum was a very tenacious person, and she was totally committed to fight for what felt like her rights, and even her duties. She did not need to be told twice to accept the idea to use the courts to defend her rights.

‘Anna,’ John said, ‘we can’t be passive on this story. We should take the initiative. If we only defend ourselves from their attacks, then we will get nothing more than continuing problems.’

‘I’ve been thinking about it already.’

‘Then let’s start to think about it seriously. At least, we should start to collect information and evidence in order to be ready.’

‘Umm, what do you suggest, John?’

‘Well, first of all, we have to ask the authorities for information related to the plantation, their authorisations, the use of pesticides, DDT’s effects, and so on.’

‘Ha! Do you really think that they are going to give us all this information?’

‘Well, they should do it. They are obliged to do it. There are laws that state that they should provide environmental information.’

‘Really? And what happens if they refuse our petition? Who is going to force them to provide us with the information?’

‘Have you ever heard about the Aarhus Convention?’

‘Aar ... what?’

‘The Aarhus Convention. It is an international treaty. Aarhus is the name of the city in Denmark where this important law was adopted in 1998. It is about “Access to In-

formation, Public Participation in Decision-Making, and Access to Justice in Environmental Matters”. This Convention says that state authorities should provide environmental information once it is requested. Indeed, lots of information must be ready to be available to the public even if it is not requested.’

‘But they will say that we have no right to demand this information. Don’t forget that I am not the land-owner, but my father.’

‘You don’t need to prove any interest to ask for environmental information. Anyone can ask, there doesn’t need to be some specific connection.’

‘Umm ... are they really obliged to provide any information that we request?’

‘Well, not exactly. They can refuse our petition but only in some cases, and even these cases should be limited as much as possible. The general idea of the Convention is to provide as much information as possible.’

‘Wow! Why are we waiting! We need to know a lot of things: is there an environmental impact assessment for the plantation? Do they have permission to use pesticides? In that case, what kind of pesticides are they authorised to use? Do they have any emergency plan in case of a spill, or for any other sort of emergency?’

‘Hey, let me write! You need a lot of information, Anna!’ And John laughed at the excitement and hope they shared.

* * *

I can still remember mum and John at home till late at night, writing and reading a lot of papers ... Of course, finally my dad accepted that she wanted to fight to the end; he knew mum perfectly, and he knew that she was un-

able to be silent. In fact, he started to help them, looking for information, making copies of documents, or simply making coffee to ward off drowsiness. And I remember perfectly how sad mum was one month later when John told her that the authorities had denied their request.

‘What are you saying, John? But you said that they must! That is what the Aarhus Convention states!’

‘I know it perfectly, Anna. I told you that they should provide us with the information, and they should do it. Their refusal is a breach of the Aarhus Convention, so we can appeal. Except that if we want to do it, we need to go to the Court.’

‘But we can’t be silent!’

‘Well, it depends on you. We can be silent, but I think that we should keep going with our action.’

‘But, do we have good reason to do it? I mean — is there any possibility to win the appeal?’

‘Of course! The refusal is a breach of the Aarhus Convention!’

‘Then, let’s do it!’

* * *

That day they were in court not as defendants but as plaintiffs. They believed that their information request had been unlawfully denied, and they wanted the court to force the authorities to provide them with the information, because they needed it in order to start the main case. My God, they were only preparing the main case, and they had already had two different court cases! It was going to go on longer than we had ever thought.

‘Your Honour, my client only wants to get information about the crop plantation. The Ministry which has the

requested information is obliged to provide this information to my client. It is a very simple case,' John said.

'Why do you say that the Ministry is obliged to do it?' the judge asked.

'Our country has ratified the Aarhus Convention, and we have even adopted national legislation that states that any citizen, personally or through a group, has the right to get environmental information from the authorities that hold it.'

'That's right, but you know that they can refuse the petition.'

'But only in limited exceptions, and even these exceptions should be interpreted in a restrictive way. Nevertheless, the Ministry refused our petition arguing that my client has no direct interest, and that the petition was formulated in too general a manner. First, my client needs no direct interest in order to get the information because the Aarhus Convention states that no direct interest has to be stated; furthermore, it is a public interest case, because my client is fighting not for her direct interests, but for general ones. Furthermore, our petition was not too general; we asked for specific data related to the plantation — what kind of permit they have, what kind of pesticides they are permitted to use, what kind of pesticides have they declared as used in the plantation, and so on.'

'What do you have to say?' the judge asked the Ministry's lawyer.

'Your Honour, we are facing an important issue here. If the Ministry, or authorities, are to provide any environmental information that we have, we are going to need a lot of time to do it. That could be counterproductive, since it would divert attention away from other

pressing business and promote chaos in the administrative bodies.’

‘We ratified the Aarhus Convention, didn’t we?’

‘Of course, Your Honour, we did. But it is nothing more than an international treaty, a Convention, but not a national law. We as officials need specific instructions or decrees in our work.’

‘Are you saying that international treaties and conventions are nothing more than the paper they are written on?’

‘Well, I mean that ...’

‘Did we adopt a national law that recognises these rights?’ the judge interrupted the lawyer.

‘Yes, we did. The Parliament amended several existing laws last year. It is Act 5/01.’

‘Does the plaintiff have something to say?’ the judge asked.

‘Yes, we do. First of all, it is unacceptable that the Ministry of Agriculture and Environment thinks that international treaties are nothing more than pieces of paper. This is the very same Ministry that is in charge of implementing these treaties yet it does not consider them to be a law at all. For example, is the Human Rights Convention itself anything more than a piece of paper for our Government? Do we have those rights, or not? Evidently, this Court cannot accept such an argument about the lack of status of international treaties. The argument is nothing more than a pretext in order to maintain an opaque and unaccountable system which denies citizens the use of their rights because authorities ignore their rights. Furthermore, even if the Court accepts those arguments, our Government passed Act 5/01, that states exactly the same

as the Aarhus Convention regarding access to environmental information.’

‘But, Your Honour, the refusal to supply the information was based on solid arguments. The petition was worded very generally, even abstractly. Furthermore, there are parts of the information which, if disclosed, could adversely affect the confidentiality of industrial and commercial information,’ the Ministry’s lawyer said.

‘Our petition was not a general or abstract one. As I said before, it was related to specific issues regarding the crop plantation and the use of pesticides in general and DDT in particular. On the other hand, the refusal stated nothing about industrial or commercial information. It is a new issue that can’t be accepted now. The refusal should state the reasons for the refusal, and it should even give information about the opportunities for further review of the decision. But the refusal, which is included here in the file, stated nothing about it. It states only that the petition was abstract, and that my client has no direct interest,’ John said. ‘Anyway, if the Ministry thinks that a part of the requested information would contravene the right to commercial and industrial secrets, they should explain why they think it. Furthermore, if that part of the information can be separated out from the rest, they are obliged to provide my client with the remainder of the information,’ John concluded.

‘It is your last turn to reply,’ the judge said, looking at the Ministry’s lawyer.

‘We support our initial position. The refusal has been dealt with in accordance with the provisions of the law.’

* * *

‘OK, now I understand why there should have been an environmental impact assessment done when they

started this new agricultural project. This assessment addresses all the possible environmental consequences of the project. They did not send this to us officially, but we have some informal documents from friends, right?’

‘Right.’

‘But who can understand this? Did you have a look at that? I don’t understand most of the things there, except maybe for *Ciconia ciconia*,’ my mum smiled. ‘I learnt it is a stork just a few months ago.’

John had received help from some kind of private network that would help its members from around the world on various environmental law issues, including providing scientific advice and contacts. They put us (well, I think I could use “us” from the time I had a deal with my mum!) in contact with leading scientists studying both wetlands and pesticides. They agreed to read through the documents and, after looking at them, they confirmed it was practically unquestionable that the storks left because of DDT. They sent us their opinions in the form of “affidavits”, sworn statements and one of the hundreds of terms my mum had learnt since she got involved.

My mum and the team talked to numerous people trying to understand the science of the problem and develop “case strategy”. They learnt that DDT had been prohibited from use for many years in many countries but tons of DDT were stockpiled, waiting for safe (and expensive) disposal. They also found out that there was no producer of DDT in our country at all — it became clear that the company had imported DDT from another country despite a law that prohibited this. Suddenly, they also discovered that a few years ago the Parliament had adopted a special decree allowing imports of “certain wastes”. Following that, they found that “wastes” on the way to a

disposal place could become “organic material” and later, after some miraculous one-minute treatment, that could become a “pesticide”.

‘Such import of wastes is called transboundary movement. It is regulated by international law, as well as by national legislation in countries. My colleagues from Kazakhstan have a similar problem — their government abolished a ban on the import of radioactive wastes based on a scientific study. We need to stop the illegal import of DDT. This would prevent the company from using these chemicals in the future.’

‘Do we know how much they have already imported? Can we find out? Do we know why the government allow these imports?’

‘Well, the Ministry of Environment should be able to provide a feasibility study for that. There should have been such a document as a basis for its decision to import DDT. Let’s see whether they will provide us with information this time.’

* * *

‘It does not matter what the impact assessment says, if anything, about the use of these compounds, Your Honour. The import of DDT into our country cannot be legal since there is no technical capacity to manage these wastes in an environmentally sound way. Environmentally sound management of wastes in the country of import is a pre-requisite for legality of import under current international and national law and practice. We believe this was the main reason behind the Ministry’s refusal to provide us with the information requested.’

‘The Court finds the plaintiff lacks standing to bring a legal claim since the plaintiff — an environmental non-governmental organisation — is not directly affected by

this decision of the government?’

When John came into the judge’s room to get a paper copy of the decision she was there — crying.

‘Listen,’ she said quickly, ‘I don’t want to get into this. I understand you’re right. I know you’re absolutely right. But I can’t ... I didn’t get a phone call only from the President of this country. I am taking maternity leave next week. I am sorry, I have to tell you this though I don’t know how to argue this.’

* * *

‘The High Court finds the plaintiff — a citizens’ association — cannot bring such a lawsuit to the court unless it represents its members. The plaintiff did not provide the court with appropriate powers of attorney to represent their interests. Therefore, the case is dismissed.’

* * *

‘Let’s do the following. We will use our informal version of the environmental impact assessment to file a lawsuit. If the ministry or the company denies any facts there, they will have to produce the real one. We will then make any necessary adjustments to the lawsuit in court. We can even change our demands while the case is still in court. However, I doubt there will be any significant changes. The science part of it will be the same.’

‘How much time do we have to prepare the lawsuit?’

‘Umm... if we want to prevent another spraying of DDT we have about two months. We don’t know exactly how the ecosystem has changed already. That’s another issue. Maybe the changes are irreversible already, who knows? We don’t have enough resources to do all the possible studies, sampling and laboratory analysis. Remember, Anna, it can take time — a year or even two — for all the courts to take a decision.’

‘Two months to prepare? It’s impossible!’

‘One of my good friends says “Nothing is impossible”, Anna.’ John smiled. ‘My friends will help us, Guardians of the Wetlands will do what they can...’

* * *

When I came to John’s office it was a cauldron of activity. A dozen people were writing, discussing, calling; piles of documents were scattered around the room. I couldn’t get in without stepping on a piece of paper. The office looked like an election headquarters. John was standing motionless; his face had the stamp of sleepless nights and an endless workload. My mother was chatting with someone and smiling.

I saw a number of empty glasses and cups, several empty coffee packs, juice bottles and pizza boxes. Probably they had been left where they were for several days. While waiting for my mum I made two trips to the waste bin outside in my naive effort to clean the room. Some of the napkins were all covered with writing or schemes.

* * *

‘Mrs. Wolf, we understand you were upset by the departure of the storks and the possible health effects allegedly caused by pesticides used by our company. Neither you nor we have evidence that people’s health was affected. And there’s no way to find this out since health records are kept in several local clinics and we have no access to them. We can agree to stop using this pesticide; however only after we use up what we have already bought. Don’t waste your time and our money, withdraw your lawsuit. We can even compensate you for the disturbance to your life and your time invested. We would be willing to pay for your son’s study in the university, any university in this country. Think about this, you don’t have to answer now.’

* * *

'Anna, this is not your business. You're destroying our family, your own life. Now you have a chance to stop, to leave this battle as a winner. They'll stop using that chemical. You will have no chances to succeed after this. But you have a real chance to help our son. You're his mother!'

These were the last words I heard before falling asleep. When I woke up I found my mum had gone to grandpa's and taken leave from the school. John and other people whom I did not know kept calling the whole day. My mum would not talk when I called grandpa's house; grandpa said she was OK. That's all.

* * *

In a few days my mum came back, silent and depressed. She cooked a late dinner for us. We ate and talked about everything but the case. After dinner I saw her calling someone.

'Hey, it's me, Anna. Listen, John, I need to talk to you ... Yes, this is important,' she looked at me and I thought I saw her answer, her decision, her choice. My dearest mum looked so vulnerable, beaten. I rushed to her and put my hand on the phone.

'Wait. I've made the decision, Mum. I am not going to university — I can't start my adult life accepting this. We are one family.'

I saw my father — upset but proud. Then I could hardly see anything but heard my mum's tears dropping on the phone as if a little drummer was playing his rat-a-tat-tat.

* * *

On my way home I stopped by a bookstore to look at new posters of my favourite football player who had led our national team to win the last championship. He was

my hero. Suddenly I heard John's voice, he was talking with someone about my mum's case.

'Why would she be so concerned about the storks?' a stranger asked.

'There's a weird story she told me. Rather heartbreaking for her, though. Her family moved to this place many years ago. It was her grandparents who had settled there originally in order to start a new life. They had no children at that time and, as I understand it, they had problems conceiving a child for several years and eventually they gave up. But one year a stork made a nest on a farm house standing nearby, and that year they were blessed with a boy — her father, who still lives there. They took this as God's gift, a grace from the heavens. That's when they started to look after the nest. Well, in fact they had nothing to do with the nest itself but they were constantly fixing the roof. In any case, the nest and storks became a symbol of the family's fate, a sign of hope for the future.'

'I see, so when she found the broken eggs ...'

I did not hear anything more. My brain was boiling; my nerves were shot through by rapid electrical impulses. I could feel my heart pounding through every part of my body. I couldn't remember how long I was standing there or how I got home.

* * *

The main case was in fact split into several court cases. They decided to separately appeal the permit granted by the Ministry of Environment and Agriculture, the conclusions of the EIA and the decision to allow the import of DDT. This was in addition to continuing consideration of the defamation case in the Supreme Court, the access to information case, and international procedures they were preparing to use.

Each of the lawsuits took weeks or months to be prepared. Each of the lawsuits had numerous, sometimes two or three dozen, annexed documents such as copies of permits, scientific decisions, newspaper articles, maps, photos, conclusions and reports by various committees, organisations, and ad-hoc commissions, copies of previous judgments and judgments in similar cases. Practically speaking, each lawsuit alone comprised complicated legal and scientific research.

At the same time various national and international organisations stepped in. They started huge mass media campaigns in order to raise the visibility of the issue and push the company and the government to solve the issue. Thousands of petitions were sent to the government supporting the campaign against the use of DDT. Leading scientific institutions did not stay aloof — their opinion and active support was very important. Though it was not enough to convince the company and the ministry. Well, they did not want to look for the truth. They did not want to see real facts, neither the polluter, nor the authority who should be controlling the polluter.

There was probably no newspaper — local or national — that did not cover our case. I still have copies of articles and cuttings at my house. Several folders' worth. Sometimes newspapers published their own "investigations" arguing that we were paid by a competitor company. Those who paid for those articles could not have realised that not everything is for sale. They couldn't accept the idea of someone doing a huge amount of work for no financial gain. Well, maybe mum's case indeed helped the competing companies to take part of the market, I don't know. But that was not the point. My mum didn't care about that — she cared about a small piece of nature that

she felt responsible for.

* * *

‘Do you really think that we need to start a new case?’ mum asked Robert.

‘Well, we had no access to the decision-making process, which is another breach of the Aarhus Convention and Act 5/2001,’ John said.

‘What do you mean by decision-making process?’

‘The Ministry issued a new DDT import authorisation without allowing the public to comment and participate, even after we had already started our claims against the crop plantation,’ John argued.

It was true. While they were dealing with the defamation case, Green New Crops Ltd. asked for a new import permit in order to increase their stock, even after they had offered to my mother to stop using it. They were running out of their stock. The Ministry of Agriculture and Environment didn’t notify my mother, nor the Guardians of the Wetlands, nor the neighbours. Nevertheless, mum and John knew about it. I can say that they had some friends inside the company, people who understood perfectly their struggle although they couldn’t support it openly for fear of losing their jobs. But as soon as they found out about the new permit request, the Guardians of the Wetlands asked the Ministry to be allowed to participate in the decision-making.

‘John, I am confused ... Aarhus and the 5/2001 law state that we should be able to participate in such a decision-making process but they closed the doors again,’ mum said. Her voice was reflecting more weariness than sadness.

‘Anna, the doors should be open but if they are closed we have to try to open them again; and if they were locked,

we should knock tirelessly until they are unlocked. It is our right and it is the duty of the authorities.'

'OK, John; do you think that we can win this case?'

'Yes I do.'

'What can we expect from this case? I mean, what will be our petition? What are we looking for?'

'We will request the court to declare that the Ministry must suspend the permitting procedure because of the lack of public participation. Furthermore, we will ask the Court to force the Ministry to start the procedure again in order to give us a voice in it.'

They were expecting that finally the court would recognise their rights, giving them the chance to intervene in such a decision-making process. Once again, they were wrong...

* * *

'What the hell is the "public concerned"?' mum desperately asked.

'It is the concept contained in the Aarhus Convention regarding the right to participate in environmental decision-making. If you are part of the "public concerned", you have the right to participate.'

'Aren't we concerned? My God, we are fighting against the plantation! Who could be more concerned than us?'

'Anna, it is a legal concept. The Court thought that you would be not be directly affected by the import permit.'

'What about the Guardians of the Wetlands? We have done a joint claim! You are an environmentalist NGO, Robert!'

'Yes, we are; but we don't meet the requirements under national law.'

‘Which requirements do you mean? Where are they stated?’

‘Environmental NGOs are normally assumed, or “deemed”, to have an interest, and so are “public concerned”. But countries can set some requirements in their national law regarding this. Our country stated those requirements in Act 5/2001: NGOs should be registered for at least four years before the petition was made, and we are only two and a half years old.’ John sighed.

‘But there’s no logic! What is the reason for such a requirement?’

‘Well, I suppose that they try to avoid “ad hoc” NGOs. I mean, they don’t want a new NGO to be created each time that a new issue comes up.’

‘Is this allowed by the Aarhus Convention?’

‘Umm ... it is a good question, but I am afraid that I can’t answer it; we should probably ask the Aarhus’ Compliance Committee who decide about the rules.’

* * *

By the time my sister started to walk they had lost most of the lawsuits. They appealed, with a last hope, to a special committee that met in Geneva, at the United Nations. They claimed the government had violated its obligations by refusing to provide information, by denying it had an obligation to do so and by depriving the citizens of access to the courts and to justice. They had to wait for some big meeting until the final decision on their case was taken. Our government ignored the committee and did not even show up for the discussions there about their actions.

We could not understand this attitude by our government. Another spring was coming in this country; the storks were on their way. Two of them would be look-

ing for a nest on the roof of an old farmhouse and they couldn't know it was in the middle of the battlefield. It was an invisible battlefield for chemistry and nature, for a few dedicated eccentrics and a modern industry.

* * *

'The court, having considered the facts of this case and applicable laws came to the following conclusions.' The chairing judge of the appeal court paused. He looked tired. The judges had left the courtroom twice for deliberations. Last week with no consensus, obviously. This time it took them 3 hours to come to agreement. The judge was supposed to read only the concluding part of the judgment. However, it seemed the chairing judge was going to go into details.

Our team was exhausted, too. They had already prepared for and attended about 50 different hearings in the first instance, appeal, higher and supreme courts. I don't remember a week without a court hearing. But I do remember weeks when my mum or John, or both, would spend the whole week travelling to the capital for one hearing and coming back for another and then getting on the train again to be at another hearing. This was their last lawsuit. It was in the Appeal Court. They had lost in the Court of First Instance but this was more important. Under our law the decision of the Court of First Instance does not come into force if appealed. But a decision by an appeal court comes into force immediately no matter whether you file a second appeal to a higher court. And then you may wait for months and years until the higher court takes a decision — by which time it may be too late to be able to change the situation or protect yourself.

'The Ministry of Environment and Agriculture respondent allowed the use of certain pesticides in the

operation of a large-scale agricultural project. The pesticide is known as DDT, an abbreviation of the active compound,' the judge continued.

'The respondent claims this chemical is used in many countries of the world and if applied properly poses no threat to human health and the environment. At the same time, the environmental impact assessment of the project did not include any study of this aspect of the project. Moreover, the EIA was a basis for granting the permit by the Ministry for the use of this chemical in the operations by Green New Crops Limited.

'The plaintiff claims that the conclusions of the environmental impact assessment are void and inadequate. They have requested that the court annul the conclusions of the EIA. The plaintiff has provided scientific evidence, including reports by the United Nations Food and Agriculture Organisation and the affidavits of several scientists from around the world stating that there are possible negative consequences of the use of DDT for human health and the environment... The plaintiff has also argued that the current use of DDT in other countries is only limited to measures to combat malaria.

'The court finds that there is much controversy in the science as to the possible effects of DDT on human health. Some studies argue that it is a probable carcinogen or cancer-causing chemical. It also notes that most studies reveal it is highly toxic to aquatic life and birds...

'Having faced such scientific uncertainty which the court is not able to solve, the court finds that the issue of the possible effects of DDT on the environment and human health must have been addressed by the authority granting the permits and other relevant decisions, including the EIA. The court finds that the documents

presented by the respondent indicate however that this issue was not dealt with through the EIA and permitting processes.

‘Therefore, based on the facts and its own understanding of the law and facts, the court concludes that while granting the permit and positively approving the environmental impact assessment the respondent did not consider the possible environmental and human health effects of the use of the compound called DDT. The court annuls the permit, annuls the conclusions of the environmental impact assessment and bans the use of DDT until the Ministry carries out a thorough study of its possible impacts. All court fees are to be paid the respondent.’

Incredible! Unbelievable judgment and our victory! It came when we had almost no hope. We all left the courtroom smiling. My mum and John could only smile. The court gave us new hope; it gave us much more than a judgment in our favour. This judgment came just at the moment when everyone was already too tired to continue, when the enormous efforts made seemed so inadequate and unsuccessful. It gave us a hope for the future, the future that was going to be different because of us.

* * *

When someone reads the judgment now it does not seem victorious at all. It’s just long, twenty six pages long. You read facts and excerpts from laws, you read positions and statements, you read succinct court opinions and assessments. It’s even hard to finish reading it. But then you think about the courage of the judges who made the judgment; you realise that each page of the judgment means a month or two that someone spent working on this case; you understand that it maybe saved the lives of hundreds of people and thousands of birds, and thou-

sands of thousands of other living creatures around you; you suddenly understand that each such judgment is one piece of a puzzle, a puzzle created around the world to help protect the earth; you clearly see other small puzzles around you — posters on your way to work, presentations and protests on TV, people put into jail for raising their voice; you finally acknowledge this puzzle is not new, it was founded a long time ago to fight an endless battle that some people see and others do not (or will not) see. That's when each word in the judgment becomes a sword or bullet that others will use again and again, in their brave struggle to save the world. They dare not think about failing or they would not start, but they just need those swords and bullets to help them go on.

* * *

A few weeks later we received a decision from Geneva. The Aarhus Convention's Compliance Committee had come to the conclusion that our country was failing to fulfill its international obligations by denying access to environmental information and by limiting our access to the courts. A further failure was in not providing the public affected by decisions to express their opinions about projects such as the plantation scheme or the DDT imports. They requested that our government develop a special strategy to ensure compliance with its international obligations under the Aarhus Convention. Those measures were to include training for bureaucrats and judges. Over thirty European countries jointly approved this decision based on the recommendations by the Compliance Committee.

* * *

Robert and mum were talking with Alex, her first boyfriend.

'Alex, you should help us. We know they were using DDT on the plantation but we still don't understand what the mercury is doing there.'

'Anna, you must promise that nobody is going to know that I have provided you this information.'

'Don't worry. We promise it — Robert?'

'Of course we do.'

'OK. When Green New Crops Limited bought the land, they started to prepare it for planting. They removed a lot of soil and other material, in order to have more flat land, and they threw it directly into the river.'

'But where was the mercury?' Robert asked

'Let me finish. There was a chlorine plant there. In fact, Anna's uncle ...'

'Alex, he already knows it. Please, keep going.'

'OK. That plant had some kind of tanks where they put the wastes from their production system. Periodically, they were emptied, but towards the end, there was no money to do it, and when Green New Crops Limited bought the land, those tanks were full. But they mixed all the wastes with the soil, and chucked it into the river. Besides, the facilities had been abandoned for three or four years before the arrival of Green New Crops Limited.'

'And mercury?' mum asked.

'Anna, I am not a chemist,' Alex said.

'Neither I am but I know that old chlorine plants used and still use mercury in their processes,' Robert said.

'We found another source of the problems, John,' my mum said sitting next day at John's office. I can only guess how John's face looked at that moment.

My mum was fighting during the rest of her life. She became an advocate not only for the environment but for democracy, too. She always said we should be part of the community; she said we can't be silent if we think that an injustice is happening.

When I came to see my mum in the hospital she was slumbering. I brought her a picture of stork chicks peering out from the nest. Since the time the doctors had prohibited her from travel we would bring her pictures of each new family of storks, every year. She would insist she could recognise storks coming back again and again, or even their children. Each year she would replace the old picture of the storks with a new one and put it on a shelf where she had photos of our nowadays big family. I watched her for some time without disturbing her dreams. Her breath and face shone peace. A smile touched her mouth and stayed there. Did she dream? Maybe ...

It was the last time I saw my mum alive. Our family no longer keeps grandpa's house. We donated it to the Guardians of the Wetlands. My brother is a new director of the organisation nowadays. We also come each year to help them fix the roof of the old farm house nearby. In the spring, going to work, when I see storks flying in the sky, I quietly ask them to find our nest. My kids mock me when they notice my whispering, exactly like I mocked grandpa's tales some years ago; or was it just yesterday? Like him, I don't mind.

* * *

Afterword

The ability of citizens to use the courts in environmental matters remains weak in the region, as it does in most parts of the world. However, its value and importance cannot be overestimated in the context of current environmental protection efforts, development of democracy and establishment of the rule of law.

This story is based on real cases and facts. It was inspired by experiences mainly gathered in the region of Eastern Europe, Caucasus and Central Asia, as well as in other parts of Europe and the world. Some of these cases are represented in the annexes to this publication. They are recent examples of citizens' efforts to protect their environment through using the law. All the cases were gathered in the context of a regional review of case-law related to the implementation of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus, 1998).

This publication is not an attempt to depict an ideal case or campaign. In fact, we tried to incorporate common strategies that environmental groups use and challenges they face when exercising their right to justice in environmental matters. Many details and real stories could not have been properly incorporated. Some public interest environmental cases consist of several lawsuits and other procedures so that it would take several publications just to reproduce the court decisions taken within one overall case. Some of the dialogues and events reflect real events and facts as gathered from case-studies, interviews and the personal experiences of the authors.

The authors would like to thank the environmental public interest lawyers and their organisations for contributing their cases to this publication: Olya Melen (EPL, Ukraine), Pavel Zamfir (Eco-Lex, Moldova) and Samir Isayev (Ecolex, Azerbaijan). The following individuals have also contributed their ideas and experiences to this publication: Eduardo Salazar Ortuno, Fe Sanchis Moreno, Nataliya Andrusevych, Oleg Pechenyuk and Zoryana Kozak.

We also extend our thanks to all our colleagues in the region and around the world for inspiring this publication by their commitment to their daily work — including in the courts — to protect our environment from continuing threats.

Lastly, we thank our families for support and patience during the development of this publication.

The characters and the events depicted in this story have been fictionalised and all names changed.

The Danube Delta — a “green” fight!

Case study I, Ukraine:

by Olya Melen, EPL, Ukraine

The plot of this story could be considered to be very typical and predictable: strong government forces announce plans for economic development and nothing can pose any obstacle to their great ideas — except environmental interests and NGOs.

In Ukraine, the government plans to construct a deep-water navigation canal to connect the Danube river and the Black Sea were first uttered in 2000 and would have been accepted peacefully by society if not for one important thing: the existence of the Danube Delta Biosphere Reserve would be gravely jeopardised by this construction. The route of the canal construction would bisect the reserve into two parts, damaging the most valuable and sensitive areas in the core area despite what was supposed to be strict protection.

The majority of the people of Ukraine have little idea what hides behind the name: Danube Delta Biosphere Reserve, so it is hard to estimate the value of that place whilst imagining extensive shipping along the River Danube — one of the most polluted rivers. For me, as a city-girl born 1000 km from that place, I also had no visions of the Danube Delta in my head, but the plans of the Ministry of Transport to construct a navigation canal caused indignation because of the obvious and blatant neglect of Ukrainian law. The high-level state officials had no desire to adjust their development plans to the legislation banning commercial activities within protected areas and paid no regard to this thing called “biodiversity”. The development was an attack on a protected area with high national and international conservation status, comprising half of a bilateral Romanian-Ukrainian biosphere reserve. The project looked to be both a serious threat to the system of protected areas in Ukraine and to the rule of law.

So, senior members of the NGO, Ecopravo-Lviv (EPL), where I had been working for more than one year as a lawyer, agreed it was necessary to go to the Danube Delta and investigate before deciding to take this case or not. The trip was very tiring and long but the rewards were very worthwhile: we plunged into another world with its traditions, values, life style and environment. The Delta turned out to be a time capsule showing little signs of civilisation and nature had seen little of the results of destructive human impacts.

On the coast of the Black Sea, the Danube river meets the ocean to form one of the most valuable wetlands in the world — the Danube Delta. This maze of lakes and channels covers over 1 million acres of territory in Romania and Ukraine. The Delta contains the largest reed

bed in the world and is home to abundant bird life, fish and plants. Thousands of pelicans in the sky, turtles laying eggs near the footpaths and huge fish jumping and splashing in the green waters of the Danube — these are not scenes from a National Geographic film — it is the real tangible nature of the Danube Delta. I was trying hard to imagine how big ships transporting cargo could damage this calm and peaceful world! And I suddenly understood that birds and fish cannot stand up and speak in their own defence. And so we needed to do this — to start the green fight!

Coming back with unforgettable memories and inspiration we started a legal campaign. EPL legal strategy was becoming more and more complicated after every weekly meeting of lawyers, scientists and international officers looking for possible redress at both national and international levels. At the national level, the court proceedings consisted of land issues, a challenge to the Presidential decree, and three suits challenging the conclusions of the state ecological expertiza (an environmental impact assessment) of the Danube canal. At the international level the strategy encompassed complaints and notifications to the European Union, to a host of international treaties (the Danube, Aarhus, Espoo, Bern and Ramsar Conventions), and to the international agencies of UNESCO, the International Commission for the Protection of the Danube River (ICPDR) and the World Conservation Union (IUCN).

An alarming call came from the director of the Biosphere Reserve. He informed us that numerous inspections of the Reserve's administration had not found any violations. Nevertheless, a criminal case had been initiated against officials of the Reserve, documents and computers had been seized and the normal work of the Re-

serve had been suspended. Of course this resulted in a lot of tension among the staff and had made it impossible for them to carry out their normal job of nature protection. It required a lot of courage and dedication on the part of its director, Oleksandr Voloshkevych, not to give up and to continue a difficult fight against this powerful Ministry. The criminal case had been initiated by supporters of the canal construction. The Delta Pilot state company — a main contractor and lobbyist — had complained to the law enforcement bodies of Ukraine about some activities of the Reserve administration, yet it was obvious that the criminal case was groundless. Only after years of fights and court proceedings was the case closed.

While we, at EPL, were discussing whether to use the courts or not for the protection of the Danube Delta, our opponents started an attack on the Biosphere Reserve and its land rights. The local town council, represented by people hired by the Ministry of Transport, the prosecutor and representatives of the Delta Pilot company, filed a suit in court challenging the previous decision which had granted the Danube Delta Biosphere Reserve its land rights and certificate. It was obvious that this issue was very important for our opponents, but they had scant arguments for their claims, the prosecutor had no idea whose interest he was representing in court, the suit appeared not to be signed by any appropriate person and the lawyers had no idea what rules and procedures needed to be applied. It was a very long and tiring court process that helped the opponents to learn more about environmental and land legislation and ended with our defeat because of a very simple reason: constant pressure was applied to the judges hearing this case by more senior and influential officials. One honest judge from the appeal court dared to confess to us. An appeal of the illegal decision depriving

the reserve of its land rights is still pending in the Supreme Court of Ukraine.

Suits in court and criminal prosecution were not the only methods used by the Ministry of Transport in order to eliminate all possible obstacles to their “utopian” plan. In order to eliminate any legal obstacles to construction of the canal, two presidential decrees were adopted. These decrees changed the zoning of the Reserve and withdrew the most valuable areas for navigation from its territory. No other part of the protected area was honoured with such attention from the head of the state! Unfortunately with this action the President started the practice of giving priority to economic development and downgrading the interests of the environment, ignoring the huge international protest against the canal construction in this UNESCO-designated Biosphere Reserve.

EPL decided to approach the national courts on its own behalf, in the role of the ‘public concerned’, trying to find justice and to prevent the canal construction through this sensitive area. A lot of difficulties were faced by the EPL lawyers who were daring to pioneer in this field: no prior favourable court practice, a lack of awareness of environmental law on the judge’s side, uncertain standing for NGOs and the political context of this case, and support for the canal construction from the very highest officials.

You must be wondering how it could happen in a democratic society that high-level officials are arrogantly neglecting the laws of Ukraine. The answer to this could in be the phrase of the late Minister of Transport, uttered at a high level meeting in Kiev: ‘The laws are constantly violated here in the capital so you want adherence to the law in the distant marshes of the Danube Delta?’

So EPL, as an organisation fighting for the rule of law and protection of the environment, could not just stay

outside this process. Several suits were filed by EPL and by citizens, the lawyers of EPL challenging the negative decisions based on violations of laws and disregard of public opinion. But the judges found it difficult to understand that any citizen could have an interest in protection of the environment and thus have standing to challenge a decree of the president of Ukraine even if it broke the law and damaged nature sites.

But with EPL itself as plaintiff, we got a different reaction. One judge even cited the Aarhus Convention in his decision affirming the rights of an NGO to be “public concerned” and able to appeal against the decision of the Ministry of Environment on the canal construction.

Still facing more defeats in courts than victories, EPL continued its fight. One really inspiring decision at the Court of First Instance declared the environmental impact statement for the canal construction to be illegal. The judge was brave and thoroughly studied all the environmental rules and evidence that we presented, but after giving this favourable decision he also stated that he did not understand the reasons for an NGO to file such a suit rather than thinking about competitiveness and construction projects! Nevertheless this decision was still considered an impetus for further actions by the environmental community and gave us hope in the court system of Ukraine.

But later on the higher courts cancelled this decision and allowed this terrible construction to start in May, 2005. It was a dark day for the green movement which had united against destruction of the Reserve. The coalition of NGOs which had actively coordinated and participated in the campaign was called the “Save the Danube” coalition and included five strong players with shared responsibilities and areas of work. The successes that we

achieved were judged to arise from the fact that the legal campaign was accompanied by a mass media campaign, by actions organised by coalition members and by the unity of our message which resulted in huge resonance within and outside Ukraine.

In order to discredit the NGO position and gain the support of the Ukrainian people, our opponents were also using the mass media, blaming the most active members of the 'Save the Danube' coalition of corruption, of being in service to the Romanian government and of spying for Romania. Romania was a major opponent of the plans. Through having better access to the mass media and bigger financial resources, the transport people managed to create an overall positive image of the canal construction based on economic reasoning.

The construction of the Danube – Black Sea canal was accompanied by numerous violations of laws, including dredging activities carried out in the fish spawning period. It resulted in misuse of state money, violation of construction project rules, and there was a lack of effective monitoring. The canal also turned out to be a total failure from an economic and hydrological point of view, bringing little profits and being silted up very quickly. After less than two years of operation and constant dredging its operation was involuntarily closed due to the water being too shallow for navigation.

From the first days of the campaign to save the Danube Delta Biodiversity Reserve, EPL had decided to act at an international level since there was little hope of effective legal action at the national level. As it turned out, the international bodies were more independent and more objective in evaluating the canal. This helped to create additional pressure on Ukraine with respect to the damage to the environment in the transborder area. Knowing

that Ukraine is bound by numerous agreements aimed at environmental protection, EPL filed several complaints to international agencies in order to engage Ukraine with relevant international agreements. As a result EPL could make strong arguments about the violation of several Conventions even while the Ukrainian authorities continued to persuade the public about the legality of the canal construction. Due to investigations by international agencies the canal construction was declared to have significant adverse transboundary impacts and international institutions confirmed that Ukraine had violated several environmental Conventions. But neither the Minister of Environment nor other relevant ministries and officials agreed to these findings and continued to try to justify their actions. They paid no regards to their obligations under agreements or even to political sanctions applied to Ukraine.

The tireless and high-profile work of the EPL team and the ‘Save the Danube’ coalition was recognised by the international community. An EPL lawyer won the Goldman Environmental Prize in 2006. This event drew huge attention from the media and the public, and reminded everyone again about the canal problem. But regardless of the fact that this so-called “green Nobel prize” award had reached Ukraine for the first time, the government still paid little attention. It really proved that environmental problems and nature protection were not being given any priority by our government and head of state, and the feasibility of the canal construction was not questioned.

Even after the Orange Revolution of Ukraine, bringing new elections to parliament and a total replacement of ministers, still the idea of a Danube – Black Sea canal persists. And no matter where the real balance lies between the benefits and costs of the plan, the government

of Ukraine continues to give this idea priority, even allowing the costs of construction to be increased several times.

Even while facing the realities of the modern political and economic system in Ukraine, NGOs still have hope and continue their fight for the Danube Delta, knowing that they would have success only if “endless pressure is endlessly applied”.

Lawsuit: Yu. Volochuk & V. Zhalba vs. the Glodeni Sugar Refinery on Compensation for Damage Caused by a Waste Effluent Discharge

Case study II, Moldova:

by Pavel Zamfir, Eco-Lex, Moldova

In the autumn of 1998, a record-breaking quantity of sugar beet was harvested in Moldova. Factories specializing in sugar production purchased a large quantity of raw products. The sugar refinery located in the town of Glodeni stocked more than 300,000 tonnes of beets. They were processed at high intensity, leading to an increased load on the industrial equipment.

Note: Equipment at the sugar refinery is disinfected with formalin (formaldehyde solution, a poisonous liquid) on a regular basis in order to neutralise the bacteria found in great quantities in raw beet molasses. For this purpose, Glodeni Sugar Refinery had purchased more than 100 kg of formalin that year.

In the period between December 1998 and January 1999, industrial equipment malfunctioned regularly, as could be seen later in the records of the repair works. For example, at one time the equipment was disabled for more than 48 hours, showing high load levels on the equipment as well as high volumes of effluents for preliminary treatment.

It is necessary to note that the processing plant was built in the 1970s; the project also provided for highly efficient (at that time) treatment facilities. According to the construction project, the wastewaters were supposed to go through the sewage/waste ponds; then they had to gradually go through the treatment facilities; after the treatment procedure they were supposed to drain off into the Kaldarusha river, and then through the cascade of lakes, finally to the Prut river (a transboundary river). However, as the court proceedings revealed, the project also provided for an emergency by-pass channel through which wastewater could be discharged without preliminary treatment directly into the Kaldarusha river.

Note: The Kaldarusha river flows through Obshteaska lake which is rented by Yu. Volochuk and V. Zhalba for commercial fish farming (silver carp). Their clients included sugar refinery workers.

During the time mentioned, a large amount of effluent containing a high concentration of formalin and other hazardous substances accumulated at the factory.

The waste ponds contained the maximum level of effluent waters. In order to avoid treating this wastewater, the enterprise decided to discharge it through the emergency channel directly into the Kaldarusha river.

The effluent was discharged into the river and then into the lake, resulting in accidental pollution. This was noticed by both members of the public and by the renters, who sounded the alarm and simultaneously addressed the refinery officials. After their calls, the chief engineer ordered his workers to pour about 75 cubic metres of lime milk, which possesses cleansing qualities, into the lake. This fact was also established during the court proceedings.

Later the refinery officials denied the wastewater discharge point blank.

But early on, and not waiting for any further action by the refinery, the renters had made a video recording of the contamination and the dead fish. This tape was later shown at the trial and was admitted in evidence.

They also informed the Sanitary and Epidemiological Service, the Environmental Agency, the public prosecutor's office and veterinary service about the events. These services conducted an examination of compliance with environmental legislation and took water and fish samples. The Sanitary and Epidemiological Service ordered the collection of all dead fish, which were weighed, then buried. Finally, it was discovered that the total weight of dead commercial fish was 20 tonnes — valued at 186 thousand leus.

When the refinery refused to compensate for the damage, Yu.Volochuk and V. Zhalba filed a lawsuit for damages against the sugar refinery in the spring of 1999.

The plaintiff's claims were based on the defendant's breach of the provisions of Article 32 lit.d) and f) of the Environmental Protection Act and Article 37 of the Water Code. The suit for damages was also based on the provisions of Article 475 of the Civil Code (1964), providing for liability by the harm-doer to compensate completely for the damage. Unfortunately, the Aarhus Convention was not ratified at the time of filing the suit and so was not referred to.

To support their claims, the plaintiffs provided several different types of evidence:

- reports on monitoring of compliance with environmental legislation prepared by the Environmental Agency officials which established and confirmed the facts of contamination;
- reports on water and fish sampling;
- the findings of the diagnostic veterinary centre about the cause of the fish death, which was due to the excessive concentration of hazardous substances (several times the maximum permissible concentration); additionally, the colour and smell of the fish confirmed the fact of poisoning;
- the findings of the Scientific and Research Station on Fish Culture with respect to the presence of formaldehyde and other dangerous substances in increased concentrations (seven times the limit) in the water of the lake;
- the report on the weight of dead fish and its land burial;
- witness testimonies, opinions of the commission of experts and other materials.

In addition to the lawsuit filed by the renters of the lake, the Environmental Agency simultaneously filed a

suit against the sugar refinery for the damages inflicted on the water body to the amount of 1200 leus (about 100 USD).

The defendant in the case initially denied the fact of a discharge of waste effluent; later the respondent also questioned the cause of the fish death, as well as the quantity of fish.

The case hearing lasted for a long time; and initially the court of original jurisdiction dismissed the claim. This decision was appealed though, and the Board of Appeal assigned chemical and technical experts to establish the source of contamination, the route of the effluent into the lake, the cause of the fish deaths, the concentrations of dangerous substances in the water, and other circumstances.

Since the expert opinions were contradictory to a certain extent, the specialists from the State Environmental Inspection and Scientific and Research Station on Fish Culture were called to witness in court. They testified and provided the conclusion that the fish died from poisoning by chemical substances, firstly formaldehyde, the concentration of which exceeded the permissible limits by several times. The presence of formaldehyde in the water and in the fish also proved the contamination had come from waste effluent.

The only circumstance not clarified was the issue of how the wastewater entered the river and the lake, since the refinery possessed water treatment facilities. The lake had been covered with a thick layer of ice at that time, and it was impossible to clearly establish the route of contamination. The defendant's agent also made statements about the possibility of fish dying from suffocation under the ice, and so the appeal court dismissed the plaintiff's claim.

That decision of the Board of Appeal was then appealed to the Higher Court Chamber. The ruling of June 12, 2003, dismissed the decisions made earlier and sent the case for a new hearing to the Court of First Instance. Also, the Chamber pointed out the necessity of considering all the circumstances in more detail and of establishing the route of contamination.

During the reconsideration, the court of the original jurisdiction treated the case in a more responsible way and ordered that the defendant should present the construction plan (project documentation) of the refinery, the explanatory note to the plan, and also summoned a technical specialist to court. After studying the documents, the specialist concluded that it was possible to discharge effluent directly into the river — without preliminary treatment — through the emergency by-pass channel.

The defence agent offered to call in a number of refinery employees as witnesses — the chief engineer, the treatment facility manager, as well as the head of the laboratory. As was expected, these people completely denied the idea of an untreated effluent discharge. However, we asked the court to critically assess this evidence, taking into consideration the fact that these individuals worked for the refinery and pointing out that this testimony contradicted other case materials. The court agreed with this argument.

During the proceedings, the court watched the video tape which recorded the contamination and the dead fish; this film apparently made a deep and indelible impression on the court.

It is necessary to note that, scandalously, the claim of the Environmental Agency against the sugar refinery for

damages inflicted upon the lake was withdrawn during its second hearing in the court of original jurisdiction. This reveals the negligent attitude of public bodies towards their duties when really they are obliged to seek compensation for the damage inflicted on the environment.

After a year long hearing, the court of original jurisdiction made a decision in which the plaintiff's claims were fully met. Besides concluding that the defendant had deliberately discharged waste effluent into the river, the court came to another important conclusion: that the untreated effluent was discharged with the purpose of preventing the treatment facilities from being disabled, since the concentration of dangerous substances exceeded the technical resources of the refinery's waste treatment facility.

This decision of the Court of First Instance was appealed by the defendant to the Court of Appeal. In their claim, the defence stated a new theory as the cause of the fish deaths — that the fish were overfed with lucerne. The appellants also put out other arguments and stated that the fish had not died in other lakes located upstream and downstream; therefore, the probability of local contamination amounted to zero.

While answering the claims, the plaintiff's agent noted that in a radius of 40 km around the contaminated lake there was no other enterprise using formalin in an industrial process — therefore the origin of contamination was clear, that is, the sugar refinery.

On August 24, 2004 the Chamber of Appeal of the city of Bel'tsy dismissed the claim and confirmed the decision of the Court of First Instance.

This decision of the Chamber of Appeal was again appealed to the Higher Court Chamber. There were no new circumstances in the claim; therefore, after hearing the

parties, on December 27, 2004, the panel made a decision to dismiss the claim and uphold the decisions made earlier.

Finally it was over, except for four months needed to recover the money. But the case had become a precedent and the first successful case against a major polluter of a natural area in the history of the independent Republic of Moldova.

The case was represented by Pavel Zamfir, an environmental lawyer, on the part of the plaintiff.

An Appeal against a Refusal to Provide Access to Environmental Information

Case study III, Azerbaijan:

by Samir Isayev, Ecolex, Azerbaijan

In the middle of January, 2004, on the instructions of the Head of Executive Power (HEP) of the city of Baku, trees were cut down in the public garden near the monument to Nizami Gyandzhevi in front of the Literature and Arts Museum.

The public of the city initiated protests against these actions of the local authorities. The non-governmental organisation, Ecolex, addressed the Ministry of Ecology and Natural Resources (MENR) and asked whether the decision on the issue included a state ecological expertiza (an environmental impact assessment).

In addition, on January 28, 2004, Ecolex made enquiries to the Administration of the Head of Executive Power (HEP) of Baku, in accordance with the requirements of both the Aarhus Convention and the Azeri Law 'On Providing Access to Information about the Environment'. The list of questions included the following:

- (1) Is there an HEP ruling on cutting down the trees? If yes, a copy of the document is requested.
- (2) Was the Baku Department of Ecology of the MENR informed about and did it give permission to cut down the trees? If yes, a copy of the document is requested.
- (3) Was any preliminary research done to justify the cutting down of trees in Nizami public garden? Was the appropriate resolution passed? If yes, a copy of the document is requested.
- (4) Is there a resolution by the Architecture and City Development Department of Baku as to whether the cutting down of the trees in the public garden complied with the master (general) plan of Baku? If yes, a copy of the document is requested.
- (5) Was the cutting down coordinated with Sabail Municipal Authority, since the public garden is located in its territory? If yes, copies of the relevant documents are requested.
- (6) Was the public involved in decision-making on the cutting down of trees in Nizami public garden? Were any consultations with the public held? If yes, copies of appropriate minutes of the meetings are requested.

According to the Law 'On Getting Access to the Information about the Environment', the state body has only ten days to refuse access to information when such a refusal is permissible under the given law. Otherwise,

copies of the requested documents must be provided within one month. Nevertheless there was no response from the Baku HEP Administration in spite of numerous reminders. Thus, on March 3, 2004, Ecolex had to file a complaint entitled 'On granting the right to get access to information about the environment' to the Court of First Instance in the district where the object of the complaint and the HEP Administration are located, i.e., the Sabail district court of Baku.

On March 19, 2004, F. Agasieva, a judge of Sabail district court, refused to accept the complaint, stating it had no lawful grounds, and turned it back to Ecolex with her ruling.

So Ecolex filed a complaint against this decision of the judge. The complaint was heard in the Court of Appeal of the Azerbaijan Republic. The Court of Appeal revoked the unlawful decision of the Court of the First Instance in an injunction on April 30, 2004.

Judge Agasieva had to accept the original complaint for consideration, which happened after the 3 month limit provided for by law. And in the process of considering the complaint, the Judge expressed her opinion about the complaint before the decision was passed, which is also unlawful.

These violations caused Ecolex to appeal to change the judge. But this appeal was also rejected. Finally, on September 9, 2004, Agasieva made a decision to dismiss the complaint of Ecolex. In her decision the judge pronounced the complaint groundless regardless of the fact that Baku HEP representatives testified in court about the fact of cutting down the trees. Moreover, the judge based her decision on a 'formal' answer from the Green Plantation Trust of Baku HEP to Ecolex (September 2, 2004).

But this letter with its formal answer was only delivered by mail to Ecolex after the court decision was made. Even more galling, while announcing the decision the judge refused to give a copy of the letter to Ecolex.

Next, on September 11, 2004, Ecolex appealed against the decision of the Court of First Instance to the Civil Board of Justices of the Court of Appeal. The complaint was against violations of legal norms of Material and Procedural law in the decision of the Court of First Instance and the Court of Appeal. But the highest appellate court confirmed the decision of both of these lower courts. The decision was based on the fact that the appellant had already received the answer from the HEP of Baku. In reaching this decision the High Court did not go deeply into the violations of law described in the appeal of Ecolex.

In conclusion, it has been the only, if unsuccessful, case regarding implementation of the Aarhus Convention in Azerbaijan.

Defence of an activist: a story of dedication

Case study IV, Ukraine:

by Olya Melen, EPL, Ukraine

Twenty years ago the whole universe was shocked by the event that made the name Ukraine memorable to the entire world and put a big black mark on our country. On 26 April, 1986, the Chernobyl nuclear power plant exploded depriving hundreds of thousands of people of normal lives, their health and their homes, and withdrawing vast areas of land from use for hundreds of years. Radiation, pollution, and death — these were the things that Ukrainian society was having to accept.

Now that 20 years have passed since that awful accident and it begins to pass into history, the issue of nuclear power is still important for Ukraine since it refused to give up its nuclear energy capacity and plans. Up to 15 nuclear reactors were planned to come into operation in order to reinforce the energy independence of Ukraine and increase the export of electricity. But alongside

this comes the issue of nuclear waste and used fuel. Such wastes have accumulated in significant amounts all over Ukraine but of course we have no moral right to shift the burden of nuclear waste disposal to future generations. This became the credo of citizen M., who devoted more than 20 years of his life to research and awareness-raising in this field. Living in close vicinity to a South Ukrainian nuclear power plant, M. was afraid for the life and health of his family and the local community. He knew of abundant scientific evidence on the unreliability and hazards posed by the atomic industry.

M. published an article in the local newspaper expressing his own opinion on the safety measures taken at nuclear power plants in Ukraine. This raised the alarm about the urgent and poor condition of nuclear reactors which were releasing pollution and radiation in his region. His article was also aimed at criticism of a new hydro-power facility that had been constructed by the atomic lobby and which would allow the enlargement of existing nuclear power plants in the future. The idea of the author was to wake up the local population and speak the real truth about safety issues in the nuclear industry.

The immediate reaction to the article was that the state enterprise National Nuclear Energy Generating Company, ENERGOATOM, filed a suit in court. The company asked for protection of its honour, dignity and goodwill by obliging the defendant to disclaim the unreliable information spread by M. in his newspaper article. The plaintiff also asked the court for compensation of moral damages to the sum of 100 000 Ukrainian hryvnia (20 000 USD) — a hugely unreasonable amount for a part-time lecturer in a college. This suit was undoubtedly aimed at intimidating M., pressuring him to stop his public activity and limit his freedom of expression.

M. had little hope in the court system and in the bar of the Mykolaiv region, but he asked EPL for legal help with his case in order to hold on to one last chance to see justice done. EPL agreed to provide legal support, treating it as a strategic case that could turn into either a good example of victory for an activist against an attack by big business or into a grim case which would stifle real environmental activism. As one of the first examples of a “strategic lawsuit against public participation” (known as SLAPP suits) there was clear potential for it to generate further similar suits all around Ukraine if successful. So EPL decided to study this new area of law and represent this activist with due skill.

The work on the case was rather complicated. M. had very few reliable sources and not so much evidence to prove the facts, and our opponents were powerful and knowledgeable. We had to work hard to compile enough evidence to support the behaviour of M. and to check the credibility of all of his statements in his article. But we managed to persuade the judge that his authorship had been conscientious.

Aspects of our defence included the experiences of the European Court of Human Rights and enforcement of the European Human Rights Convention in the courts of Ukraine. We found out that a few years previously, Mykolaiv court was the first in Ukraine to apply the norms of the European Convention in a decision.

ENERGOATOM was asking for an astronomical amount of money to be awarded as damages — but they submitted notice to the court that they would transfer all the money awarded by the court to an orphanage. What a generous gesture!

The main argument of the plaintiff in this particular case was their desire to shield society from frightening ide-

as that might cause panic and even result in illegal action. They did not understand that the public has a right to know the truth and indeed sometimes needs to be shocked.

The court case caused a lot of interest among the local community and journalists. The court rooms were always full of people and the court house was often surrounded by demonstrations in support of the local activist and freedom of speech.

After heated and lengthy debates, the judge, trying to be unbiased, issued a decision awarding compensation of 500 USD to the plaintiff and obliged the defendant to disclaim some of the allegations that he had published. The Judge even tried to use the practice of the European Court of Human Rights to support the position of the plaintiff. Our prompt appeal did not change anything and the Appellate Court left the decision of the Court of First Instance in place. The judges were also somewhat indignant about an uncomfortable truth published by M. in his article.

The case has now gone to the Supreme Court of Ukraine for the second appeal. We are hoping to get a more unbiased and balanced decision in line with European Court practice in defamation cases.

Despite the setbacks, this case has shown the nuclear industry that the public is a strong and intelligent counterpart and that disregarding public opinion will result in bigger problems for their strategic plans. Their SLAPP suit did not threaten the public and in fact had a contrary effect on M. and his colleagues — giving them dedication and inspiration for further fights.

The Nest of Justice

«... When someone reads the judgment now it does not seem victorious at all. It's just long, twenty six pages long. You read facts and excerpts from laws, you read positions and statements, you read succinct court opinions and assessments. It's even hard to finish reading it. But then you think about the courage of the judges who made the judgment; you realise that each page of the judgment means a month or two that someone spent working on this case; you understand that it maybe saved the lives of hundreds of people and thousands of birds, and thousands of thousands of other living creatures around you; you suddenly understand that each such judgment is one piece of a puzzle, a puzzle created around the world to help protect the earth; you clearly see other small puzzles around you — posters on your way to work, presentations and protests on TV, people put into jail for raising their voice; you finally acknowledge this puzzle is not new, it was founded a long time ago to fight an endless battle that some people see and others do not (or will not) see. That's when each word in the judgment becomes a sword or bullet that others will use again and again, in their brave struggle to save the world. They dare not think about failing or they would not start, but they just need those swords and bullets to help them go on.»

