

## **The European Court Of Human Rights And The Right To The Environment**

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### **ABSTRACT**

*The interpretation of the rights included in the European Convention for the Protection of Human Rights and Fundamental Freedoms, by the Court of European Human Rights (Court,) is of significant importance to respond environmental concerns within the context of human rights. The Court's approach regarding environmental protection is analyzed through two different categories, taking into account the diverse position of the Defendant States in the relevant cases: judgments related to interference in individual rights based on the protection of the environment as part of the general interest, and judgments related to interference in individual rights derived from environmental degradation based on the economic well-being of the country. The clarification of two main questions has been the goal through the evaluation of these issues: one is the degree of willingness of the Court to interpret the rights in the Convention to protect the environment in general; the other is whether the Court has a tendency to enlarge the traditional principles of human rights.. In answering these questions, the specific characteristics of the right to the environment and its main differences from traditional human rights were taken into account. Judgments with regard to Articles 2 and 8 of the Convention are particularly the focus of the evaluation. The concepts of general interest, long term focus and the duty of individuals are considered to be crucial aspects of the interpretation process, with regard to both the rights themselves and their restrictions under the Convention, to protect the environment.*

### **ÖZET**

*Avrupa İnsan Hakları Sözleşmesine, bütün çabalara karşın, henüz çevrenin korunması hakkında bir hüküm eklenememiştir. Bu durumda Avrupa İnsan Hakları*

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*Mahkemesi'nin Sözleşmedeki hakları önüne gelen ve çevreyi bir şekilde ilgilendiren davalarda yorumlaması büyük önem taşır. Mahkemenin bu bağlamdaki yorumu iki farklı çerçevede gerçekleşmiştir: İlkinde devletlerin çevreyi korumak için yaptıkları bazı faaliyetlerinin ikincisinde ülkenin ekonomik refahı gerekçesini dayanak alan çevreyi bozucu girişimlerinin Sözleşmenin koruduğu bazı hakları ihlal etmesine ilişkin davalar söz konusudur. Bu davalardaki kararlar geleneksel insan hakkı anlayışındaki özellikler ve çevre hakkının özgünlüğü çerçevesinde irdelenmiş, Mahkemenin belirtilen hak anlayışının dışına çıkan ve çevre hakkındaki farklı yanları tanıyan ya da ortaya koyan bir içtihadı henüz geliştirmedeği saptanmıştır. Ancak çevresel bozulmanın dayanak oluşturduğu hak ihlali savlarında Mahkeme özellikle özel yaşama saygı hakkını dayanak olarak kabul ettiği gibi bu hakka oldukça geniş bir kapsam çizmiştir. Öyle ki bu hak artık sağlıklı bir çevrede yaşama hakkının dolaylı -zımnî- dayanağı sayılmaktadır. Çevrenin korunması açısından asıl önemli gelişme ise Mahkemenin çevre hakkına ve çevrenin korunmasına ilişkin bazı özgün kavramların önemini gösteren yorumlar yapması halinde mümkün olabilecektir.*

**Keywords:** *The general interest in environmental protection, right to privacy, right to property, right to life, the holistic approach, the duty to protect the environment, long term consideration, environmental degradation, economic well being of the Country, margin of appreciation, legitimate purpose, fair balance, positive duties of States.*

**Anahtar Kelimeler:** *Çevresel Bozulma, çevrenin korunmasındaki genel menfaat, mülkiyet hakkı, özel yaşama saygı hakkı, yaşam hakkı, takdir alanı, adil bir denge, devletin pozitif ödevleri, bütünsel yaklaşım, ülkenin ekonomik refahı, çevreyi koruma ödevi.*

## I. INTRODUCTION

Human rights conventions, either regional or universal, are of great importance since they constitute a fundamental basis for the inclusion of rights into constitutions as well as for the proper implementation and application of them at the national level. Therefore the expansion of fundamental rights listed in these documents, through either the adoption of new protocols or the addition of new provisions to the present documents to include new rights which have emerged as a response to the latest developments and needs in societies, is of great value to all human beings.

Hence it is not surprising that efforts towards the introduction of a right to the environment, or at least the introduction of a provision concerning the importance of environmental protection, into the regional and universal human rights conventions, as well as constitutions at the national level, have a long history. It is true that the history of these kinds of claims, which have been put forward by environmentalists, scholars and institutions, go back to the

perception of environmental problems on the international agenda at the beginning of the 1970s.

Unfortunately, in spite of these continuous attempts, presently neither the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) nor the International Covenant on Civil and Political Rights, has any provision regarding environmental protection, let alone describing a right to the environment, implicitly or explicitly, contrary to the positive developments at the national levels. Today provisions aimed at protection of the environment are included in the majority of national constitutions; even the ones dated before 1970 have done so through amendments.

Consequently *interpretation* as a legal instrument gains a significant priority, since it contributes to the continuous expansion of the list of the fundamental rights in the abovementioned conventions. If one looks at the history of the human rights, he or she can clearly see that some rights which were not explicitly foreseen by the drafters of these conventions were created by the judiciary as so called “subrights” through the process of interpretation. This trend can be observed in the light of the judgments of almost all human right bodies. Hence environmental protection as the latest global concern of humanity has not been excluded from this development. However it covers completely new aspects as compared to the other concerns of individuals since it is mainly based on the fact that it represents *general interest* for all.

This article will evaluate several judgments of the European Court of Human Rights (the Court) from an environmental perspective. The court has indeed played a creative role in the face of situations not envisaged by the drafters of the Convention. Hence, the judgments concerning environmental protection will be analyzed in the context of two different analyses, and then these evaluated aspects will be assessed in the light of the specific characteristics of a “right to the environment,” and traditional human rights concepts before reaching concluding remarks. The principal aim of the article is to underline two points: first is the concept of *general interest* in protection of the environment and the other is the *duty* of individuals to protect the environment. The main argument in this article is that the dynamic interpretation of these two concepts according to their essence will contribute both to the effective protection of the environment, clarification of the relations among several human rights and the *core* of human rights as well as the restrictions envisaged for these rights.

The article is organized as follows: after the introduction, Section II discusses a number of cases where the Court has tried to balance protection for

the environment and the protection of individual rights while Section III evaluates cases against a concept of human rights. Section IV then concludes.

## II. ENVIRONMENTAL PROTECTION IN THE JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS

The Court's relevant jurisprudence can be analyzed by classifying the case in two distinct categories as already indicated in the literature<sup>1</sup> according to the involvement of traditional human rights in environmental protection.<sup>2</sup> During this evaluation some crucial aspects as whether there are general criteria or specific criteria in solving conflicts between different interests would also be touched upon.

The applicants for the analyzed cases,<sup>3</sup> grounded their actions in several Articles of the Convention. However the Court mostly took into consideration Article 8 of the Convention and Article 1 of Protocol 1 to the Convention, with Article 2 of the Convention occasionally used as a basis for its judgments. Therefore this article will only emphasize the judgments based on the rights stated in these three Articles -- the right to respect for private and family life (Article 8); the right to property (Article 1 of the Protocol), and the right to life (Article 2).

The first paragraphs of these first two Articles encompass the right itself while the second paragraphs contain the legal basis to justify some restrictions on them. Therefore to truly understand the judgments of the Court that are discussed below, what the Convention states in the all paragraphs of these Articles should be discussed.

Article 8 of the Convention states that:

### Right to respect for private and family life

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<sup>1</sup> Daniel G. San Jose, *Environmental Protection and the European Convention on Human Rights* (Council of Europe, 2005); Matthew Creven, *Human Rights and the Environment: The Case of Balmer-Shafroth and Others v. Switzerland*, 7 REVIEW OF EUROPEAN COMMUNITY AND INTERNATIONAL ENVIRONMENTAL LAW 93 (1998).

<sup>2</sup> See generally Robin Churchill, *Environmental Rights in Existing Human Rights Treaties*, in HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION 89 (Alan Boyle and Michael Anderson, eds., Oxford University Press 1996); Alastair Mowbray, *The Creativity of the European Court of Human Rights*, 5 Human Rights Law Review 57 (2005).

<sup>3</sup> Except for a few ones dated before 1990 and the one cited *infra* note 9 below, These cases, in general, are available at <http://www.echr.coe.int> (last visited Dec. 18, 2007).

Everyone has the right to respect for private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as in accordance with law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of other.

Article 1 of the Protocol 1:

Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

In general, States have obligations under human rights and constitutional law to attend to their duties that they have acknowledged by every paragraph of these Articles. More clearly, on one hand they have to guarantee the individuals’ rights protected by the Convention but on the other hand they have to protect public interests in general. That means human rights can be restricted by States for the purposes of public interest; however this should be done according to the requirements specified in constitutions as well as the Convention. In this context, one of the major justifications for such restrictions is the protection of the general public interest.

Therefore the applicants’ claims concern violations grounded in the first paragraphs while the limitations that may be imposed by the defendant States are based on the second paragraphs; as far as the right to property is concerned also the second sentence of the first paragraph applies.

**A. Judgments Related to Interference Based on the Protection of the General Interest**

The core point in this category of judgments is the subject as well as the purpose and reason of the limitations imposed by the Defendant States in the applicants’ rights. These interferences represent various methods for the protection of the environment. States have limited individual rights when necessary to accomplish their duty of safeguarding the environment on behalf of the general interest. In short, protection of the environment is the reason why many of the alleged interferences are brought before the Court by the applicants

on the basis that they are violating their alleged rights. Therefore the general interest represented in the activities of the Defendant States concerning environmental protection and individual interest protected by the individual rights claimed are competing interests in this category, and there is a conflict between them. In this context the restrictions specified in the Convention instead of the right itself, serve as the legal basis for the protection of the environment.

### **1. The main examples of interference with rights**

State interference with rights that reflect the relevant purpose and reasons providing a legal basis for the States' activities to protect the environment are:

-Rejection of a planning permit for the construction of an industrial warehouse. Aim: Protection of a "green-belt". Claim: Breach of the right to property.<sup>4</sup>

-Restriction on fishing with certain equipment, in certain areas and in certain times. Aim: Safeguarding future fish stocks. Claim: Breach of the right to property.<sup>5</sup>

-Denial of a permit to keep the estate more than two years. Aim: Promotion of agriculture. Claim: Breach of the right to property.<sup>6</sup>

-Denial of an exploitation permit for gravel. Aim: Restoration of the relevant area. Claim: Breach of the right to property.<sup>7</sup>

-Refusal of a planning permit to place a gypsy caravan, requiring the discontinuance of the unauthorized use of caravans and removing of them from where they placed. Aim: Protection of the rural character of the relevant site, and the visual aesthetic of the countryside. Claim: Breach of the right to privacy.<sup>8</sup>

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<sup>4</sup> Pine Walley Developments Ltd and Others v. Ireland, No. 12742/87, (Eur. Ct. H. R. 1991).

<sup>5</sup> Posti and Rahko v. Finland, no. 27824/95 (Eur. Ct. H. R 2002); *see also* Alatulkkila and Others v. Finland, Nr. 33538/96 (Eur. Ct. H. R 2005)(dealing with restriction of fishing).

<sup>6</sup> Hakansson and Stuesson v. Sweden, Nr. 11855/85 (Eur. Ct. H. R 1990).

<sup>7</sup> Fredin v. Sweden, Nr. 12033/86 (Eur. Ct. H.R. 1991).

<sup>8</sup> Coster v. the United Kingdom, Nr. 24876/94 (Eur. Ct. H.R. 2001); Buckley v. the United Kingdom, Nr. 20348/95 (Eur. Ct. H.R. 1995).

- Reversal of the grant of a planning permit for the construction of a road to an island. Aim: Protection of the habitat of the white-backed woodpecker. Claim: Breach of the right to property.<sup>9</sup>

- Issue of an order to demolish a storage building. Aim: Orderly development of the countryside. Claim: Breach of the right to property.<sup>10</sup>

## 2. The Judgments of the Court

Although the applicants in the abovementioned cases complained also about the breach of some of their other rights protected under assorted articles (such as Articles 9, 10, 11 of the Convention) the Court evaluated the abovesited claims mostly under the right to property (Article 1 of Protocol 1 to the convention) and partly the right to privacy (Article 8).

The Court, in this category of judgments, weighed the competing interests in the cases, taking into account both the first and second paragraphs of the articles mentioned *supra* and found that there was not any breach of the applicants' alleged rights. Thus the Court ruled on behalf of the Defendant States. It should be stressed that the Court indeed accepted that there was a limitation of the applicants' rights; however after weighing the competing interests, by considering the conflicting duties of the States, based on the first and second paragraphs of the Articles in question, and in the light of the below mentioned criteria, the Court ruled that a fair balance had been struck and the limitations were justified. This fair balance indeed indicates that the general interest of the community prevails over the interest of the individual.<sup>11</sup> Consequently the 'no violation judgments' (justifying the limitations on rights protected under the Convention), and, as their legal basis the second paragraphs of the claimed rights, have indirectly contributed to the protection of the environment.

The Court referred to several criteria or main concepts before to reach the conclusion. First, the Court assessed whether the alleged interference in the claimed rights was lawful or not. This means that such interference should be in accordance with the internal law of the Defendant State, and should not be arbitrary. The Court assessed the existence of lawfulness in light of the rule of law which is one of the fundamental principles of democratic society.

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<sup>9</sup> *Airi Aarniosalo and Others v. Finland*, Nr. 39737/98 (Eur. Ct. H. R. 2005).

<sup>10</sup> *Saliba v. Malta*, Nr. 4251/02 (Eur. Ct. H.R. 2005).

<sup>11</sup> *See San Jose*, *supra* note 1, at 58.

Second, the Court searched whether there was a *legitimate purpose*, meaning whether the Defendant State pursued a public interest with the relevant limitations on the claimed rights. This concept, is indeed, underlined as ‘except in the public interest’ in the first sentence of the first paragraph of Article 1 of Protocol 1 to the Convention, and as ‘in accordance with general interest’ in the second paragraph of the same Article. In general, under the Court’s jurisprudence, public interest is considered to be an extensive concept and consequently States enjoys a wide margin of discretion. Thus it should be respected unless it is without reasonable foundation.<sup>12</sup>

Third, the Court assessed the existence of a fair balance between the two competing interests; in doing this, the Court referred to the concept of proportionality, and tried to figure out whether the margin of appreciation was exceeded by the Defendant States. The Court determined whether the Defendant States had maintained a reasonable proportionality between the means used to interfere with rights and the legitimate aim of the interference; between the general interest of the community which is indeed the cause of the alleged interference and the requirement for the protection of the applicants’ claimed rights. Hence the Court tested the margin of appreciation of the States by taking into consideration the above mentioned relevant reasons or purposes of interferences indicated in the analyzed cases and by referring to some subordinate concepts such as the necessity in a democratic society, and necessity to control the use of property which are stated in the Articles in question.

The Court also referred to some more concrete evaluation techniques such as whether the restrictions caused a considerable decrease in the value of the property and, if there is such a decrease, whether it is accurately compensated by the Defendant State or not. The core point of this assessment is finding out whether the applicant had to bear a disproportionate and excessive burden.

### **3. Bases of the Judgments**

After the above cited evaluation, the Court, when ruling in favor of the relevant Defendant State and so rejecting the claims of violation of rights, justified the reasons for the interference, in general, on the argument that they are related to environmental purposes in the general interest, in the sense of the second paragraph of Article 1 of Protocol 1, and accepted environmental protection as a legitimate goal. The Court did not challenge this legitimacy even in cases which it admitted the existence of the alleged violations but still ruled in favor of the applicants. In these cases where the alleged infringements based

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<sup>12</sup> See *Zvolzsky and Zvolzka v. The Czech Republic*, Nr. 46129/99, para. 67 (Eur. Ct. H.R. 2002).

on the protection of nature reserve,<sup>13</sup> safeguarding the national forest resources,<sup>14</sup> reforestation<sup>15</sup> or restitution of agricultural land,<sup>16</sup> the Court relied on the argument that the proportionality and fair balance had not been maintained.

The following statements made by the Court in the abovementioned cases clearly reflect this reasoning of the Court:

-“Protection of the environment is an increasingly important consideration.”<sup>17</sup>

-“There is a legitimate aim of protecting environment as part of general interest.”<sup>18</sup>

-“The interference was designed and served to ensure that the relevant planning legislation aiming to preserve a green belt was correctly applied by the local government.”<sup>19</sup>

-“Pursued the legitimate general interest in protecting of the fish stocks.”<sup>20</sup>

In this category of cases, contrary to second category of cases cited in Section II.B. *infra*, the Court showed a great deference for States when determining the steps to be taken to ensure compliance with the Convention. The Court often indicated that in cases involving environmental concerns and having complex characteristics, such as planning issues, States must be allowed a great degree of deference. In this context the Court repeatedly emphasized that national authorities are, in principle, better placed than an international court to evaluate local needs and conditions.

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<sup>13</sup> *Mateos e Silva Ltd. and Others v Portugal*, Nr. 15777/89 (Eur. Ct. H.R. 1996).

<sup>14</sup> *Papastavrou and Others v. Greece*, Nr. 46372/99 (Eur. Ct. H.R. 2003).

<sup>15</sup> *Katsoulis and Others v. Greece*, Nr 66742/01 (Eur. Ct. H.R. 2004).

<sup>16</sup> *Zvolsky and Zvolska v. The Czech Republic*, Nr. 46129/99 (Eur. Ct. H.R. 2002).

<sup>17</sup> *Fredin v. Sweden*, Nr. 12033/86, para. 48 (Eur. Ct. H.R. 1991).

<sup>18</sup> *Coster v. the United Kingdom*, Nr. 24876/94 (Eur. Ct. H.R. 2001); *Saliba v. Malta*, Nr. 4251/02, para. 44 (Eur. Ct. H.R. 2005).

<sup>19</sup> *Pine Walley Developments Ltd and Others v. Ireland*, No. 12742/87, para. 59 (Eur. Ct. H. R. 1991).

<sup>20</sup> *Posti and Rahko v. Finland*, no. 27824/95 (Eur. Ct. H. R 2002); *see also Alatulkkila and Others v. Finland*, Nr. 33538/96, para 67 (Eur. Ct. H. R 2005).

#### 4. Accomplishments

Under the above-cited jurisprudence, consequently, both the “no violation” judgments and, as the legal basis for justification of the alleged restrictions, the concept of *general interest* under the meaning of the second paragraph of Article 1 of Protocol 1, has played a particular role in the protection of the environment. Moreover this concept has been considered over a relatively broad extent, covering elements of the environment varying from the classical elements of the environment, such as local planning of the land, agriculture and forest, to the protection of new components such as green belts, nature reserves, fish stocks, and endangered species like the woodpecker.<sup>21</sup> Hence the Court did not follow a very narrow approach when analyzing the meaning as well as the scope of the environment. Also, the Court accepted that protection of the environment can be a legitimate governmental purpose, and placed it with the other commonly accepted issues that comprise the general interest.

##### **B. Judgments Related to Interferences Derived From Environmental Degradation**

The central point in this category is again the reason or subject and aim of the alleged governmental interference in rights by the Defendant States. However this time, different from the previous category, these interferences stem from different sources of environmental pollution, or if we put it in legal terms, various *nuisances* grounded in noise or other types of pollution sources. Clearly adverse impacts caused, in general, by the operation of various industrial facilities have been the subjects of relevant cases.

Therefore the Court’s verdicts on the existence of the alleged violation of individual rights through these kinds of interference mean that these activities or omissions (failures to act) of States are not justifiable under the Convention. Hence the protection of individual interests through the perceived rights coincides with the general interest of society (protection of the environment) since the elimination of the violations would depend on the removal of environmental pollution–interferences. Hence there is a complimentary relation between environmental protection and the applicants’ rights ensured in the first paragraphs of both Articles 2 and 8. The need to protect individual rights inevitably leads to the protection of the environment.

##### **1. The Main Examples of Environmental Interference**

-Interference in the health and well-being of the applicants through the hazardous operation of industrial facilities, such as a waste treatment plants (the

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<sup>21</sup> This species have been the subject of two cases: *Kukkola v. Finland*, Nr. 26890/95, (Eur. Ct. H.R. 2005)(decided under Article 6 of the Convention in favor of the applicant due to the length of the proceedings); *see Airi Aarniosalo and Others v. Finland*, *supra* note 9 above).

complaint alleged that the State did not take the necessary steps to stop the alleged harmful effects of the plant from affecting the applicant and her family<sup>22</sup>), a chemical factory (it was claimed that the State had failed to provide information about risk factors and how to proceed in the event of an accident at the nearby facility<sup>23</sup>), and a plant for the storage and treatment of 'special' waste (it is alleged that the State had failed to suspend operation of a plant located close to dwellings that generated toxic emissions).<sup>24</sup>

-Interference in the health of the applicant by way of nighttime disturbances, including noise caused by premises that operate under a governmental license, such as nightclubs. It was claimed that the relevant local authorities had failed to take action to stop the noise, which was beyond the permitted levels.<sup>25</sup>

-Interference in the health and well-being of the applicant through the operation of a gold mine. The complaint alleged that the government allowed the operation of the mine so as to create risks to human health and the environment, contrary to the decisions of a national administrative court.<sup>26</sup>

-Interference in the health and well-being of the applicant by way of exposure to toxic chemicals during tests related to chemical weapons, such as mustard and nerve gas. The complaint alleged that the government had failed to provide information about the risks of these tests.<sup>27</sup>

-Interference in the health and well-being of the applicant by way of toxic substances from a steel-producing plant. The complaint alleged that the Government had failed to prevent prolonged exposure to the hazardous emissions caused by the operation of the steel plant.<sup>28</sup>

-Interference in the health and well-being of the applicant through the risk derived from a methane-gas explosion in a garbage dump. The complaint

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<sup>22</sup> Lopez Ostra v. Spain, Nr. 16798/90 (Eur. Ct. H.R. 1994).

<sup>23</sup> Guerra and Others v. Italy, 14967/89 (Eur. Ct. H.R. 1998).

<sup>24</sup> Giacomelli v. Italy, Nr. 59909/00 (Eur. Ct. H.R. 2006).

<sup>25</sup> Moreno Gomez v. Spain, Nr. 4143/02 (Eur. Ct. H.R. 2004).

<sup>26</sup> Taşkın and Others v. Turkey, Nr. 46117/99 (Eur. Ct. H.R. 2004).

<sup>27</sup> Roche v. the United Kingdom, Nr. 32555/96 (Eur. Ct. H.R. 2005).

<sup>28</sup> Fadeyeva v. Russia, Nr. 55723/00 (Eur. Ct. H.R. 2005).

alleged that defendant State had not informed the applicant of the potential dangers to himself and his family by living in the vicinity of the dump.<sup>29</sup>

Some other environmental nuisances such as exposure to the negative effects of nuclear power plants,<sup>30</sup> or floods caused by a hydroelectric project also have been the subject of some other cases and adopted by the Court as interference in claimed rights. However the decisions were justified on the grounds of the economic well-being of the country. In addition, noise pollution from airports is also considered by the Court to be interference with the right to privacy, and two related cases<sup>31</sup> were concluded with friendly settlements while another one was concluded with a finding of no violation since the interference was found to be justifiable.<sup>32</sup> Therefore these cases are not included into the analyzed cases. An environmental nuisance derived from thermal power plants was also considered to be an example of interference as a result of an application<sup>33</sup> made regarding the failure of authorities to implement a domestic court's order to eliminate pollution from three thermal power plants. However, since this case was considered to be a breach of the right to a fair trial defined in Article 6 of the Convention, and not Article 2 or 8, it was not included in the analyzed cases either.

## 2. Judgments of the Court

The applicants in the cited cases claimed the breach of assorted rights under Articles 3, 6, 10, and 13 of the Convention in addition to the right to life and the right to the respect of privacy. However, the majority of these cases were considered by the Court under the violation of right to privacy, based on Article 8, except the *Öneryıldız v. Turkey*, which was considered under the right to life from Article 2. Indeed this case is the first, and presently only, prime example of a possible violation of the right to life due to environmental interference.

The Court, in reaching its judgment, again had to weigh the general interest, represented in the governmental interference by the Defendant State, and individual rights protected under Articles 2 and 8. By doing this, the Court evaluated again whether a fair balance had been struck and whether the

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<sup>29</sup> *Öneryıldız v. Turkey*, 48939/99 (Eur. Ct. H.R. 2004).

<sup>30</sup> *Balmer-Schafroth and Others v. Switzerland*, Nr. 22110/93 (Eur. Ct. H.R. 1997).

<sup>31</sup> *Arrondelle v. the United Kingdom*, Nr. 7889/77 (Eur. Ct. H. R. 1982); *Baggs v. the United Kingdom*, 9310/81 (Eur. Ct. H.R. 1987).

<sup>32</sup> *Hatton and Others v. the United Kingdom*, Nr. 36022/97 (Eur. Ct. H.R. 2000).

<sup>33</sup> *Okyay and Others v. Turkey*, Nr. 36220/97 (Eur. Ct. H.R. 2005).

discretion permitted had been exceeded by the Defendant States. Therefore the Court referred to the same criteria mentioned above as *legality*, *legitimate purpose*, and *proportionality* to assess these aspects. At the end, the Court reached the conclusion that there had been a breach of the applicants' rights, and ruled on behalf of the applicants. Thus, interference in the applicants' rights were not justified, as different from its decision in the first category judgments discussed *supra* in Section II.A.

However the Court took a more rigid approach when assessing the discretion of the Defendant States than the judgments explained above in the first category of cases. Hence the Court took a more sensible and firm approach when evaluating the impact of interference with the applicants' claimed rights. More clearly, the Court did not consider the mere existence of the *relevant reasons* to be enough and looked for whether the chosen means were *strictly necessary* to achieve the legitimate governmental purpose desired.

Thus the Court has gone beyond the relevant reasons put forward by the Defendant States and challenged them on the basis of whether they were sufficient or not. In this regard, the Court made it clear that if there are less grievous means, other than the one applied, the resulting interference cannot be regarded either as proportional or necessary in a democratic society. To put it more clearly, in order for there to be no breach of the applicants' claimed rights, there should not be any other less restrictive means available that will accomplish the legitimate governmental purpose.

Therefore, the Court, in ruling on behalf of the applicants, first grounded its argument on the fact that the Defendant States, in the cited cases, did not strike a fair balance between the competing interests – public and private. The Court acknowledged that the alleged environmental pollution adversely affected the applicants' right under both Articles 2 and 8, and prevented the applicants from exercising their rights ensured under these Articles.

### **3. The Bases of the Judgments**

The Court, in ruling on behalf of the applicants, in general, based its decisions on the argument that the main reason put forward by the States – the protection of the economic well-being of the country, cannot be considered to be sufficient justification under the first paragraphs of both Articles 2 and 8 of the Convention. The Court acknowledged that Defendant States failed to accomplish their obligation to protect these rights of the applicants. Thus the Defendant States did not strike a fair balance between the competing interests in the cited cases.

#### 4. Accomplishments

Regarding this category of judgments, two aspects are of great importance from the environmental protection perspective:

a. Positive duties of States: To a certain extent, the Court clarified and enlarged the scope and content of the obligations imposed on States under Articles 2 and 8 of the Convention. The Court admitted that the *negative duties* of States in a classical sense, meaning refraining from violation and providing means to fulfill fundamental rights, are not enough to ensure the individual rights. Thus the Court underlined that, in addition to these duties, States also have *positive obligations* such as to take all *appropriate* and *reasonable* measures to prevent risks (to the right) to life and the right to privacy. For instance, in a case the Court cited

...administrative authorities had known or ought to have known that the inhabitants of certain slum areas of Ümraniye were faced with a real or immediate risk, both to their physical integrity and their lives on account of deficiencies and cannot, moreover, be deemed to have done everything that could be reasonable be expected of them...<sup>34</sup>

To inform the applicants about the real and immediate risks they faced through environmental interference has also been considered to be among the duties of States. With regard to this obligation, the Court stated in another case that the State has not fulfilled the positive obligation to provide an effective and accessible procedure enabling the applicant to have access to all relevant appropriate information which would allow him to assess any risk to which he had been exposed during his participation in the tests.<sup>35</sup>

States have the cited obligations even in the situations where the interference has been caused by the private sector. For instance, in one case the Court underlined that “Article 8 may apply in environmental cases whether the pollution is directly caused by the State or whether State responsibility arises from the failure to regulate private-sector activities properly.”<sup>36</sup>

Therefore it is true that the Court has gone beyond the traditional concept of negative duty as far as the classical rights are concerned. However the Court did this in a cautious way since, as was pointed out in *Öneryıldız v. Turkey*, it took into account only the well-defined circumstances of the relevant cases, and did not admit that every presumed threat obliges the authorities to take concrete measures to avoid that risk.

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<sup>34</sup> *Öneryıldız v. Turkey*, 48939/99, para 87 (Eur. Ct. H.R. 2004).

<sup>35</sup> *Roche v. the United Kingdom*, Nr. 32555/96, para 167 (Eur. Ct. H.R. 2005).

<sup>36</sup> *Giacomelli v. Italy*, Nr. 59909/00, para 78 (Eur. Ct. H.R. 2006).

b. Expansive interpretation. There is no doubt that the Court made a considerable contribution to the concept of environmental protection due to the wider interpretation of the right to privacy under Article 8 of the Convention. The Court accepted quite a large scope for this right. It is worth to note the well-known statement in *Lopez Ostra v. Spain* in this context:

Severe environmental pollution may affect individuals' well being and prevent them from enjoying their homes in a way as to affect their private and family life adversely, without however seriously endangering their health.<sup>37</sup>

The Court considered the negative effects on human health of various types of environmental pollution, such as night time disturbances by way of noise and light, and negative impacts derived from some industrial facilities, under this right instead of the right to life. Allegations concerning the failure of States to inform citizens about the potential risks also have been considered under the same right instead of the right of information ensured in Article 10 of the Convention. The right to sleep is understood to be an essential part of the right to privacy. Even disturbances affecting the traditional ways of life of indigenous people who lives side-by-side with natural resources, as well as the gypsy way of life, are considered to be part of this right.

Consequently the right to privacy has been considered in legal literature to be a basis for the protection of the environment and recognition of an implicit right to live in a healthy environment.<sup>38</sup>

### III. EVALUATION OF THE COURT'S JUDGMENTS UNDER THE RIGHT TO THE ENVIRONMENT AND TRADITIONAL HUMAN RIGHTS CONCEPT

This evaluation will be made by answering to these two following interrelated questions:

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<sup>37</sup> *Lopez Ostra v. Spain*, Nr. 16798/90, para. 51 (Eur. Ct. H.R. 1994).

<sup>38</sup> See Jean-Pierre Marguenaud, *Droit de L'homme à L'environnement et Cour Européenne des Droits de L'homme (Human Rights for the Environment and the European Court of Human Rights)*, 2 REVUE JURIDIQUE DE L'ENVIRONNEMENT (JUDICIAL REVIEW OF THE ENVIRONMENT) 15/s, 16/s-19/s (2003); Yves Winisdoerffer, *La Jurisprudence de la Cour Européenne des Droits de L'homme et L'environnement' (Jurisprudence of the European Court of Human Rights and the Environment)*, 2 REVUE JURIDIQUE DE L'ENVIRONNEMENT (JUDICIAL REVIEW OF THE ENVIRONMENT) 213, 215 (2003); Harry Post, *The Judgment of the Grand Chamber in Hottin and Others v. the United Kingdom or: What is left of the "indirect" right to a healthy environment?*, 4 NON STATE ACTORS AND INTERNATIONAL LAW 135 (2004).

1. Do the cited judgments, and current jurisprudence of the Court provide a basis to protect the environment in general and thus provide a direct legal basis for the right to the environment?

2. Do these judgments challenge the traditional concept of human rights?

The immediate answer to these two questions is “no.”

The reasons for this reply will be based on the reasoning of the Court under jurisprudence related not only the above categorized judgments but also its other judgments with regard to some other cases which are concluded in different rulings, and on the different nature of the right to the environment. Therefore the issue will be explained separately according to the first and second category judgments after the explanation on the right to the environment.

#### **A. Specific Characteristics of the Right to the Environment: Differences from the Traditional Human Rights Concept**

It should be noted that the purpose of this article is not to discuss the ongoing debates in the immense literature on the issue but to underline several central aspects.<sup>39</sup>

Currently the formulation as the “right to the (clean, sound or, decent) environment” reflects a commonly-shared view as far as the literature and the provisions in most national constitutions are concerned. The subject of the right is that human beings, at least at a theoretical level under this formulation, have the right to a decent environment. This view also coincides with the traditional concept of human rights which primarily aims to protect human beings. The other goods or organisms are only protected through their affiliations with human beings under this concept as well as under classical law. Therefore only humans are entitled to human rights. This is indeed the consequences of another traditional social perception that environmental goods, other than human species, have primarily instrumental value, meaning they exist only for human benefit, and do not have intrinsic worth in themselves. At the present stage of environmental protection, the *anthropocentric approach* is still dominant worldwide mainly because of this fact. On the other hand, there is an undeniable practical fact that even if the rights are also granted to organisms other than human beings, the implementation and enforcement of them would be verified only by human beings.

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<sup>39</sup> See Nühket Turgut, ÇEVRE HUKUKU KARŞILAŞTIRMALI İNCELEME (COMPARATIVE ANALYSIS OF ENVIRONMENTAL LAW) 131-69 (Savaş Yayınevi 2001)(containing a comprehensive assessment of the debate as well as the related literature).

Consequently it seems that presently the most proper formulation should be *the right to live in a healthy environment* since to take a radical step by legally granting to every organism a right to the environment will not be possible as well as practical. The formulation as simply “the right to a healthy environment” can be seen as more appropriate due to its more comprehensive scope and formulation in terms of environmental purposes. However the first cited formulation is more useful since it linked the issue directly with the right to life. Hence, even if it is formulated among the traditional human rights, this right has specific characteristics mainly because of ecological facts such as the interdependence of all organisms, and the intrinsic value, mentioned above, of every species. First of all, two aspects are of great importance in the cited formulation: one is the establishment of an explicit link with *the right to life*;<sup>40</sup> the other is qualifying the environment in terms of *health*. Therefore, to live and to be healthy are the most important two aspects of the lives of all organisms when they are combined together. The term *healthy environment* indicates that organisms other than human beings also are protected under the expansive meaning of the word “environment.” Since the concept of ecosystem covers all living and nonliving organisms, including human beings, literally the term environment encompass all of these in its broadest meaning. Thus even at the conceptual level, human beings are the direct subject of this right; in practice the other organisms also become at least *indirect subjects*.<sup>41</sup>

In this context, the issue needs another clarification to prevent the use of this right solely on behalf of the purely personal and narrow individual interests of the right holders (human being). This aim can be, and in fact is, accomplished by including the dimension of *duty* or obligation of all natural and legal persons, apart from States, into the formulation of this right. Indeed, conscience of this crucial point, several national constitutions underlined the duties of individuals or citizens (apart from States), either as complementary to the provisions which define the right itself or as a separate provision. This aspect points out one of the differences of the right to the environment when compared to established human rights – it indicates that this right entitles *a right combined with obligations to its subjects*, contrary to established human rights, which brings obligation only for third parties to protect the right holder. This point can be also considered as the reason behind a suggestion in the literature

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<sup>40</sup> There is certainly an inseparable relation between the concepts of the right to life and the right to live.

<sup>41</sup> For a similar assessment, see Alexandre Kiss, *Définition et Nature Juridique d'un Droit de L'homme a L'environnement (The Definition and Judicial Nature of Human Rights for the Environment)* in ENVIRONMENT AND DROITS DE L'HOMME (ENVIRONMENT AND HUMAN RIGHTS) 13, 16-17 (Pascale Kromarek, ed., UNESCO 1987).

relating to the formulation of a *right to environmental protection*<sup>42</sup> which indeed can be challenged on the fact that the term of protection mainly encompasses the duties, and a right only cannot be defined referring to such a term. The key point under the *duty* concept is that the protection of the environment is not solely dependant on the discretion of human beings. This *duty* concept includes not only a passive aspect of not to cause to any environmental degradation but also an active obligation to act against polluting activities. It is certain that the *participation principle* of environmental law has been developed under this fact, and it entails a duty for individuals to protect the environment besides a procedural right.

Since the right to the environment covers the protection of all organisms, including future generations, in light of the larger meaning of the environment and environmental protection, it has *collective* characteristics contrary to the *individualistic* nature of traditional human rights.<sup>43</sup> This collective characteristic is inevitably connected to the protection of the *general interest*. Because of these two interrelated characteristics, it is difficult to clarify an *identifiable individual interest* in every case to be contrary to the classical human rights concept.

Today, at least in theory, it is widely accepted that the protection of the environment is in the *general interest*, which has a large and collective meaning covering all human beings including future generations. This concept mainly developed in light of the special characteristics of the environmental problem set as well as environmental protection. For instance, the environment constitutes a *common good* or *common patrimony* for all, and this leads to the necessity of a *holistic approach* as well as the longer-term considerations. Therefore in the short term, there may be conflict between this interest and the interests of the fundamental rights of individuals. However in the long term, the protection of the environment and individual interests coincide. This aspect underlines the importance of considering the long term in dealing with conflicts among different interests; it can be therefore accepted that there is a logical basis to solve several conflicting issues by putting the general interest in environmental protection before other general interests. It seems that currently the Court did not consider the particular nature of this concept by separating it

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<sup>42</sup> See *Id.*, at 25; see also Ved P. Nanda, INTERNATIONAL ENVIRONMENTAL LAW AND POLICY 66. (Transnational Publishers 1995)(supporting this view).

<sup>43</sup> For instance the term “next generation” has a collective meaning. See Edith B. Weiss, *What Obligations Does Our Generation Owe to the Next? An Approach to Global Environmental Responsibility*, 84 American Journal of International Law 198, 2004 (1990); Edith. B. Weiss, FAIRNESS TO FUTURE GENERATIONS: INTERNATIONAL LAW, COMMON PATRIMONY AND INTERNATIONAL EQUITY 96 (Transnational Publishers 1989).

from other general interest concerns, let alone make a comment on it. This is true for also the closely-connected concept of the duty of individuals to protect the environment.

### **B. Judgments Related to Interferences Derived From Environmental Degradation**

Particularly, the first category of judgements analyzed, based on the alleged environmental pollutions, that caused a breach of the right to privacy or the right to life, when considered in light of the specific nature of the right to the environment, can be easily seen not to reflect the specific characteristics and needs of this right explained above as well as environmental protection.<sup>44</sup>

First of all, it is obvious that human beings are the primary directly protected subjects under these judgments. Thus the environment in general is protected indirectly and to a limited extent by depending on the protection of human beings. Second, only individuals' interests which are indeed considered only in the particular conditions of the claimed specific rights had been taken into account. Third, the immediate and short term interests of individuals and only the identifiable interests of individuals had been considered.

The Court did not admit that environmental pollution or degradation either can be considered to be a general interference under both Articles 2 and 8, nor did it admit the existence of a requirement to eliminate all environmental harms. More clearly, the Court did not take into consideration the protection of the environment in general. Instead, it repeatedly underlined *the connection of alleged environmental interferences with the applicants' individual interests* (causal link) in the cited cases. Additionally, it did not interpret this link under the mentioned rights to a large extent because it considered the existence of a *certain level adverse effect* of the alleged interferences in the applicants' relevant rights is allowable. The Court stressed that adverse effects of environmental pollution must attain a certain minimum level and the assessment of that minimum depends on all the circumstances of the case such as the intensity and duration of the nuisance, its physical or mental effect.<sup>45</sup>

The Court underlined the need for a causal link between the alleged interferences and the applicants' rights. The decisions pointed out the necessity of such a link by using the terms *real, personal, immediate, serious, specific*

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<sup>44</sup> Nükhet Turgut, *Çevre Hakkı: AİHM ve Bergama Davası (Environmental Rights: The ECHR and the Pergamon Case)*, 4 LEGAL HUKUK DERGISI 1361 (2006).

<sup>45</sup> *Fadeyeva v. Russia*, Nr. 55723/00, para 68-69 (Eur. Ct. H.R. 2005). It should be noted that this actual interference criteria under Article 6 of the Convention was not interpreted by the Court in such a strict way in *Okyay and Others v. Turkey*. See *supra* note 33.

*and imminent* to quantify the danger or threat. Therefore the Court dismissed several applications on the grounds that they were *superficial, tenuous, remote,* and *hypothetical* since they do not reflect such a substantial danger or threat as to rise of the level of interference with rights.<sup>46</sup> The Court emphasized these aspects in its various judgments, which were not considered under the categories above, since they are not of specific importance as far as their contribution to the concept of environmental protection is concerned. For instance, in two identical cases<sup>47</sup> which were brought before the Court on the grounds of threat to health caused by the operation of nuclear power plants, the Court argued that the applicants failed to show that they are facing *a real, personal and immediate risk* because of the operation of the alleged plant. Hence the Court dismissed any attempt of *actio popularis* concerning environmental risks in general.

Moreover the Court stated in another case<sup>48</sup> that

The crucial element ... is the existence of a harmful effect on a persons' private or family sphere and not simply the general deterioration of the environment. Neither Article 8 nor any of the other Articles of the Convention are specifically designed to provide general protection of the environment as such.<sup>49</sup>

In sum, it can be mostly argued that the Court's judgments which favored the applicants in the first category of cases, based on environmental pollution, can be consistent, in general, with the *narrow interpretation* of the formulation as "the right to live in a healthy environment" since the Court considered primarily the health of individuals. Hence it would not be wrong to discern the abovementioned view in literature that Article 8 is the implicit legal basis for environmental protection. However it is not easy to suggest that the Court has established an environmentalist jurisprudence.<sup>50</sup> This consideration should be

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<sup>46</sup> The Court underlined these terms in its several judgments in *Balmer-Schafroth and Others v. Switzerland*. See *supra* note 30; *Athasanooglou and Others v. Switzerland*, Nr. 27644/95 (Eur. Ct. H.R. 2000). *Kyrtatos v. Greece*, Nr. 41666/98 (Eur. Ct. H.R.2003).

<sup>47</sup> *Balmer-Schafroth and Others v. Switzerland*, Nr. 22110/93 (Eur. Ct. H.R. 1997); *Athasanooglou and Others v. Switzerland*, Nr. 27644/95 (Eur. Ct. H.R. 2000).

<sup>48</sup> *Kyrtatos v. Greece*, Nr. 41666/98 para. 52 (Eur. Ct. H.R.2003).

<sup>49</sup> It should be noted that the allegations in this case were the visual and noise pollution, as well as the destruction of the swamp stemming from the urban development.

<sup>50</sup> Yves Winisdoerffer, *Convention Européenne des Droit de L'homme-Note (Note: The European Convention on Human Rights)*, 2 REVUE JURIDIQUE DE L'ENVIRONNEMENT (JUDICIAL REVIEW OF THE ENVIRONMENT) 171, 177 (2003).

approached cautiously<sup>51</sup> since the Court primarily took into account individual interest and interpreted the causal link in a rather narrow way. Hence it is too early to admit that the Court took an environmentalist approach.

The Court, to make a more dynamic or *teleological* interpretation, and to reflect more environmental concerns into its judgments, should consider three crucial interconnected aspects which are indeed inherent in the core of the environmental problem set as well as the right to the environment, and in all policy and law developed for environmental protection. These aspects are related to the term and concepts of *duty*, *general interest* and the *long term*. As already mentioned, individuals are obliged to protect the environment in addition to have a right to the environment. The main reason for this obligation derives from the fact that the environment is a *common good* and there is a general interest in its protection. Hence an appropriate protection policy can be developed only in a holistic framework which inevitably includes the long term in the issue. In the short term, there may be conflict between individual interests (and related fundamental rights) and the protection of the environment. However in the long term, this protection coincides with individual interests. Therefore it needs also to consider the interests of individuals in the light of the long term to solve conflicts between competing interests.

The above-mentioned facts concerning the environmental protection policy and law should be considered by the Court in assessing the existence of all criteria to which it has referred to, as mentioned above. For instance, assessing the proportionality and fair balance in this context is of great importance, particularly in two areas with regards to the cases that were based on environmental pollution. First, one is related to the cases which involve not only two parties, such as an individual and State, but also a third private person. In these situations, during the evaluation of competing interests the Court should also consider the duty of the third party to protect the environment apart from comparing the general interest, such as the economic well being of the country, and alleged right of applicant. This aspect gains particular importance if the constitution or other acts of Defendant States require all natural and legal persons to protect the environment. On the other hand, under these types of cases, applicants try not only to defend their individual rights but, at least indirectly, also to protect the general interest since their claim is based on the removal of environmental pollution. In other words, the concept of the general interest and the duty of all persons to protect the environment coincide with, and reinforce each other, in this category of cases. Therefore assessing the fair balance means to compare two different general interests as well, and in this context the general interest to protect the environment can and should prevail

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<sup>51</sup> See, e.g., Dinah Shelton, *Human Rights and the Environment: Jurisprudence of Human Rights Bodies*, 32 ENVIRONMENTAL POLICY AND LAW 158, 166 (2002)(taking a cautious approach).

over the general interest, based on the economic well being of country if the above mentioned aspects are all accepted and taken into account.

The second area is related to cases involving the conflicts between different human rights. For instance under the jurisprudence of the Court, Article 8 serves as a legal basis for both prevention of environmental pollution caused by unacceptable interference in the private lives of the individuals, as well as the protection of the traditional ways of life of indigenous people. However there are examples that these two subrights can be in conflict with each other. Thus to refer the above-mentioned aspects can be helpful to solve these kinds of conflicts as well. In that case, both the duty obliged to individuals and the general interest to protect the environment, as well as consideration of the long term, should be used as the legal foundations for the subright with regard to the environment to prevail over the other assessed rights.

### **C. Judgments Related to Interferences Based on the Protection of General Interest**

The Court's rejection of the applicants' claims concerning the violation of their right to property, and justifying the alleged restrictions in these cases based on interference aimed at environmental protection, is also of considerable importance from the environmental perspective as we mentioned above. However the Court considered the issue to be within the borders of the concept of traditional human rights by not paying particular attention to the specific characteristics of the environmental concerns. For instance, the Court accepted that the attempts by the States to protect the environment constitute a general interest in the sense of paragraph 2 of Article 1 of Protocol 1, and took this into account when assessing whether the proportionality criterion was achieved. Nevertheless, the Court remained silent about particular characteristics of the concept of general interest in environmental protection and difference from any other general interests, such as the economic well being of the country. The Court preferred allowing a wide respect for the discretion of States and did not challenge their discretion by not attempting to make any particular clarification or comment. The same is true for the analysis with regard to the term of public interest under the first paragraph of the same Article.

Another noteworthy aspect under this category of judgments is that they are consistent with the duty of individuals to protect the environment. As indicated before, the dimension of duty-obligation in the right to the environment becomes a priority in both theory and practice in any case, regardless of the formulation of the right to the environment. This point will help to justify more restrictions in some individual rights. This argument is also supported under the concept of general interest in environmental protection since it requires the consideration of the longer-term interests of individuals. In that case, individuals will consent to more restrictions on their rights, such as

the right to property in the short term when the long term benefits are essentially related to maintaining the sustainability of life.

#### IV. CONCLUDING REMARKS

Since environmental concerns were not on the worldwide agenda when the Convention was adopted, there has been no chance to establish an appropriate balance between these and other individual interests already regulated in the Convention at the legislative level. This fact is of great importance because of several interrelated reasons. First of all, protection of the environment is a general interest. Second, environmental problems affect every aspect of daily life due to the common, collective, interconnected and holistic characteristics of the environment, and consequently challenge all established patterns of behaviour and disciplines, including human rights law. The clear meaning of this is that if the Convention is revised in light of the circumstances of today's world, it is almost certain that its present provisions would be amended in a way to reflect environmental concerns based on commonly-accepted concepts and principles of environmental protection policy and law. This fact clearly exposes the importance and priority of interpretation as a method of law,

Therefore the European Court of Human Rights should feel more responsibility to consider environmental concerns when applying the *living instrument* approach which is already established under its jurisprudence. The Court has made a contribution to this reasoning in two different ways: one is through the protection of the right to privacy against various types of environmental degradation; the other is through the justification of restrictions, particularly on the right to property, for the purpose of the general interest in the protection of the environment. The Court certainly took a positive step, particularly due to the expansive interpretation of the right to privacy, and by admitting that serious adverse affects of environmental pollution (or unhealthy environmental conditions) constitute a breach of this right. However this should be considered an achievement, bearing in mind that it depends on the well-defined circumstances of each case, and did not open a door to the general protection of the environment under the rights ensured by the Convention. According to indications, neither Article 8 nor any other Articles of the Convention were specifically designed to provide the general protection of the environment.

The Court can and should go further beyond the present interpretation concerning classical human rights, which indeed reflects the established concept of human rights by considering the very specific characteristics, concepts and principles of environmental protection. The concepts of *general interest* in the protection of the environment, the *long term* interests, *duty of individuals* on the protection of the environment, and the *participation principle*, which are

commonly accepted crucial themes, should be considered during the analysis of all the relevant criteria, such as fair balance by the Court. This consideration would lead the interpretation of the *causal link* between individual interests and environmental issues more broadly, and make a valuable contribution to specify the *core* of established human rights under the convention, the content and scope of the term of general interest as well as clarifying the relationships between different general interests.

As a final word, it should be noted that the rise of environmental consciousness in societies would be a determining factor in the acceleration of all steps to be taken on the abovementioned analysis. The increasing of serious negative effects of the environmental problem set will increase such a consciousness, and it would be inevitable for the Court to follow a more teleological interpretation reflecting these new concerns as the daily facts are required.