

# The state of access to justice to protect human rights and environment in Turkey

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# **The state of access to justice to protect human rights and environment in Turkey**

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## I. Introduction

Environmental degradation is, as elsewhere in the world, a longstanding problem in Turkey, carrying massive human rights impacts. The negative environmental effects of mining, large infrastructure projects and waste disposal practices pose serious threats to the right to a safe, clean, healthy, and sustainable environment, among other rights.<sup>1</sup> Effects of earthquakes,<sup>2</sup> wildfires<sup>3</sup> and floods<sup>4</sup> during the past years in Turkey renewed discussions on whether disaster prevention measures are effectively applied by the authorities. The recent sea snout outbreak in Turkey's inland sea of Marmara further demonstrates the need for a robust action against environmental pollution.<sup>5</sup>

The global Climate Action Tracker, published by ClimateAnalytics and the New Climate Institute, assesses the policies and actions of Turkey in this field as "critically insufficient".<sup>6</sup> According to the report, "Turkey continues to rely on fossil fuels, even though costs for renewables are at record lows. ... These developments stand in strong contrast to Turkey's need to reduce the use of coal in electricity to close to zero by 2030. ...".<sup>7</sup>

Turkey has recently ratified the Paris Agreement, arising out of the UN Framework Convention on Climate Change.<sup>8</sup> However, notwithstanding its place among the G20 countries, it introduced a declaration upon ratification that it "will implement the Paris Agreement as a developing country and in the scope of her nationally determined contribution statements, provided that the Agreement and its mechanisms do not prejudice her right to economic and social development."<sup>9</sup> Turkey is not among the 46 State Parties to the Aarhus Convention<sup>10</sup> on access to information, public participation in decision-making and access to justice in environmental matters, nor is it party to the Espoo Convention<sup>11</sup> on environmental impact assessment in a transboundary context.

As waste regulations<sup>12</sup> are not implemented properly, more than 90 percent of the waste generated in Turkey ends up landfills.<sup>13</sup> A number of infrastructure projects

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<sup>1</sup> The ICJ and KAGED will refer throughout the report to the right to a safe, clean, healthy and sustainable environment and use as shorthand "the right to a healthy environment". While the UN Human Rights Council in its Resolution 48/13 recognised the right to a clean, healthy and sustainable environment, many international law documents and cases include the reference to a safe environment that constitutes a more complete understanding of the right's content, including towards the integrity of human beings and therefore their right to security under article 9 of the International Covenant on Civil and Political Rights.

<sup>2</sup> See news report at <https://www.eurotopics.net/en/250750/izmir-after-the-earthquake-politicians-at-fault>.

<sup>3</sup> See news report at <https://www.dw.com/en/turkey-fires-it-took-only-a-few-minutes/a-58811906>.

<sup>4</sup> See news reports at <https://www.bbc.com/news/world-europe-58200296> and <https://floodlist.com/tag/turkey>.

<sup>5</sup> See at <https://www.greenpeace.org/turkey/haberler/musilaj-veya-diger-adiyla-deniz-salyasi-nedir/>.

<sup>6</sup> See at <https://climateactiontracker.org/countries/turkey/policies-action/>.

<sup>7</sup> *Ibid.*

<sup>8</sup> UN treaty collection, Status of Treaties, Paris Agreement, Paris, 12 December 2015, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XXVII-7-d&chapter=27&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-7-d&chapter=27&clang=en)

<sup>9</sup> The paragraph follows as such: "on the basis of "equity, common but differentiated responsibilities and respective capabilities" as clearly and accurately recognized under the United Nations Framework Convention on Climate Change of 9 May 1992 and the Paris Agreement, and by recalling decisions 26/CP.7, 1/CP.16, 2/CP.17, 1/CP.18 and 21/CP.20 adopted by the Conference of the Parties to the Convention, declares that Turkey will implement the Paris Agreement as a developing country and in the scope of her nationally determined contribution statements, provided that the Agreement and its mechanisms do not prejudice her right to economic and social development."

<sup>10</sup> UN treaty collection, Status of Treaties, *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, Aarhus, Denmark, 25 June 1998, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVII-13&chapter=27&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-13&chapter=27&clang=en)

<sup>11</sup> *Convention on Environmental Impact Assessment in a Transboundary Context*, Espoo, 1991

<sup>12</sup> Regulation on Waste Management, Published in the Official Gazette on 2 April 2015, available at <https://www.resmigazete.gov.tr/eskiler/2015/04/20150402-2.htm>; Zero Waste Regulation, Published in the Official Gazette on 12 July 2019, available at <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=32659&MevzuatTur=7&MevzuatTertip=5>.

<sup>13</sup> OECD (2019), OECD Environmental Performance Reviews: Turkey 2019, OECD Environmental Performance Reviews, OECD Publishing, Paris, at page 3, <https://doi.org/10.1787/9789264309753-en>.

have encountered strong public opposition in form of protests.<sup>14</sup> These include mining projects in İkitidere,<sup>15</sup> Kirazlı,<sup>16</sup> Lapseki,<sup>17</sup> Fatsa,<sup>18</sup> Kışladağ;<sup>19</sup> thermal power station projects in Çan, Aliaga,<sup>20</sup> İskenderun, and Elbistan; and hydroelectric power station projects in Cide,<sup>21</sup> Alakır<sup>22</sup>, Kahta, Dargeçit and nuclear power station projects in Sinop<sup>23</sup>, Akkuyu<sup>24</sup> and major construction projects<sup>25</sup> in İstanbul.

Despite this, most of these construction projects have continued unhindered and without public authorities and company officials taking into consideration or addressing the objections brought against them. Furthermore, legal challenges brought against these projects before Turkish courts have mostly failed. Considering the number, variety and size of the projects and their negative impacts on the environment, it is striking that judicial authorities endorse the arguments presented by the government in most cases.

Structural problems concerning the environment are closely connected to the operation of the courts, access to justice and the fairness of the judicial process. They cannot be easily separated from the country's structural rule of law and human rights problems. As reported by many independent observers,<sup>26</sup> Turkey's already complex human rights and rule of law problems have even been more exacerbated in the last six years, especially after the failed coup attempt that took place on 15 July 2016.

In previous reports, the ICJ and IHOP described the shortcomings in access to justice,<sup>27</sup> judicial independence<sup>28</sup> and restrictions on the enjoyment of the freedoms of movement and assembly.<sup>29</sup> This baseline study provides an extensive explanation of the relation between environmental problems and rule of law and human rights problems in Turkey. It identifies the gaps in access to justice in Turkey in relation to human rights and the environment as well as the freedom of action of CSOs, human rights defenders and lawyers when defending the environment.

Having this in mind, the present report examines access to justice problems concerning the environment at three different levels. Following a summary of international human rights law on access to justice in environmental matters, Turkey's constitutional

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<sup>14</sup> For all ecological Conflicts in Turkey, see; Environmental Justice Atlas, available at: <https://tr.ejatlaser.org/>.

<sup>15</sup> See news report at <https://m.bianet.org/english/politics/244156-demonstration-ban-in-ikizdere-amid-resistance-against-stone-quarry>.

<sup>16</sup> See news report at <https://m.bianet.org/english/environment/243519-alamos-gold-is-gone-but-mining-threat-is-not-over-in-ida-mountains>.

<sup>17</sup> See news report at <https://m.bianet.org/english/environment/211740-last-exit-before-cyanide-it-is-not-too-late-to-stop-gold-mine-in-ida-mountains>.

<sup>18</sup> See news report at <https://bianet.org/bianet/ekoloji/241597-maden-sirketi-agac-kesiyor-fatsalilar-protestoda>.

<sup>19</sup> See news report at <https://bianet.org/bianet/insan-haklari/128289-kisladaag-altin-madeni-kalkinma-degil-yokulus-getiriyor>.

<sup>20</sup> See news report at <https://bianet.org/english/health/174473-battle-against-coal-plants-increasing-in-number>.

<sup>21</sup> See news report at <https://m.bianet.org/english/law/232853-power-plant-project-rejected-again-no-legal-remedies-available>.

<sup>22</sup> See news report at <https://m.bianet.org/english/environment/157350-nearing-the-end-in-alakir-s-hydroelectric-plant-struggle>.

<sup>23</sup> See news report at <https://m.bianet.org/english/society/196380-demonstration-ban-for-nuclear-plant-protesters-in-sinop>.

<sup>24</sup> See news report at <https://m.bianet.org/english/people/163800-nuclear-plant-ceremony-met-with-protests>.

<sup>25</sup> See news report at <https://bianet.org/english/environment/209630-they-said-we-will-cut-2-5-million-trees-for-3rd-airport-they-cut-13-million-instead> and <https://bianet.org/english/environment/217744-istanbulites-queue-up-to-object-to-canal-istanbul-we-are-worried-for-next-generations>.

<sup>26</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), *Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East- January - December 2017*, March 2018, European Commission, Turkey 2020 Report, Doc. No. SWD (2020) 355 final, 06.10.2020

<sup>27</sup> ICJ, Report, *Justice Suspended: Access to Justice and the State of Emergency in Turkey*, 2018, available at: <https://www.icj.org/wp-content/uploads/2018/12/Turkey-Access-to-justice-Publications-Reports-2018-ENG.pdf>

<sup>28</sup> ICJ, Report, *Turkey's Judicial Reform Strategy and Judicial Independence*, November 2019, available at: <https://www.icj.org/wp-content/uploads/2019/11/Turkey-Justice-Reform-Strat-Advocacy-Analysis-brief-2019-ENG.pdf>

<sup>29</sup> ICJ, Report, *Restricted at Discretion: The Enjoyment of the Freedoms of Movement and Assembly in Turkey During and After the State of Emergency*, September 2019, , available at: <https://www.icj.org/turkey-legal-framework-allows-for-arbitrary-restrictions-of-movement-and-assembly-warns-icj-briefing-paper/>

problems and access to justice issues in general will be described. The issues covered include the independence and impartiality of the judiciary, non-implementation of judgments, high court fees, narrow interpretation of the concept of interest by administrative courts, legal standing issues, and corruption. Secondly, restrictions on other human rights that affect the legal and political struggle of environmental activists will be examined. This examination will include problems concerning civil and political rights, as well as economic, social and cultural rights.

Finally, the report considers specific problems concerning the right to a healthy environment. This part will address issues surrounding environmental impact assessments, health impact evaluation, public participation issues in projects affecting the environment and ongoing major projects negatively affecting the environment.

This report provides recommendations on how to enhance access to justice for the environment in Turkey considering the country's existing human rights obligations under international and national law.

## **II. Methodology**

The report examines the availability of access to justice in Turkey to protect human rights against environmental harm.

This assessment has been based on research focused on the application of human rights and environmental standards by the authorities and their assessment by international bodies. This study has analyzed legislative sources as well as decisions of local, national, and international bodies, including courts.

Critically, in order to consider the nature and impact of problems in implementation of these standards in Turkey, the study benefitted from information acquired through field research that included interviews with environmental rights defenders, human rights defenders, non-governmental organizations, and victims of environmental harm. Thirty-eight persons including academics, lawyers, physicians, forest engineers and journalists from different regions and provinces have been interviewed: Antalya (8), Adana (1), Mersin (1), Maraş (1), İzmir (7), Aydın (1), İstanbul (7), Bursa (3), Ankara (7), Zonguldak (1), Muğla (1).

## **III. International environmental law and related human rights law applicable to Turkey**

International environmental law is a complex body of international public law comprising a burgeoning number of multilateral environmental treaties (MEAs) as well as bilateral treaties on general and specific issues. They are concluded under the auspices of different organizations. Those of greatest importance for Turkey are the United Nations and its agency, including the United Nations Environmental Programme (UNEP), the International Maritime Organization (IMO), and the Council of Europe.

International environmental law further includes a set of principles of general international law, such as the "no harm" principle, the principles of prevention and precaution, the "polluter pays" principle, and the principle of intergenerational equity.

These standards may generally be divided according to their field of protection keeping in mind that this simplified nomenclature does not exclude cross-cutting influences among the different clusters:

- Climate change standards, including the UN Framework Convention on Climate Change (UNFCCC) and the Paris Agreement 2015;
- Standards on Pollution and Waste Management, including the Vienna Ozone Layer Convention or the Basel Agreement on Hazardous Wastes;
- Standards on Biodiversity and Preservation, including the Council of Europe Bern Convention;
- Standards on the Law of the Sea and Watercourses, that often deal with pollution and toxic wastes;
- Standards on Public Participation, Accountability and Access to Justice, of which key treaties are the Aarhus Convention and the Espoo Convention.

Whilst there is now widespread acceptance in international human rights law of the right to healthy environment and an exponential increase of human rights decisions related to environmental protection, incorporation of human rights norms in multilateral environment treaties is more indirect.<sup>30</sup>

The 1972 Declaration issued following the United Nations Conference on the Environment in Stockholm<sup>31</sup> is acknowledged as the first step towards the legal recognition of the interconnection of human rights law and protection of the environment.<sup>32</sup> The Stockholm Declaration stated that the natural as well as the human-made environment is essential to human well-being “and to the enjoyment of basic human rights— even the right to life itself.”<sup>33</sup> The first principle of the Stockholm Declaration refers to the “right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.”<sup>34</sup>

The 1987 report of the World Commission on Environment and Development (the Brundtland Commission) declared that “all human beings have the fundamental right to an environment adequate for their health and well-being.”<sup>35</sup>

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<sup>30</sup> John H Knox (2021, 2nd ed), “Human Rights”, in *The Oxford Handbook of International Environmental Law*, (ed. L. Rajamani and J. Peel), (Oxford: OUP) 787.

<sup>31</sup> Report of the United Nations Conference on the Human Environment, 16 June 1972, Stockholm, Available at <https://undocs.org/en/A/CONF.48/14/Rev.1> , Last checked 27.08.2021

<sup>32</sup> Elisabeth LAMBERT, *The Environment and Human Rights Introductory Report to the High-Level Conference Environmental Protection and Human Rights Strasbourg*, 27 February 2020 prepared at the request of the Steering Committee for Human Rights (CDDH), p.3, available at “<https://rm.coe.int/report-e-lambert-en/16809c827f>”, Last checked 25.08.2021.

<sup>33</sup> Stockholm Declaration, PP 1, Report of the United Nations Conference on the Human Environment, 16 June 1972, Stockholm, Available at <https://undocs.org/en/A/CONF.48/14/Rev.1> .

<sup>34</sup> *Ibid.*, article 1.

<sup>35</sup> See Article 1 of Summary of Proposed Legal Principles for Environmental Protection and Sustainable Development Adopted by the WCED Experts Group on Environmental Law WCED (1987), ‘Our Common Future (Brundtland Commission Report)’.

The 1992 Rio Declaration on Environment and Development<sup>36</sup> also recognizes the links between human rights and the environment. In the following decades, through the developments in understanding the link between human dignity and protection of the environment, the complementary nature of these two fields received more international recognition.

A more direct reference to human rights and the environment was included in the Paris Agreement, whose preamble states: "Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of Indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity".

A number of international environmental law instruments include some references to the rights that are necessary to support environmental protection, including rights to freedom of expression, to respect for private life, to a fair trial and to effective remedies. For instance, the Rio Declaration recognizes access to information, public participation and effective remedies in Principle 10:

*At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.*

The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention), concluded under the auspices of the UN Economic Commission for Europe, provides that States Parties shall guarantee rights of information, participation, and remedy in environmental matters '[i]n order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being'.<sup>37</sup> The Convention is based on three pillars: access to information, public participation in decision making and access to justice. Parties to the Convention are obliged to update and disseminate environmental information, provide for public participation in environmental decision-making and ensure that members of the public have access to legal remedies for failures to provide environmental information and facilitate public participation. The Escazu Agreement,<sup>38</sup> adopted in 2018, recognizes the same rights for Latin American and Caribbean States. As will be explained further below, these three pillars are effectively incorporated into

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<sup>36</sup> UN General Assembly, Rio Declaration on Environment and Development, A/CONF.151/26 (Vol. I), 12 August 1992, available at: [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_CONF.151\\_26\\_Vol.I\\_Declaration.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf), Last checked 03.09.2021.

<sup>37</sup> See Article 1 of the Aarhus Convention.

<sup>38</sup> *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*.



international human rights law, through the jurisprudence of human rights authorities, including the European Court of Human Rights.

In relation to environmental law binding on Turkey, a detailed reporting of the ratified or accepted treaties is contained in the table in Annex I. It is however already possible to conclude that, while Turkey has acceded now to the main climate change agreements with the ratification of 11 October 2021 of the Paris Agreement, it scores very poorly on other key aspects. It is particularly striking that Turkey has not ratified the UN Convention on the Law of the Sea as well as key treaties providing for civil liability for environmental accidents. Key among these concerns is the absolute absence of ratification of or accession to any treaty providing for public participation, accountability or access to justice in relation to the environment.

#### **IV. Human Rights Law and Standards and the Protection of the Environment**

There are two ways in which international human rights law can provide protection for the environment. The first one is substantive. It includes the recognition and implementation of the right to safe, clean, healthy and sustainable environment, that has been defined as the right to enjoy “a safe climate, clean air, clean water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems”<sup>39</sup> or “the right of every person of present and future generations to live in an environment adequate to his or her health and well-being.”<sup>40</sup> Even in the absence of recognition of this right, however, it is well established that the obligations to protect other rights under international human rights law, including for example the right to life, the right to health, the right to respect for private life and the home, the right to adequate housing and the rights to food and water are engaged by conduct affecting the environment. Implementation of States’ international human rights law obligations are a critical component in environmental protection. At the same time, certain human rights, in particular procedural rights, are instrumental for the protection of human rights from environmental harm: the rights to information, public participation and access to justice and the right to a fair hearing are the prominent, but not the only, rights that fall within this category. Only with the application of this wider human rights framework, can the legal system be effective in protecting the environment.<sup>41</sup>

##### **A. The right to a safe, clean, healthy and sustainable environment**

The right to a healthy environment is not contained as a self-standing right in any global treaty instrument. However, in 2021, the UN Human Rights Council recognized, in Resolution 48/13, “the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights.”<sup>42</sup> The resolution affirms that “the right to a clean, healthy and sustainable environment is related to other rights and existing international law,”<sup>43</sup> and that the promotion of this right

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<sup>39</sup> UN Special Rapporteur on human rights and the environment, Annual Report to the UN General Assembly, UN Doc. A/74/161, para. 43.

<sup>40</sup> Article 1, Aarhus Convention.

<sup>41</sup> J.H. Knox, ‘Human Rights Obligations to Protect the Environment’ Statement by Independent Expert on human rights and the environment Human Rights Council, 25th Session 10 March 2014, at 2, available at <http://ieenvironment.org/2014/03/11/the-independent-experts-report-to-the-human-rights-council/>.

<sup>42</sup> Human Rights Council, UN Doc. A/HRC/RES/48/13, para. 1.

<sup>43</sup> *Ibid.*, para. 2.

“requires the full implementation of the multilateral environmental agreements under the principles of international environmental law.”<sup>44</sup>

This recognition was preceded by many resolutions of the General Assembly,<sup>45</sup> the former Commission on Human Rights, and its successor, the Human Rights Council, that found that environmental degradation may have adverse effects on the enjoyment of certain human rights,<sup>46</sup> as did several reports issued by the Office of the High Commissioner on Human Rights (OHCHR).<sup>47</sup>

The Human Rights Council adopted its first resolution on human rights and climate change in 2008<sup>48</sup> and on human rights and the environment in 2011.<sup>49</sup> In the following years, it has adopted 22 resolutions<sup>50</sup> on the relation of human rights and the environment. In these resolutions, among many other issues, the Human Rights Council observed the role of human rights defenders in the enjoyment of human rights, disproportionate negative impacts of climate change on the rights of older persons, displaced persons, and the rights of persons with disabilities. In its most recent resolution on human rights and the environment, the Council reaffirmed that “protection of the environment, including ecosystems, contribute to human well-being and to the enjoyment of human rights, including the rights to life, to the enjoyment of the highest attainable standard of physical and mental health, to an adequate standard of living, to adequate food, to safe drinking water and sanitation and to housing, and cultural rights”.<sup>51</sup>

The right to a healthy environment has also been recognized in some regional human rights law treaties. In 1981, the African Charter on Human and Peoples’ Rights became the first human rights treaty to include an the right of ‘all peoples [to] a general satisfactory environment favourable to their development’. The African Commission has received complaints alleging violations of this provision and has clarified to some extent the content of the right. In *SERAC v. Nigeria*, the Commission held that this provision “requires the State to take ... measures to prevent pollution and ecological

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<sup>44</sup> *Ibid.*, para. 3. It is important to note that the promotion obligations only require the implementation of MEAs while the obligations to respect, protect and to fulfil (besides those of promotion) may be effectively implemented by the sole use of the human rights framework. In any case, on the basis of the principle of holistic interpretation of international law obligations under article 31 of the Vienna Convention on the Law of Treaties 1969, it is important to refer to environmental MEA when assessing the detailed obligations under this right.

<sup>45</sup> General Assembly Resolution 67/174, 3 April 2013, A/RES/67/174. In Resolution 67/174, the GA stated that environmental degradation, desertification, natural disasters, and the impacts of global climate change threatens the right to adequate food.

<sup>46</sup> Human Rights Council Resolution 16/11, 24 March 2011, A/HRC/RES/16/11; Human Rights Council Resolution 18/22, 17 October 2011, A/HRC/RES/18/22.; Commission on Human Rights Resolution 2005/60, 20 April 2005. Human Rights Council Resolution 9/1, 5 September 2008, A/HRC/RES/9/1: Resolution 9/1 mentioned that, as an environmentally hazardous activity, dumping of toxic wastes may constitute a serious threat to the right to life, the enjoyment of the highest attainable standard of physical and mental health, food, adequate housing and work, access to information, and to safe drinking water and sanitation, public participation and the right to development.” See also, General Assembly Resolution 66/158, 13 December 2011, A/RES/66/158. Commission on Human Rights Resolution 2005/60, 20 April 2005, E/CN.4/RES/2005/60; Commission on Human Rights Resolution 2003/71, 25 April 2003, E/CN.4/RES/2003/71.

<sup>47</sup> All reports are accessible here: <https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/Reports.aspx>

<sup>48</sup> Human Rights Council Resolution 7/23, Human rights and climate change, A/HRC/RES/7/23, Human Rights Council resolutions on human rights and climate change, available at <https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/Resolutions.aspx>, Last checked 05.10.2021.

<sup>49</sup> Human Rights Council Resolution 16/11, Human rights and the environment, A/HRC/RES/16/11

<sup>50</sup> Human Rights Council Resolutions, 02/04/2019, A/HRC/RES/40/11; 16/07/2018, A/HRC/RES/38/4; 09/04/2018, A/HRC/RES/37/8, 11/10/2017, A/HRC/RES/36/15, 07/07/2017, A/HRC/RES/35/20; 06/04/2017, A/HRC/RES/34/20; 18/07/2016, A/HRC/RES/32/33; 22/04/2016, A/HRC/RES/31/8; 22/07/2015, A/HRC/RES/29/15; 06/04/2015, A/HRC/RES/28/11; 03/10/2014, A/HRC/RES/27/23; 15/07/2014, A/HRC/RES/26/27; 15/04/2014, A/HRC/RES/25/21; 22/10/2012, A/HRC/RES/21/17; 19/04/2012, A/HRC/RES/19/10; 03/04/2012, A/HRC/RES/19/4; 17/10/2011, A/HRC/RES/18/22; 13/10/2011, A/HRC/RES/18/11; 12/04/2011, A/HRC/RES/16/11; 12/10/2009, A/HRC/RES/12/18; 25/03/2009, A/HRC/RES/10/4; 05/09/2008, A/HRC/RES/9/1.

<sup>51</sup> Human Rights Council Resolution 37/8, Human rights and the environment ,09/04/2018, A/HRC/RES/37/8.

degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources”.<sup>52</sup>

The 1988 Additional Protocol on Economic, Social and Cultural Rights to the 1969 American Convention on Human Rights (ACHR) (San Salvador Protocol) to the 1969 American Convention on Human Rights includes the right of everyone ‘to live in a healthy environment’ among the protected rights.<sup>53</sup> The Inter-American Court of Human Rights also issued an Advisory Opinion on human rights and the environment in which it examined the member states’ responsibilities concerning environment under the American Convention on Human Rights.<sup>54</sup> The Inter-American Court stated that, with regards to environment, the rights to information, public participation and access to justice are protected under the rights of life and personal integrity. The Court also held that State parties could be held accountable for actions within their territory or control that cause transboundary transboundary environmental harm.

At the national level, 155 countries have recognized the right to a healthy environment in their constitutions as a right.<sup>55</sup> Some others have recognized the right to a healthy environment either in other national legislation and/or through judicial interpretation.

## **B. The protection of the environment through other human rights**

As mentioned above, the right to a healthy environment itself is not expressly provided for in human rights treaties binding on Turkey. However, Turkey is party to most of the principal universal human rights treaties and European regional instruments,<sup>56</sup> and a number of provisions of these human rights are necessarily interlinked with environmental issues. The enjoyment of many rights will be impaired by adverse human rights affects, and, accordingly, there are implicit obligations in relation to the environment in these treaties. The UN Human Rights treaty bodies, as well as the Council of Europe bodies such as the European Court on Human rights have developed significant jurisprudence in environmental matters based on the interpretation of States’ obligations under a plethora of human rights.

While this report will make reference mainly to UN treaty bodies and Council of Europe judicial or quasi-judicial bodies, it is important to note that, in their thematic reports, the UN Special Procedures- independent thematic experts mandated by the UN Human Rights Council -have addressed the impacts of environmental harm on the enjoyment of a wide range of human rights including the rights to life; health; water; food;

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<sup>52</sup> Social and Economic Rights Action Center and the Center for Economic and Social Rights (SERAC) v. Nigeria (2001), African Commission on Human and Peoples’ Rights, Communication No. 155/96, para. 52. See also Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya, AComHPR (2009) Communication No 276/ 03.

<sup>53</sup> See Article 19 (6) of the Protocol.

<sup>54</sup> State Obligations in Relation to the Environment (Advisory Opinion) IACtHR (2017) OC- 23/17 (State Obligations in Relation to the Environment case)

<sup>55</sup> Environmental Rule of Law First Global Report, United Nations Environment Programme, 2019, Nairobi, at p.2.

<sup>56</sup> The International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Elimination of All Forms of Discrimination against Women; International Convention on the Elimination of All Forms of Racial Discrimination; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Convention on the Rights of the Child; Convention on the Rights of Persons with Disabilities; European Convention on Human Rights; Revised European Social Charter; First and Second Optional Protocols to the International Covenant on Civil and Political Rights; Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; First, Second and Third Optional Protocols to the Convention on the Rights of the Child; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; Optional Protocol to the Convention on the Rights of Persons with Disabilities; First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth and Sixteenth Protocols to the ECHR.

housing; development; safe and healthy conditions of work; freedom of expression; form and join trade unions; strike and to bargain collectively; social security; and enjoy the benefits of scientific progress and its applications; to an effective remedy; and the rights of the child and others from vulnerable populations.<sup>57</sup>

In 2018, the Special Rapporteur on human rights and the environment published a set of Framework Principles on Human Rights and the Environment that reflect the application of existing human rights obligations in the environmental context.<sup>58</sup> In his commentary on the Framework principles, the Special Rapporteur underscored that the exercise of human rights, including rights to freedom of expression and association, to education and information, and to participation and effective remedies, is vital to the protection of the environment.<sup>59</sup> Decay of the rule of law inevitably affects the struggle for the protection of the environment. Having this in mind, the Framework Principle 4 provides that; “States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence”. The three pillar approach of the Aarhus Convention is also reiterated in the Framework: access to information,<sup>60</sup> public participation in decision making<sup>61</sup> and access to justice.<sup>62</sup>

## **i. UN Treaty Bodies**

The **UN Human Rights Committee**, in its General Comment No.36 on State obligations concerning the right to life under ICCPR article 6,<sup>63</sup> affirms that that “implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.” The interlinkage with the right to life may be seen also from the connection the Human Rights Committee makes with the environment and weapons of mass destruction: “The threat or use of weapons of mass destruction, in particular nuclear weapons, which are indiscriminate in effect and are of a nature to cause destruction of human life on a catastrophic scale is incompatible with respect for the right to life and may amount to a crime under international law.”<sup>64</sup>

The Human Rights Committee has also linked environmental protection with minorities rights protected under article 27 of the ICCPR. For example, in *Sara et al. v. Finland*<sup>65</sup> concerning logging activities in the herding lands of reindeer breeders of Sami ethnic origin, the Committee assessed whether legal protection of minority group’s particular way of life is affected from activities that negatively impact the natural environment.

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<sup>57</sup> Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/22/43, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 19 July 2021, A/76/179

<sup>58</sup> Annex to the report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 24 January 2018, A/HRC/37/59, available at <https://undocs.org/A/HRC/37/59>.

<sup>59</sup> UN Doc A/ HRC/37/ 59, Commentary on framework principles 1 and 2, para. 4.

<sup>60</sup> Principle 7.

<sup>61</sup> Principle 9.

<sup>62</sup> Principle 10.

<sup>63</sup> UN Human Rights Committee (HRC), General comment no. 36, Article 6 (Right to Life), 3 September 2019, CCPR/C/GC/36, available at: <https://www.refworld.org/docid/5e5e75e04.html>, last checked 01.09.2021.

<sup>64</sup> *Ibid.*, para. 66.

<sup>65</sup> *Sara et al. v. Finland*, Communication No. 431/1990, CCPR/C/50/D/431/1990, 1994. See also *Anni Äärelä et al. v. Finland*, Communication No. 779/1997, 7 November 2001, CCPR/C/73/D/779/1997.

Similarly, in *Poma Poma v. Peru*,<sup>66</sup> a case concerning the diversion of groundwater by the authorities from an area causing the death of many livestock and deprivation of a minority community's means of survival, the Committee found that the State party had infringed the right to an effective remedy for the violation of the applicant's article 27 rights. The Committee did not find it necessary to consider the applicant's claims under the right to privacy, family and home.

In 2019, the Committee reinforced its environmental jurisprudence by issuing two decisions that recognized the connection between ICCPR rights and environmental protection through articles 6 and 17 ICCPR, that protect the right to life and right to private life.<sup>67</sup>

The case of *Cáceres v. Paraguay*<sup>68</sup> concerns the mass application of pesticides to soy farms resulting in death, poisonings, deterioration of crops and water contamination. The Human Rights Committee upheld the applicants claim that the State authorities had violated their obligations to ensure the right to life and the right to private and family life by failing to take actions against illegal polluting activities and not putting in place adequate controls. Finding violation of the right to life of surviving applicants, the Committee affirmed the undeniable link between environmental protection and human rights.<sup>69</sup>

In *Teitiota v. New Zealand*,<sup>70</sup> the applicant argued that, by forcibly returning him from New Zealand to Kiribati in disregard of the effects of climate change, sea level rise and violent land disputes that he would have faced upon return to his country of origin, State authorities had violated their obligations under article 6 ICCPR because he would have risked to be exposed to a real risk of irreparable harm to his right to life. Although the Human Rights Committee did not find a violation in the case, it recognized that "the effects of climate change in ... states may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant."<sup>71</sup> The Committee "recall[ed] that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life", "that environmental degradation can compromise effective enjoyment of the right to life, and that severe environmental degradation can adversely affect an individual's well-being and lead to a violation of the right to life."<sup>72</sup>

The ICESCR contains implicit environmental obligations, as made clear by its supervisory body, the **Committee on Economic, Social and Cultural Rights**. In its General Comment No.12 on the right to food , the Committee affirmed that "the right to adequate food is ... inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels...."<sup>73</sup> In its General Comment No. 14 on the right to the highest

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<sup>66</sup> *Poma Poma v. Peru*, Communication No. 1457/2006, 27 March 2009, CCPR/C/95/D/1457/2006.

<sup>67</sup> Ginevra Le Moli, The Human Rights Committee, Environmental Protection and the right to life, ICLQ, Vol 69, July 2020, pp 735–752.

<sup>68</sup> *Portillo Cáceres v. Paraguay*, Communication No. 2751/2016, 9 August 2019, CCPR/C/126/D/2751/2016.

<sup>69</sup> *Ibid.*, at para 7.4

<sup>70</sup> *Teitiota v. New Zealand*, Comm No. 2728/2016, 24 October 2019, CCPR/C/127/D/2728/2016.

<sup>71</sup> *Ibid.*, para. 9.11.

<sup>72</sup> *Ibid.*

<sup>73</sup> CESCR, *General Comment No.12*, E/C.12/1999/5, 12 May 1999, para. 4.

attainable standard of health,<sup>74</sup> the Committee affirmed that “the highest attainable standard of physical and mental health ... extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.”<sup>75</sup> In its General Comment No. 15 on the right to water,<sup>76</sup> the Committee stated that “water is necessary to produce food (right to adequate food) and ensure environmental hygiene (right to health).”

The **Convention on the Rights of the Child** (CRC)<sup>77</sup> expressly addresses State obligations in respect of the risks of environmental pollution. Under Article 24 (2) (c), the CRC describes environmental pollution as a threat against primary healthcare.<sup>78</sup> Also in Article 29 (1), the CRC makes it an obligation for States to include the development of respect for the natural environment as an aim of education.<sup>79</sup>

The environmental obligations extend to regulation of the private sector. In its General Comment No. 16, the **Committee on the Rights of the Child** stated that “[t]he activities and operations of business enterprises can impact on the realization of article 6 (the right to life) in different ways. For example, environmental degradation and contamination arising from business activities can compromise children’s rights to health, food security and access to safe drinking water and sanitation”. Under the State’s obligations to fulfil human rights, the Committee has found that, “if children are identified as victims of environmental pollution, immediate steps should be taken by all relevant parties to prevent further damage to the health and development of children and repair any damage done. States should provide medical and psychological assistance, legal support and measures of rehabilitation to children who are victims of abuse and violence caused or contributed to by business actors.”<sup>80</sup>

In September 2019, a complaint under the third Optional Protocol to the CRC was filed against Argentina, Brazil, France, Germany and Turkey. A group of sixteen children from twelve countries claimed that by perpetuating the foreseeable consequences of climate change, the respondent States violated petitioners’ rights to life, health, and the prioritization of the child’s best interests, as well as the cultural rights of the

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<sup>74</sup> CESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health* (Art. 12), adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000, contained in Document E/C.12/2000/4.

<sup>75</sup> *Ibid.*, at para.4: “However, the reference in article 12.1 of the Covenant to “the highest attainable standard of physical and mental health” is not confined to the right to health care. On the contrary, the drafting history and the express wording of article 12.2 acknowledge that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.

<sup>76</sup> CESCR, *General Comment No. 14 (2000), The right to the highest attainable standard of health*, E/C.12/2000/4, 11 August 2000

<sup>77</sup> Considering that there are 196 State Parties to the CRC, the Convention provides a broad human rights protection in support of environmental protection.

<sup>78</sup> According to Article 24 (2) (c) of the United Nations Convention on the Rights of the Child, “States Parties shall pursue full implementation (...) and take appropriate measures (...) to combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution.

<sup>79</sup> Article 29 (1) on the aims of education provides that: “States Parties agree that the education of the child shall be directed to: [...] the development of respect for the natural environment.”

<sup>80</sup> UN Committee on the Rights of the Child, *General Comment 16, State obligations regarding the impact of the business sector on children’s rights*, UN Doc CRC/C/GC/16, 17 April 2013.

petitioners from indigenous communities. The complaint<sup>81</sup> was dismissed by the Committee on 8 October 2021 for lack of exhaustion of domestic remedies.

The Committee, however, made very important findings. It held that “when transboundary harm occurs, children are under the jurisdiction of the State on whose territory the emissions originated ... if there is a causal link between the acts or omissions of the State in question and the negative impact on the rights of children located outside its territory, when the State of origin exercises effective control over the sources of the emissions in question. The Committee further consider[ed] that while the required elements to establish the responsibility of the State are rather a matter of merits, the alleged harm suffered by the victims needs to have been reasonably foreseeable to the State party at the time of its acts or omissions even for the purpose of establishing jurisdiction.”<sup>82</sup>

The Committee found that, “through its ability to regulate activities that are the source of these emissions and to enforce such regulations, the State party has effective control over the emissions. ... In accordance with the principle of common but differentiated responsibility, as reflected in the Paris Agreement, the Committee [found] that the collective nature of the causation of climate change does not absolve the State party of its individual responsibility that may derive from the harm that the emissions originating within its territory may cause to children, whatever their location. ... Regarding the foreseeability element, [i]n light of existing scientific evidence showing the impact of the cumulative effect of carbon emissions on the enjoyment of human rights, including rights under the Convention, the Committee consider[ed] that the potential harm of the State party’s acts or omissions regarding the carbon emissions originating in its territory was reasonably foreseeable to the State party.”<sup>83</sup>

Importantly, the Committee stressed that children in general have victim status in such cases because they “are particularly impacted by the effects of climate change, both in terms of the manner in which they experience such effects as well as the potential of climate change to affect them throughout their lifetime, in particular if immediate action is not taken. Due to the particular impact on children, and the recognition by States parties to the Convention that children are entitled to special safeguards, including appropriate legal protection states have heightened obligations to protect children from foreseeable harm.”<sup>84</sup>

## **ii. The European Court of Human Rights (ECtHR)**

The European Convention on Human Rights does not contain a self-standing right to healthy environment. The Court has also held that the Convention does not expressly recognize the right to a healthy environment.<sup>85</sup> However, the Convention rights have been interpreted and applied by the European Court of Human Rights to encompass

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<sup>81</sup> *Communication to the Committee on The Rights of The Child, Chiara Sacchi (Argentina); Catarina Lorenzo (Brazil); Iris Duquesne (France); Raina Ivanova (Germany); Ridhima Pandey (India); David Ackley, Iii, Ranton Anjain, And Litokne Kabua (Marshall Islands); Deborah Adegbile (Nigeria); Carlos Manuel (Palau); Ayakha Melithafa (South Africa); Greta Thunberg (Sweden); Raslen Jbeili (Tunisia); & Carl Smith and Alexandria Villaseñor (Usa) v. Argentina, Brazil, France, Germany and Turkey*, Communications Nos. 104/2019, 105/2019, 106/2019, 107/2019, 108/2019, 22 September 2021.

<sup>82</sup> *Ibid.*, para 9.7..

<sup>83</sup> *Ibid.*, paras. 9.9-9.11.

<sup>84</sup> *Ibid.*, para. 9.13.

<sup>85</sup> *Apanasewicz v. Poland*, ECtHR, Application No. 6854/07, 3 May 2011, para. 94. Discussions are being held at the Council of Europe in this regard in its Steering Committee of Human Rights. The Parliamentary Assembly of the Council of Europe has called for an Additional Protocol to the ECHR enshrining the right (ADD RES).

the protection from environmental harm and to impose obligations on States to protect against such harm.

The Court has consistently ruled, under different provisions of the Convention, that, in addition to their negative obligations to refrain from violations of the Convention rights, States are under positive obligations to take action to prevent and protect against Convention violations, as well as to investigate and remedy them. In cases relating to the environment, for instance, the State has a duty not to damage environment that might affect the rights of people protected under the Convention.<sup>86</sup> However, States have also positive duties in environmental cases. For instance, the State is under the positive obligation to provide an effective and accessible procedure enabling individuals to have access to all relevant and appropriate information which would allow them to assess any risk to which they had been exposed during their participation in tests affecting the quality of environment.<sup>87</sup>

The European Court of Human Rights has repeatedly examined the question of procedural obligations separately from the question of compliance with the substantive obligations. States responsibility under the substantive limb of the right might derive from the failure of authorities to meet negative or positive obligations. However, procedural obligations might arise even in the absence of any violation as to substantive aspects of the right. In fact, in cases where the direct responsibility of the State authorities cannot be proven, the procedural limb of the concerned right might be breached due to the failure to carry out an effective investigation as required by the Convention. For instance, in the case of *Özel and Others v. Turkey*, the deaths of the applicants' family members, who were buried alive under buildings that collapsed during an earthquake, in a town located in a region classified as "major risk zone" on the map of seismic activity, the Court held that there had been a violation of Article 2 of the Convention under its procedural limb. The Court found in particular that the Turkish authorities had not acted promptly in determining the responsibilities and circumstances of the collapse of the buildings which had caused the deaths.<sup>88</sup>

Since the 1990s, the European Court of Human Rights has ruled on more than 300 applications regarding environment related issues including dangerous industrial activities, environmental risks, urban nuisance, environmental activism, industrial pollution, and natural disasters. The environmental case-law of the Court includes decisions on the right to life, prohibition of ill treatment,<sup>89</sup> right to respect for private and family life, right to assembly and association,<sup>90</sup> freedom of expression, right to fair trial, and the right to property. In recent years, the Strasbourg Court has also received applications concerning greenhouse gas emissions.<sup>91</sup>

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<sup>86</sup> See for instance, *Dubetska and others v. Ukraine*, ECtHR, Application No. 30499/03, 10 February 2011. In that case, the applicants complain about the state-owned coal mine.

<sup>87</sup> *Roche v. the United Kingdom*, ECtHR, Application No. 32555/96, 19 October 2005, paras. 157-169.

<sup>88</sup> *Özel and Others v. Turkey*, ECtHR, Application No. 14350/05, 17 November 2015, paras. 191-200.

<sup>89</sup> Although it is distant from recognizing a right to a healthy environment, the European Court of Human Rights has considered in some cases that passive smoking (*Elefteriadis v. Romania*, ECtHR, Application No. 38427/05, 25 January 2011 and *Florea v. Romania*, ECtHR, Application No. 37186/03, 14 September 2010) in prison may result in ill treatment.

<sup>90</sup> Environmental defenders' right to assembly and association is protected under article 11 of the ECHR. In *Costel Popa v. Romania* concerning the complaint of an environmental association on the Romanian courts' refusal to legally register the association, the Court found that the denial to register an association before it starts operating constitutes a disproportionate interference against the right to association. *Costel Popa v. Romania*, ECtHR, Application No. 47558/10, 26 April 2016.

<sup>91</sup> *Duarte Agostinho and Others v. Portugal and Others*, Application No. 39371, Communication at <https://hudoc.echr.coe.int/fre?i=002-13055>.



## a) The Right to Life

Several positive obligations arise under the right of life (article 2 of the ECHR). First, according to the case-law of European Court, States have the obligation to put in place a regulatory framework to protect life and ensure that such framework is properly implemented. In the context of environmental threats against life, a number of applications to the Court under the right to life have concerned natural disasters and industrial activities.<sup>92</sup> Especially in these conditions, a primary duty on the State is to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life. Regulations must govern the licensing, setting up, operation, security and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks.<sup>93</sup> The European Court of Human Rights has also stated that, in the context of dangerous activities, the scope of the positive obligations under article 2 of the Convention largely overlap with those under article 8. The principles developed in the Court's case-law relating to planning and environmental matters affecting private life and home may also be relied on for the protection of the right to life.<sup>94</sup>

Secondly, according to the European Court's case-law, within the scope of its positive obligations to protect life, the State must do all that it can to prevent life from being avoidably put at risk.<sup>95</sup> However, this is an obligation of conduct, but not of result. States have positive duties to take precautions to prevent natural disasters to affect the right to life of individuals. The obligation on the part of the State to safeguard the lives of those within its jurisdiction includes the duty to adequately inform the public about any life-threatening emergency.<sup>96</sup> Examples of precautions include cleaning stream beds against flooding, ensuring that stricter construction rules are complied with in the disaster areas, establishment of warning systems, establishment of observation points for disaster risk monitoring, and informing of people at risk. Disaster relief and rescue organization, evacuation, provision of treatment, accommodation, aid and compensation for the damage caused can be given as examples to the measures that must be taken aftermath of the disaster. When these disasters are inescapable, it is the duty of State parties under the convention to mitigate the effects.

In the landmark *Öneriyıldız v. Turkey*<sup>97</sup> judgment concerning a methane explosion at a landfill in Istanbul causing multiple deaths and damage to property, the Grand Chamber of the Court ruled that there had been a violation of the right to life under both its substantive and procedural limbs. According to the Court, the shortcoming by State authorities in taking appropriate steps to prevent the accidental deaths, lack of adequate protection by law safeguarding the right to life, including not providing

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<sup>92</sup> *Kolyadenko and others v. Russia*, ECtHR, Application No. 17423/05, 28 February 2012.

<sup>93</sup> *Özel and others v. Turkey*, ECtHR, Application No. 14350/05, 17 November 2015, para.194; *Budayeva v. Russia*, ECtHR, Application No. 15339/02, 20 March 2008.

<sup>94</sup> *Öneriyıldız v. Turkey*, ECtHR, Application No. 48939/99, 30 November 2004, para. 90.

<sup>95</sup> *Budayeva and Others v. Russia*, ECtHR, Applications Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, 20 March 2008, para. 133.

<sup>96</sup> *LCB v. UK*, ECtHR, Application No. 23413/94, 9 June 1998, para. 36.

<sup>97</sup> *Budayeva and Others v. Russia*, *op.cit.*, para. 131.

<sup>98</sup> *Öneriyıldız v. Turkey*, ECtHR, *op. cit.*

information to the inhabitants about risks caused by the operation of landfill, resulted in a violation of article 2 ECHR.

In *Budayeva and others v. Russia*, the authorities' failure to implement land-planning and emergency relief policies in the hazardous area of Tyrnauz concerning the foreseeable risk to the lives of its residents led the European Court to find a violation of article 2 under its substantive limb.

Thirdly, State Parties also have procedural obligations following an incident that impacts on the right to life. Where lives have been lost in circumstances potentially engaging the responsibility of the State, article 2 entails a duty for the State to ensure, by all means at its disposal, an adequate response so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and redressed. The Court has held that, if the infringement of the right to life or to physical integrity is not caused intentionally, the positive obligation to set up an "effective judicial system" does not necessarily require criminal proceedings to be brought in every case and may be satisfied if civil, administrative or even disciplinary remedies were available to the victims.<sup>98</sup>

Apart from natural disasters and industrial activities, there are several applications concerning climate change<sup>99</sup> and toxic waste disposal<sup>100</sup> pending before the Court.

## **b) Right to respect for private and family life**

The European Court of Human Rights has held that, where an individual is directly and seriously affected by noise or other pollution, article 8 ECHR may be engaged.<sup>101</sup> The adverse effects of environmental pollution must attain a certain minimum level if they are to fall within the scope of this article. The assessment of that minimum is relative and depends on all the circumstances of the case, such as the intensity and duration of the nuisance and its physical or mental effects.<sup>102</sup> On the other hand, to reach the severity threshold, effect on the right to health is not a necessity. Severe environmental pollution can adversely affect an individual's well-being and constitute an interference against the right to respect for private and family life and home without seriously endangering their health.<sup>103</sup>

The Court has looked for the presence of two factors to ascertain whether environmental pollution is an interference with the right protected under article 8. The first factor is whether there is a causal link between the polluting activity and the encountered adverse effect. The second is whether a certain threshold of harm is passed.<sup>104</sup> The State's responsibility arises because of the failure to regulate private industry, when the activities of this industry affect the right protected under article 8.

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<sup>98</sup> *Vo v. France*, ECtHR, GC, Application No. 53924/00, para. 90.

<sup>99</sup> *Duarte Agostinho and Others v. Portugal and Others*, ECtHR, *op. cit.*

<sup>100</sup> *Di Caprio and Others v. Italy*, ECtHR, Application no. 39742/14.

<sup>101</sup> *Hatton and Others v. the United Kingdom*, ECtHR, Application No. 36022/97, para. 96.

<sup>102</sup> *Fadeyeva v. Russia*, ECtHR, Application No. 55723/00, paras. 68-9.

<sup>103</sup> *López Ostra v. Spain*, ECtHR, Application No. 16798/90, 09 December 1994, para. 51; *Guerra and Others v. Italy*, ECtHR, GC, Application No. 14967/89, 19 February 1998, para. 60; and, *Yevgeniy Dmitriyev v. Russia*, ECtHR, Application No. 17840/06, 01 December 2020, para. 32.

<sup>104</sup> *Fadeyeva v. Russia*, ECtHR, *op. cit.* The severity threshold of the Court that is applied under article 3 is much higher compared to the severity threshold applied under article 8.

Regarding the presence of a causal link, in *Tatar v. Romania*,<sup>105</sup> a case on the harmful effects of cyanide exposure from a gold mine after a breach, the Court stated that, although the causal link between exposure to sodium cyanide and asthma was not proven, the State should have taken precautionary measures, even in the absence of scientific and technical knowledge at the time. The Court found that the State authorities failed to take precautions after an accident, and could not justify any delay on the part of the State in adopting effective and proportionate measures.

Regarding the harm threshold, in the case of *Calancea and Others v. the Republic of Moldova*<sup>106</sup> concerning a high-voltage power line crossing the land of the applicants, the Court found that the threshold of severity had not been attained as the strength of the electromagnetic field created by the high-voltage line did not have as sufficiently serious harmful effect on the applicants' private and family life.

In *Kyrtatos v. Greece*, the applicants submitted that urban development had led to the destruction of their physical environment and had negatively affected their private life. The European Court of Human Rights held that they had not shown that the alleged damage to the birds and other protected species living in the swamp was of such a nature as to directly affect their own rights under article 8.<sup>107</sup>

According to article 8.2 ECHR, domestic authorities in any of the Contracting States to the ECHR may interfere with the the right to respect for private life where three cumulative conditions are fulfilled: the interference is prescribed by law; it is aimed at protecting one or more of the interests or values enumerated in the paragraph; and it is necessary in a democratic society and proportionate to the aim pursued.

As in article 2, under article 8, the States have not only an obligation to abstain from arbitrary interference but also positive obligations. In *Lopez Ostra v. Spain*, the Court stated that the applicable principles to both obligations are broadly similar.<sup>108</sup> As already noted, positive obligations might require the State to regulate private industry. In *Hatton and others v. UK*, the European Court of Human Rights affirmed that "[e]nvironmental protection should be taken into consideration by States in acting within their margin of appreciation and by the Court in its review of that margin, but it would not be appropriate for the Court to adopt a special approach in this respect by reference to a special status of environmental human rights".<sup>109</sup>

In a number of cases, where the State authorities failed to take necessary measures to prevent and control private industry, the European Court has concluded that the article 8 ECHR had been breached. In *Fadeyeva v. Russia*, the respondent State had authorized the operation of a polluting enterprise in the middle of a densely populated town. The European Court held that it would be going too far to hold that the State or the polluting enterprise were under an obligation to provide the applicant with free housing. However, noting that the State did not offer the applicant any effective

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<sup>105</sup> *Tatar v. Romania*, ECtHR, Application No. 67021/01, 27 January 2009.

<sup>106</sup> *Calancea and others v. Republic of Moldova*, ECtHR, Application No. 23225/05, 06 February 2018, para. 32.

<sup>107</sup> *Kyrtatos v. Greece*, ECtHR, Application No. 41666/98, 22 May 2003.

<sup>108</sup> *López Ostra v. Spain*, Application No. 16798/90, 9 December 1994, para 51.

<sup>109</sup> *Hatton and Others v. UK*, ECtHR, Application No. 36022/97, 8 July 2003, para. 122. In line with this approach in *Greenpeace e.V. and Others v. Germany* the European Court found the application inadmissible stating that "the State had taken certain measures to curb emissions by diesel vehicles. The choice of means as to how to deal with environmental issues fell within the State's margin of appreciation and the applicants had failed to show that in refusing to take the specific measures they had requested, the State had exceeded its discretionary power by failing to strike a fair balance between the interests of the individuals and that of the community as a whole". *Greenpeace e.V. and Others v. Germany*, Application No. 18215/06, 12 May 2009.

solution to help her move from the dangerous area, the Court concluded that a fair balance in that case had not been struck.<sup>110</sup>

Failure to require an environmental impact assessment for a long period of time might also lead to violation of article 8. In *Giacomelli v. Italy*,<sup>111</sup> which concerns a toxic industrial waste treatment facility, the authorities failed to require that an environmental impact assessment be carried out. The Court found that the authorities' failure to suspend the operation of a facility that generated toxic emissions, despite the lack of environmental impact assessment and the presence of a court order, caused violation of the rights to respect for private life and home.

To examine the compatibility with article 8, the European Court of Human Rights may scrutinize the decision-making process to decide whether a fair balance has been struck. In *Hatton and others*, the Court summarized different aspects of this inquiry in the following way:

*In connection with the procedural element of the Court's review of cases involving environmental issues, the Court is required to consider all the procedural aspects, including the type of policy or decision involved, the extent to which the views of individuals (including the applicants) were taken into account throughout the decision-making procedure, and the procedural safeguards available.*<sup>112</sup>

Whilst article 8 contains no explicit procedural requirements, the Court attaches importance to public access to information and participatory decision-making process under procedural requirements.<sup>113</sup>

In numerous cases under Article 8, the Court stressed the positive obligation of States to ensure public participation in decision making and the implementation of the right to access to information.

In *Guerra and Others v. Italy*,<sup>114</sup> concerning the failure to provide the local population with information about risks caused by a chemical factory; in *Roche v. the UK*,<sup>115</sup> concerning the failure to provide a procedure enabling the applicant to access information on health risks of participation in army gas tests; and in *McGinley and Egan v. the UK*<sup>116</sup> on access to records relating to applicants' participation in nuclear tests, the Court assessed whether the State had fulfilled its positive obligation to provide an effective and accessible procedure enabling the applicants to have access to all information that would allow them to assess any risks.

In *Di Sarno v. Italy*, the Court held that authorities' prolonged failure to ensure collection, treatment and disposal of garbage had infringed the applicants' right to respect for their private lives and their homes in their substantive aspect.<sup>117</sup> Under the procedural aspect of Article 8, the Court found that there had been no violation as that

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<sup>110</sup> *Fadeyeva v. Russia*, *op. cit.*

<sup>111</sup> *Giacomelli v. Italy*, ECtHR, Application No. 59909/00, 2 November 2006, para.86.

<sup>112</sup> *Hatton and Others*, ECtHR, *op. cit.*, para. 104.

<sup>113</sup> *Di Sarno and others v. Italy*, Application No. 30765/08, 10 January 2012, para. 107; *Giacomelli v. Italy*, ECtHR, *op.cit.*, paras. 79 and 83.

<sup>114</sup> *Guerra and Others v. Italy*, ECtHR, *op.cit.*

<sup>115</sup> *Roche v. the United Kingdom*, ECtHR, GC, Application No. 32555/96, 19 October 2005.

<sup>116</sup> *McGinley and Egan v. UK*, ECtHR, Applications Nos. 1825/93 and 23414/94, 9 June 1998.

<sup>117</sup> *Di Sarno and others v. Italy*, ECtHR, Application No. 30765/08, 10 January 2012, para.112.

there had been no failure of authorities in ensuring the information enabling the assessment of risk .

Concerning different types of pollution, under article 8 ECHR, the Court has repeatedly referred to the judicial exercise to strike a fair balance between the interests of the community and the applicants' effective enjoyment their right to respect for private and family life and home. For example, in *Fadeyeva v. Russia* concerning toxic emissions of a steel production facility, the Court stated that authorities, by allowing a polluting enterprise in the middle of a densely populated town, failed to conduct this balancing exercise.<sup>118</sup>

### **c) Right to fair hearing**

Environmental disputes are also subject to the right to a fair hearing. However, there are two difficulties in the application of article 6 ECHR to environment cases. First, it is critical to decide whether the complaint falls within the subject matter jurisdiction (*ratione materiae*) under article 6 of the Convention. In other words, whether the dispute is about a civil right. Secondly, the Convention does not confer any right to an *action popularis*. The applicants, therefore, have to show that their rights are directly affected apart from the public interest.

As to the first point, in *Athanassoglou and Others v. Switzerland*, the applicants claimed that they were denied effective access to a court, in breach of article 6.1 of the Convention, to challenge the authorities' decision to renew the operating licence of a nuclear power plant. The European Court held that the applicants were not alleging a specific and imminent danger in their personal regard, but rather a general danger in relation to all nuclear power plants. The Court considered that, under article 6.1, individuals have to be granted access to a court whenever they have an arguable claim that there had been an unlawful interference with the exercise of one of their civil rights. However, the outcome of the procedure before the Federal Council was decisive for the general question as to whether the operating licence of the power plant should be extended, but not for the "determination" of any "civil right", such as the rights to life, physical integrity and of property, which Swiss law conferred on the applicants in their individual capacity.<sup>119</sup>

In *Gorraiz Lizarraga and Others*, the Court concluded that article 6.1 was applicable to an action brought by an association of owners to oppose the construction of a dam – in proceedings to which only the association was party – on the ground that in addition to defence of the public interest, the association was also defending certain specific interests of its members, whose economic rights in particular were at issue.<sup>120</sup>

In the case of *Collectif national d'information et d'opposition à l'usine Melox – Collectif Stop Melox et Mox v. France*, the European Court affirmed that article 6.1 ECHR was applicable to proceedings brought by an environmental-protection association not describing itself as an association of local people aiming specifically to defend the rights and interests of its members. The Court concluded that while the purpose of the impugned proceedings had fundamentally been to protect the general interest, the

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<sup>118</sup> *Fadeyeva v. Russia*, ECtHR, *op. cit.*, para 132.

<sup>119</sup> *Athanassoglou and Others v. Switzerland*, *op. cit.*

<sup>120</sup> *Gorraiz Lizarraga and Others v. Spain*, Application No. 62543/00, para. 46.

“dispute” raised by the applicant association also had a sufficient link with a “right” to which it could claim to be entitled as a legal entity. In fact, the issue of the public’s right to be informed and to participate in the decision-making process where an activity involving a risk to health or the environment was concerned lay at the heart of the applicant association’s claims.<sup>121</sup>

In *L’Erablière asbl v. Belgium*, a case concerning an association’s complaint against the granting of planning permission to expand a waste collection site, the European Court considered that, since the increase of the capacity of a waste collection site could directly affect the private life of the members of the applicant association, the right to access to a court was violated.<sup>122</sup>

Failure to enforce final judicial decisions can be considered as the second limb of the European Court’s environmental case-law under article 6. In *Apanasewicz v. Poland*, the failure to enforce a judgment that ordered the closure of a factory was considered a violation of article 6.1. Similarly, in *Bursa Barosu Başkanlığı and Others v. Turkey*, the failure to enforce multiple judgements annulling administrative authorizations for the construction and operation of a starch factory over the years had resulted in a violation of the right to a fair hearing under article 6.1 of the Convention.<sup>123</sup>

#### **d) Freedom of expression**

Environmental case-law of the Court on freedom of expression has mostly concerned cases in which expression aiming to raise awareness for the protection of environment was subjected to defamation claims.<sup>124</sup> *Vides Aizsardzības Klubs v. Latvia* concerns a judicial order directed at an NGO to publish an official apology and to pay damages for alleging that the local mayor had facilitated illegal construction work in the coastal area. The Court found that the applicant exercised the role of a “watchdog” and interference to a contribution aiming the transparency of public authorities’ activities was in violation of Article 10.<sup>125</sup>

The right to access to information is protected under article 10 of the ECHR. In environmental matters, public access to information may be vital in ensuring public participation. In this regard, the Court in some instances has referred to the *Aarhus Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters* under relevant international texts on the right to a healthy environment.<sup>126</sup>

In the case of *Association BURESTOP 55 and Others v. France*, the European Court considered the applicability of the right of access to information in cases concerning the environmental rights organizations.<sup>127</sup> The Court stated that the right of access to information would be rendered nugatory if the information supplied were dishonest,

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<sup>121</sup> *Collectif national d’information et d’opposition à l’usine Melox – Collectif Stop Melox et Mox v. France*, ECtHR, Application No. 75218/01, admissibility decision, 28 March 2006.

<sup>122</sup> *L’Erablière asbl v. Belgium*, ECtHR, Application No. 49230/07, 24 February 2009.

<sup>123</sup> *Bursa Barosu Başkanlığı a.o v. Turkey*, ECtHR, Application No. 25680/05, 19 June 2018, para.145.

<sup>124</sup> *Steel and Morris v. the United Kingdom*, ECtHR, Application No. 68416/01, 15 February 2005; *Vides Aizsardzības Klubs v. Latvia*, ECtHR, Application No. 57829/00, 27 May 2004.

<sup>125</sup> *Vides Aizsardzības Klubs v. Latvia*, ECtHR, *op cit.*

<sup>126</sup> *Taşkın and others v. Turkey*, ECtHR, *op. cit.*, para 99. See also, *Okyay and others v. Turkey*, ECtHR, Application No. 36220/97, 12 July 2005, para.52; *National Movement Ekoglasnost v. Bulgaria*, ECtHR, Application No. 31678/17, 15 December 2020, para.57.

<sup>127</sup> *Association BURESTOP 55 and Others v. France*, ECtHR, Application No. 56176/18, 1 July 2021.

inaccurate or insufficient. It also held that access to such review was particularly important in the case of information concerning a project presenting a major environmental risk such as a nuclear hazard. However, the European Court did not find a violation as it found the judicial review of the national authorities adequate.

In *Cangi v. Turkey*, concerning an application to obtain information about the threat of destruction of an ancient city by a dam project, the Court observed the aim of the information request, content of the requested information, role of the applicant and the usage of that information. The Court assessed that the applicant had a role in civil society groups aiming to protect an ancient city, and the requested information was required for bringing relevant decision-making procedure to the attention of the courts and the public. Based on these findings, the Court found that denying the applicant access to the requested official documents prevented the applicant from exercising his freedom to receive and impart information protected under article 10.<sup>128</sup>

### **e) Right to protection of property**

In environmental disputes, property rights are usually referred to in issues concerning the legal standing of an applicant before a judicial body to file an environmental complaint. It is a current and a global challenge of environmental defenders to overcome the legal standing obstacle where the applicants do not possess a property in the vicinity of a polluted area, despite scientific proof that environmental pollution and climate change are global issues with far reaching negative effects. Contrary to this approach to property rights, in several cases, the European Court of Human Rights has interpreted the right to protection of property from an eco-friendlier perspective.

The Court, in *Hamer v. Belgium* concerning the demolition of a holiday home in an unpermitted forestry area, stated that the protection of the environment is an increasingly important consideration and financial imperatives or even certain fundamental rights, such as ownership, should not be afforded priority over environmental protection considerations. It underlined that authorities should assume a responsibility in implementing the regulations that aim to protect the environment and did not find a violation of Article 1 of the Protocol 1 that protects the right to property.<sup>129</sup>

In *O'Sullivan McCarthy Mussel Development Ltd v. Ireland*, concerning a company's mussel trade being affected from the implementation of environmental regulations under EU law, the Court stated that the protection of the environment is a legitimate objective and when it is at stake States have a wider margin of appreciation in regard to interference with property rights. The Court found that a balancing exercise between the general interests of the community and the protection of the right to property was conducted by the authorities and did not find a violation against the right to property.<sup>130</sup>

### **i. European Committee for Social Rights**

The Revised European Social Charter protects certain economic and social rights and provides for a collective complaint procedure to remedy violations. Article 11 provides

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<sup>128</sup> *Cangi v. Turkey*, ECtHR, Application No. 24973/15, 29 January 2019.

<sup>129</sup> *Hamer v. Belgium*, ECtHR, Application No. 21861/03, 27 November 2007, para.79.

<sup>130</sup> *O'Sullivan McCarthy Mussel Development Ltd v. Ireland*, ECtHR, Application No. 44460/16, 7 June 2018, para.124.

that “[e]veryone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable”. Relying on this provision, the European Committee for Social Rights has developed jurisprudence related to environmental protection. The Committee has recently stated that issues such as the creation and protection of a healthy environment are central to the Charter’s system of guarantees.<sup>131</sup>

The case of the *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*<sup>132</sup> concerns the environmental impacts and health hazards caused by lignite mines.<sup>133</sup> The Committee found that the State had not adequately prevented the impact for the environment nor had developed an appropriate strategy in order to prevent the violations against the applicants’ right to protection of health, right to reduced working hours or additional holidays for workers in dangerous or unhealthy occupations,<sup>134</sup> enforcement of safety and health,<sup>135</sup> protected under the European Social Charter. In this case the Committee recognized that the right to health under article 11 includes the “right to a healthy environment”.<sup>136</sup> The Committee held that the objective of overcoming pollution must be obtained by States Parties “within a reasonable time, by showing measurable progress and making best possible use of the resources at their disposal.”<sup>137</sup> States must also demonstrate the respect of existing environmental rules<sup>138</sup> and introduce precautionary measures against any foreseeable environmental or health harm.<sup>139</sup> There is furthermore an obligation to inform the public about environmental problems that may affect them or the region where they live.<sup>140</sup>

### **C. Responsibilities of businesses and private entities**

Business enterprises are responsible for a significant part of damage to the environment, including emissions. It is therefore important to assess how human rights law may be applicable to them in terms of access to justice.

The responsibility of the State will be engaged in respect of the conduct of business in two types of situation. The first is where the conduct of the company can be effectively be attributed to the State. According to the International Law Commission’s articles on State responsibility, this will occur when the company “is not an organ of the State ...but .. is empowered by the law of that State to exercise elements of the governmental authority..., provided the person or entity is acting in that capacity in the particular instance.”<sup>141</sup> This may be the case, for example, with essential utilities. Conduct may also be attributed to the State if the company “is in fact acting on the

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<sup>131</sup> European Committee of Social Rights, *ATTAC ry, Globaali sosiaalityö ry and Maan ystävät ry v. Finland*, decision on admissibility and on immediate measures, Complaint No. 163/2018, 22 January 2019, para. 12.

<sup>132</sup> European Committee of Social Rights, Decision on the merits, *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, Collective Complaint No. 30/2005, 06/12/2006.

<sup>133</sup> Turkey has not signed nor ratified the Additional Protocol providing for a system of collective complaints.

<sup>134</sup> Article 2.4, European Social Charter (revised).

<sup>135</sup> *Ibid.*, article 3.2.

<sup>136</sup> *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, *op. cit.*, paras.195-196.

<sup>137</sup> *Ibid.*, para.204. See also, *International Federation of Human Rights Leagues (FIDH) v. Greece*, ECSR, Collective Complaint No. 72/2011, 23/01/201, para 129.

<sup>138</sup> *International Federation of Human Rights Leagues (FIDH) v. Greece*, ECSR, Collective Complaint No. 72/2011, 23/01/201, para 142.

<sup>139</sup> *Ibid.*, para 146-147. See also para.150 enshrining the precautionary principle: “when a preliminary scientific evaluation indicates that there are reasonable grounds for concern regarding potentially dangerous effects on human health, the State must take precautionary measures consistent with the high level of protection established by Article 11. Where required, these measures must be taken in accordance to relevant decisions adopted by national jurisdictions.”

<sup>140</sup> *Ibid.* para 158

<sup>141</sup> Article 5, UN Articles on the Responsibilities of States for International Wrongful Acts, UNGA resolution, UN Doc. A/RES/56/83 of 12 December 2001.



instructions of, or under the direction or control of, that State in carrying out the conduct.”<sup>142</sup> This may often be the case with private military or security contractors.

Under all of the human rights treaties, States have an obligation not only to ensure that State agents respect human rights, but also an obligation to protect people from the acts of non-State actors, such as businesses, that would impair their human rights. This has been affirmed by the various treaty bodies, including, among others, the Human Rights Committee.<sup>143</sup>

As far as private companies are concerned, States retain international responsibilities for the human rights abuses committed or caused by companies in light of their positive obligations, i.e. their duty to prevent human rights abuses by companies insofar State authorities knew or ought to have known about it, to protect victims of such abuses and to provide effective remedies and redress to them, including effective investigations and prosecutions, when applicable, as well as reparation, satisfaction, restitution, guarantees of non-repetition. To implement these obligations, States must put in place an effective normative framework and set of institutions apt to the task.<sup>144</sup>

International law has developed a set of non-binding standards directly applicable to companies. These include as the most prominent the UN Guiding Principles on Business and Human Rights.<sup>145</sup> Additional declarative international standards include the OECD Guidelines for Multinational Enterprises<sup>146</sup> and the Council of Europe’s Recommendation on Human Rights and Business.<sup>147</sup> For a number of years negotiations have been underway at the United Nations on a international legally binding instrument on business and human rights, with the most recent draft having been debated at an open ended Working Group of the UN Human Rights Council in October 2021.<sup>148</sup>

Article 15 of the Council of Europe Recommendations on Human Rights and Business affirms that “member States have a duty to protect individuals against human rights abuses by third parties, including business enterprises. This includes their positive and procedural obligations under the European Convention on Human Rights, as applied and interpreted by the European Court of Human Rights. Such obligations consist of requirements to prevent human rights violations where the competent authorities had known or ought to have known of a real risk of such violations, to undertake an independent and impartial, adequate and prompt official investigation where such violations are alleged to have occurred; to undertake an effective prosecution, and to

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<sup>142</sup> *Ibid.*, article 8.

<sup>143</sup> Human Rights Committee, *General Comment No. 31*, para. 8: “the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.” See also the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child (General Comment No. 16), which have both developed full General Comments on the topic (General Comment No. 24). This is restated in the first Pillar of the tripartite UN Guiding Principles on Businesses and Human Rights. See also Maastricht ETO Principles.

<sup>144</sup> *Osman v. the United Kingdom*, ECtHR, Application No. 23452/94, 28 October 1998.

<sup>145</sup> UN Guiding Principles on Businesses and Human Rights, available at [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf).

<sup>146</sup> Available at <https://www.oecd.org/daf/inv/mne/48004323.pdf>.

<sup>147</sup> Available at <https://edoc.coe.int/en/fundamental-freedoms/7302-human-rights-and-business-recommendation-cmrec20163-of-the-committee-of-ministers-to-member-states.html>.

<sup>148</sup> The work can be followed here: <https://www.ohchr.org/en/hrbodies/hrc/wgtranscorp/pages/igwgontnc.aspx>. Although progress has been made, agreement on final text seems some way off.

take all appropriate measures to establish accessible and effective mechanisms which require that the victims of such violations receive prompt and adequate reparation for any harm suffered.”<sup>149</sup>Critically, “[m]ember States should apply such legislative or other measures as may be necessary to ensure that human rights abuses caused by business enterprises within their jurisdiction give rise to civil liability under their respective laws.”<sup>150</sup>

#### **D. EU Accession and standards for the protection of the environment**

In the process of accession to the EU, Turkey will need to implement the legislation and policies encompassed in Chapters 23 and 27 of the EU “acquis”,<sup>151</sup> namely on fundamental rights and the rule of law, and on the environment.

The EU has a wealth of environmental legislation applicable to EU Member States, that is referenced in Chapter 27 of the EU acquis. Much of this legislation flows from the international obligations derived from international environmental law, including in terms of participation and access to justice under the Espoo Convention and the Aarhus Convention. EU law also encompasses general principles of international environmental law such as the principles of preventive action, the precautionary principles, and the “polluter pays” principle. More recently, the EU passed Regulation (EU) 2021/1119 establishing the framework for achieving climate neutrality and amending Regulations<sup>152</sup> (EC) No 401/2009 and (EU) 2018/1999 (‘European Climate Law’) which introduces in binding terms a system of implementation of the Paris Agreement’s commitments.

Furthermore, Chapter 23 requires acceding countries to improve protection of fundamental rights, namely the EU Charter of Fundamental Rights, and the rule of law, including, importantly, the independence of the judiciary. These standards are also key to environmental protection. In light of the accession process of Turkey, these standards therefore provide useful points of comparison.

#### **V. Access to justice in environmental matters under Turkey’s domestic law**

Article 56 of the Turkish Constitution provides that “[e]veryone has the right to live in a healthy and balanced environment. It is the duty of the State and its citizens to improve the natural environment, to protect the environmental health and to prevent environmental pollution”. Under article 148 of the Constitution, “[e]veryone may apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights which are guaranteed by the Constitution has been violated by public authorities.” The Constitutional Court has ruled that Constitutional rights that are not protected under the Convention may not be the subject of individual applications. As economic, social and cultural rights and other more recently recognized international human rights are not directly protected by the ECHR, Article 56 does not fall within scope of individual application. Claims concerning environmental risks created by the emission of greenhouse gases may engage Articles 2 and 8 of the ECHR that cover respectively

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<sup>149</sup> Article 15, Council of Europe’s Recommendation on Human Rights and Business.

<sup>150</sup> Article 32, *ibid*.

<sup>151</sup> The acquis is the collection of standards that States must implement to be aligned with EU law and policies in a sufficient way to allow for their accession to the European Union.

<sup>152</sup> Available at <https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=celex:32021R1119> .

the right to life and the right to respect for private and family life. The right to a healthy environment is also protected the Environment Law No 2872. This legislation grants a right to everyone who becomes aware of activities that damage the environment to request administrative authorities to take necessary precautions and to stop relevant activities.<sup>153</sup>

Since access to justice to seek protection for human rights is increasingly important also to ensure the protection of the environment, general problems concerning the rule of law in Turkey have direct impact on them. This Chapter will address firstly the general problems concerning rule of law, and then will analyse the specific problems faced by environmental activists to access justice.

## **A. Rule of Law and Judicial Independence**

The separation of powers, particularly between the judiciary and political branches of government, is a core precept of the rule of law. A competent, independent and impartial judiciary is fundamental to the rule of law, particularly in respect of the fair administration of justice and for the effective legal protection of human rights.<sup>154</sup> It is therefore essential both to the rule of law more generally, and specifically to the fulfilment of a State's international legal obligations on human rights, that the independence, impartiality, integrity and competence of its courts and judges are guaranteed in law and secured in practice.

In the past years, Turkey has undergone a serious decline in the rule of law and in access to justice. This is partly due to political turmoil the State has experienced in the last decade. The judiciary was restructured numerous times between 2010 and 2019. Constitutional amendments enacted in 2010 introduced a partly electoral system within the High Council of Judges and Prosecutors (HCJP), the body responsible for the self-government of judges and prosecutors.<sup>155</sup> The ICJ in 2016 published a report *Justice in Peril*, detailing how the High Council existing at that time had been prone to undue influence by the executive and legislative powers.<sup>156</sup>

The structure, composition, and methods of appointment of the previous judicial council were radically changed by a constitutional amendment in April 2017, which also renamed the body as the Council of Judges and Prosecutors (CJP).<sup>157</sup> Of the thirteen members, four are now appointed by the President of the Republic. The Minister of Justice, who presides over CJP, and his or her deputy are *ex officio* members. The remaining seven members are appointed by the National Assembly. All members appointed by the Parliament are elected by a qualified majority. Consequently, the appointment of majority of all members of the Council is, in one

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<sup>153</sup> Some scholars, based on this provision, even claimed that there should be no subjective legal capacity requirement in environmental cases. Nükhet Turgut, Çevre Hukuku, s.292; Yasemin Özdek, "İptal Davasında Menfaat Koşulu", Amme İdaresi Dergisi, C.24, 1991, s.112.

<sup>154</sup> UN Basic Principles on the Independence of the Judiciary, at preamble. ICJ, "Justice Suspended: Access to Justice and the State of Emergency in Turkey", July 2018, pages 21 and 22, available at <https://www.icj.org/wp-content/uploads/2018/12/Turkey-Access-to-justice-Publications-Reports-2018-ENG.pdf>. Venice Commission, Opinion, Turkey, On the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017, Opinion No. 875/2017, CDL-AD(2017)005, Adopted by the Venice Commission at its 110th Plenary Session, Venice, 10-11 March 2017, para.44

<sup>155</sup> Council of Judges and Prosecutors is the centralized body responsible for the organization of the judiciary, with power to decide on admission, appointment, transfer, promotion, disciplinary measures, dismissal, and supervision of judges and public prosecutors

<sup>156</sup> ICJ, Report, *Turkey Judiciary – Justice in Peril*, 2016, available at <https://www.icj.org/wp-content/uploads/2016/07/Turkey-Judiciary-in-Peril-Publications-Reports-Fact-Findings-Mission-Reports-2016-ENG.pdf>.

<sup>157</sup> Law no.6771, available at <https://bit.ly/2IIIfuK>.

way or another, presently controlled by the government. None of the members of the CJP are elected by judges or public prosecutors.

The Council of Europe's European Commission For Democracy Through Law (Venice Commission) analyzed the constitutional amendments that restructured the judiciary and found that "enhanced executive control over the judiciary and prosecutors which the constitutional amendments would bring about would be even more problematic, in the context in which there have already been longstanding concerns regarding the lack of independence of the Turkish judiciary." As foreseen by the Venice Commission, the amendments have also weakened an already inadequate system of judicial oversight of the executive.<sup>158</sup>

The Turkish supreme courts (the Court of Cassation and the Council of State) have undergone four structural reforms of their composition and functioning between 2011 and 2017. The number of the members of the both Court of Cassation and the Council of State and their structure were substantially changed in 2011,<sup>159</sup> 2014,<sup>160</sup> 2016<sup>161</sup> and 2017.<sup>162</sup> The number of members of the Court of Cassation was increased from 250 to 516, and the number of members of the Council of State was increased from 95 to 195, by amendments in 2011 and 2014. In 2016, the number of members of the Court of Cassation was reduced to 200 and the number of members of the Council of State was reduced to 90.<sup>163</sup>

Furthermore, following the amendments to the composition of the CJP, the number of judges and prosecutors subjected to involuntary transfers increased substantially. While 190 judges and prosecutors were transferred in 2010 by decisions taken on 9 May 2017<sup>164</sup> and 3 July 2017,<sup>165</sup> the CJP transferred 1,815 judges and prosecutors in less than two months. On 25 July 2018, the CJP transferred 3,320 judges and prosecutors.<sup>166</sup> By its 31 May 2019 decision,<sup>167</sup> the CJP transferred 3,722 judges and prosecutors.<sup>168</sup>

Transfer of judges on a mass scale against their will has negatively impacted the independence of judiciary. Even the Turkish Government in its Judicial Reform Strategy effectively admits that the absence of protection against arbitrary and involuntary transfers is a problem.<sup>169</sup>

The Executive's undue influence over the judiciary has further increased following the failed coup attempt on 15 July 2016. One-third of the existing judges and prosecutors

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<sup>158</sup> European Commission For Democracy Through Law, Venice Commission, CDL-AD(2017)005-e, Turkey - Opinion on the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a National Referendum on 16 April 2017, para. 129.

<sup>159</sup> See news report at <http://www.hurriyet.com.tr/gundem/yargitay-ve-danistayda-daire-sayilarini-attiran-tasari-yasalasti-16982030>

<sup>160</sup> See news report at <http://www.aljazeera.com.tr/haber/yukse-yargida-cemaate-fren>

<sup>161</sup> See news report at [https://www.ntv.com.tr/turkiye/yargitay-ve-danistay-uyeleriyeni-yargi-paketini-protesto-etti.OOGgmDIUVeyiXe-AR39izQ?\\_ref=infinite](https://www.ntv.com.tr/turkiye/yargitay-ve-danistay-uyeleriyeni-yargi-paketini-protesto-etti.OOGgmDIUVeyiXe-AR39izQ?_ref=infinite), <https://www.bloomberght.com/haberler/haber/1899437-cumhurbaskani-erdogan-yargitay-ve-danistay-kanununu-onayladi>

<sup>162</sup> Emergency Decree Law no.696, <http://www.diken.com.tr/ne-yeni-yargi-ne-de-yargiya-son-darbe/>

<sup>163</sup> Amendments on Legislation n.2575 and Legislation n.2797 by Legislation n.6110, and articles 12 and 22 of legislation n. 6723, adopted on 01.07.2016, <http://www.hurriyet.com.tr/gundem/yargitay-ve-danistayda-daire-ve-uye-sayisi-artti-17017953>

<sup>164</sup> CJP statement available at: <https://www.hsk.gov.tr/Eklentiler/files/Ek-1-09-05-2017.pdf>

<sup>165</sup> CJP statement available at: <https://www.hsk.gov.tr/Eklentiler/files/EK%201-%202017%20Y%c4%b1%c4%b1%20Adl%c3%ae%20Yarg%c4%b1%20Kararname%20Listesi.pdf>

<sup>166</sup> CJP statement available at: <https://www.hsk.gov.tr/Kararnameler/2018.aspx>

<sup>167</sup> CJP statement available at: <https://www.hsk.gov.tr/Kararnameler/2019.aspx>

<sup>168</sup> News report at <https://www.aa.com.tr/tr/turkiye/3-bin-722-hakim-ve-savcinin-gorev-yeri-degisti/1494318>

<sup>169</sup> Judicial Reform Strategy, p. 33.

were dismissed without any individual investigation or an opportunity for defence.<sup>170</sup> In order to justify the dismissal of a judge, the law only requires a mere “connection” or “affiliation” with an “structure, formation or group” that the National Security Council has “determined to operate against the national security of the state”.<sup>171</sup> While the formal state of emergency lapsed in July 2018, the power of the Council of Judges and Prosecutors to dismiss judges and prosecutors under the same criteria as under emergency legislation was maintained for a further three years under Law no. 7145 in July 2018. In July 2021, this power was extended for another year.

The Commissioner for Human Rights of the Council of Europe has stated that mass dismissals created “an atmosphere of fear” among the remaining judges and prosecutors.<sup>172</sup> Concerning a number of judges and prosecutors who were also detained under terror charges after the failed coup attempt, the European Court of Human Rights in a series of judgements - *Baş v. Turkey*,<sup>173</sup> *Alparslan Altan v. Turkey*<sup>174</sup> and *Turan and others v. Turkey*<sup>175</sup> - found the detention of more than 429 judges and prosecutors to be arbitrary and contrary to Turkey's ECHR obligations under article 5 ECHR.

Furthermore, the need to recruit large numbers of new judges following the mass dismissals, and the relative inexperience of many such new recruits, as well as the additional caseload generated by state of emergency measures, even after the state of emergency itself ended, has had a highly adverse impact on the overall effectiveness, competence and fairness of the justice system. More than 8,000 judges and prosecutors have been appointed since the beginning of the state of emergency and the requirements of appointment were eased in order to allow for the appointment of judicial interns before the end of their internship and to make it easier for lawyers to become judges.

In their Joint Statement,<sup>176</sup> the International Commission of Jurists and Human Rights Joint Platform identified the following factors that restrict the access to justice:

- abusive application of vaguely defined offences against civil society;
- arbitrary restriction of freedom of expression, assembly and association;
- mass dismissal and replacement of one-third of members of the judiciary;
- mass detentions of judges, prosecutors, lawyers, and human rights defenders;
- executive control over the judiciary;

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<sup>170</sup> There are 4236 members of the judiciary in total, <http://bianet.org/bianet/siyaset/182400-ohal-de-yargi-kurumlarindan-ihraclar>

<sup>171</sup> Article 3 of State of Emergency Decree n.667 relating to Precautions against members of the judiciary: “In case of their membership, affiliation or a connection to a structure, formation or group that is determined by the National Security Council to operate against the national security of the state or terrorist organizations, it is decided that it is not appropriate for members of the Constitutional Court, Chamber Presidents and members of the Court of Cassation, Chamber Presidents and members of the Council of State, members of the Turkish Court of Accounts, judges and prosecutors to remain in the profession and that they should be removed from the profession. Deciding authority for members of the Constitutional Court is the General Assembly of the Constitutional Court, for Chamber Presidents and members of the Court of Cassation, deciding authority is the First Presidency Council of the Court of Cassation, for Chamber Presidents and members of the Council of State, deciding authority is the Presidency Council of the Council of State, for members of the Court of Accounts deciding authority is the commission consisting of the vice-presidents and the head of a department and a member to be determined by the president of the Court of Accounts under the chairmanship of the president of the Court of Accounts.”

<sup>172</sup> *Abdullah Zeydan a.o v. Turkey*, ECtHR, Application no. 25453/17 and others, Third party intervention by the Council of Europe Commissioner for Human Rights, Doc. CommDH (2017)33, 2 November 2017, para. 35.

<sup>173</sup> *Baş v. Turkey*, ECtHR, Application No. 66448/17, 3 March 2020.

<sup>174</sup> *Alparslan Altan v. Turkey*, ECtHR, Application No. 12778/17, 16 April 2019.

<sup>175</sup> *Turan and Others v. Turkey*, ECtHR, Application No. 75805/16, 23 November 2021

<sup>176</sup> International Commission of Jurists and Human Rights Joint Platform, *Joint Statement on the State of Access to Justice for Human Rights Violations in Turkey*, 17 December 2020, available at: <https://www.ici.org/wp-content/uploads/2020/12/ICJIHOP-JointStatement-2020-EN.pdf>

- the undermining of the independence of the legal profession;
- continuing impunity for gross human rights violations;
- lack of proper judicial review of criminal peace judgeships' decisions, and
- lack of institutional independence of the National Human Rights Institution.

Many of the structural problems articulated above led the European Court of Human Rights to find that article 18 of the Convention has been breached in the cases of *Kavala v. Turkey*<sup>177</sup> and *Selahattin Demirtaş v. Turkey (no.2)*.<sup>178</sup> The misuse of judicial process was one of the main factors for the Court's finding related to article 18 in these cases.

## **B. Impact of Rule of Law Problems in Environment Cases and Corruption**

Inadequate judicial oversight of the Executive creates an enabling environment for corruption in government agencies. During interviews conducted with environmental rights defenders from different regions of Turkey, corruption in forms of collusion, embezzlement, bribery in government institutions were frequently raised as crucial problems in environmental disputes. There are rising concerns among environmental rights defenders that, in environmental disputes, government officials and contractor companies act in collaboration against local stakeholders which cannot enjoy public participation in decision-making.

In its 2021 interim report, the Group of States against Corruption (GRECO), established by the Council of Europe to monitor States' compliance with anti-corruption standards, found that "fundamental structural changes which have weakened judicial independence and also led the judiciary to appear even less independent from the executive and political powers".<sup>179</sup> GRECO concluded that Turkey had failed to comply with 19 out of 22 recommendations it had made with a view to combatting corruption.

In its 2016 report on Turkey, Transparency International, an international global organization which works to counter corruption, stated that "it is concerning that the executive and the legislature perform so poorly in their roles regarding the fight against corruption and have failed to prioritize anti-corruption measures and good governance. (...) A key problem is the fact that there is very limited constraint on the executive's power and official misconduct is rarely prosecuted and punished. The judiciary is neither a deterrent to corruption nor effective in investigating allegations of corruption in full transparency and is in fact itself perceived as one of the most corrupt institutions in the country."<sup>180</sup>

Environmental justice claims in Turkey predominantly concern construction and infrastructure projects, including dams, mines, thermal energy facilities or wastes

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<sup>177</sup> *Kavala v. Turkey*, ECtHR, Application No. 28749/18, 10 December 2019.

<sup>178</sup> *Demirtaş v. Turkey (no. 2)*, ECtHR, Application No. 14305/17, 22 December 2020.

<sup>179</sup> Fourth Evaluation Round Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors Second Interim Compliance Report Turkey, Adopted By Greco at its 86th Plenary Meeting (Strasbourg, 26-29 October 2020, para 116, available at: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a1cac3>

<sup>180</sup> Transparency international, National Integrity System Assessment- Turkey, April 2016, [https://images.transparencycdn.org/images/2016\\_NIS\\_Turkey\\_EN.pdf](https://images.transparencycdn.org/images/2016_NIS_Turkey_EN.pdf)



generated by these facilities. Corruption allegations in environmentally degrading construction projects have increased significantly in the past decade.<sup>181</sup>

Construction and infrastructure industries have certain characteristics that typically make them prone to corruption.<sup>182</sup> Some of these characteristics involve diverse stakeholders such as governments, contractors, subcontractors, consultants and suppliers, payment flows that are challenging to trace, large and exclusive budgets for each project that makes monitoring more difficult.<sup>183</sup> Mega construction projects that are prone to corruption are therefore advantageous in generating income for political actors and construction businesses at the expense of a safe, sustainable and healthy environment.

Executive influence over the judiciary enables corruption that results in environmental harm<sup>184</sup> and environmental harm in almost all cases involves human rights violations. Thus, the absence of an independent judiciary, environmental harm and human rights violations form a vicious cycle. The following section will attempt to explain the practical legal obstacles in the Turkish legal system that facilitate environmental harm and human rights violations.

### **C. Systemic problems concerning access to justice in environment cases leading to environmental harm and human rights violations**

There are a number of systemic problems obstructing access to justice for environmental cases in Turkey. These problems usually lead to environmental harm and human rights violations. While some of these problems can be solved through amendment of certain legal regulations, there are some problems that require a holistic approach and structural reforms.

#### **i. Non-implementation of court judgements**

The duty of executive authorities to respect and carry out the decisions of judicial authorities is a fundamental requirement of the rule of law. Principle 4 of the *UN Basic Principles on the Independence of the Judiciary* forbids political authorities and others from revising judicial decisions.

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<sup>181</sup> Gunduz, Murat & Onder, Oytun. (2012). Corruption and Internal Fraud in the Turkish Construction Industry. Science and engineering ethics. 19. 10.1007/s11948-012-9356-9, Also : <https://www.ganintegrity.com/portal/country-profiles/turkey/> , <https://m.bianet.org/bianet/environment/237525-report-pro-government-construction-company-to-start-new-project-in-natural-protected-area>, <https://bianet.org/english/environment/224117-cyanide-waste-facility-granted-positive-environmental-report-locals-intimidated>

<sup>182</sup> World Economic Forum, Learnings from the Field Cases on Corruption in the Infrastructure and Urban Development Industries, Prepared by the Project Task Force of the Infrastructure & Urban Development Industries in collaboration with the Partnering Against Corruption Initiative (PACI), available at: [https://www3.weforum.org/docs/WEF\\_IU\\_PACI\\_2014\\_Learning\\_from\\_the\\_field.pdf](https://www3.weforum.org/docs/WEF_IU_PACI_2014_Learning_from_the_field.pdf)

<sup>183</sup> Corruption in Construction Projects: Bibliometric Analysis of Global Research Zhao Zhai, Ming Shan, Amos Darko and Albert P. C. Chan, Sustainability 2021, 13, 4400. <https://doi.org/10.3390/su13084400>

<sup>184</sup> Allegations challenging the impartiality of court appointed expert witnesses in environmental cases could be considered as one of many negative effects of executive influence over the judiciary. Executive influence over the judiciary encourages government associated third parties to attempt to influence the members of the judiciary as well as expert witnesses appointed by the judiciary. For example, in a case concerning the environmental impact assessment of Canal Istanbul project, an expert from the appointed board confirmed that he was threatened and relinquished the case. <https://bianet.org/english/law/237800-objection-to-panel-of-experts-in-canal-istanbul-case>, <https://bianet.org/english/local-goverment/238333-canal-istanbul-expert-claims-to-be-threatened-after-not-making-changes-in-report>,

In *Okyay and others v. Turkey*<sup>185</sup> and in *Taşkın and others v. Turkey*,<sup>186</sup> concerning refusal of authorities to enforce court judgments ordering the halt of thermal-power plants and the halt of activities of a gold mine, the European Court of Human Rights stated that non implementation of court judgements adversely affects the principle of a law-based State, founded on the rule of law and the principle of legal certainty. The right of access to a court guaranteed under that article 6 ECHR would be rendered illusory if a Contracting State's legal system allowed a final binding judicial decision to remain inoperative to the detriment of one party. This principle is of even greater importance in the context of administrative proceedings concerning a dispute whose outcome is decisive for a litigant's civil rights. In both cases, the European Court found that the failure of authorities to comply with an administrative court order within the prescribed time-limits deprives article 6.1 of its effectiveness.

Despite the clear rulings of the Strasbourg Court in the cases concerning non-implementation of domestic court decisions in environment cases, a frequently raised problem during interviews with environmental and human rights defenders was non-implementation or circumvention of court judgements.

In environmental disputes in Turkey, there are an increasing number of instances where court judgments are not complied with by administrative authorities or business enterprises. "Stay of execution" decisions<sup>187</sup> given by administrative courts are repeatedly disregarded.<sup>188</sup> "Stay of execution" decisions are interlocutory orders which can be given, for example, to halt activities that may include emitting toxic wastes, cutting trees or damaging a natural habitat. Not complying with these court decisions cause irreparable environmental harm, render judicial proceedings illusory.

There are also cases in which administrative authorities have circumvented the implementation of a court decision annulling an administrative action by issuing a second or a third administrative decision to continue a construction project. These unlawful methods make judicial review process practically ineffective in preventing environmental abuses.<sup>189</sup>

In its Rule 9 submission<sup>190</sup> to the Committee of Ministers of the Council of Europe responsible for the monitoring of the implementation of the judgments of the European Court of Human Rights, the Human Rights Joint Platform observed that there had been systemic problem of circumvention of administrative court decisions in cases in Turkey

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<sup>185</sup> *Okyay and Others v. Turkey*, ECtHR, Application No. 36220/97, 12 July 2005, paras. 70-75.

<sup>186</sup> *Taşkın and Others v. Turkey*, ECtHR, Application No. 46177/99, 10 November 2004, paras. 135-138. See also *Öçkan and others v. Turkey*, ECtHR, Application No. 46771/99, 28 March 2006; *Lemke v. Turkey*, ECtHR, Application No. 17381/02, 05 June 2007; *Genç and Demirgan v. Turkey*, ECtHR, Application No. 34327/06, 10 October 2017.

<sup>187</sup> See article 27 paragraph 2 of the Procedure of Administrative Justice Act: "The Council of State or the administrative courts can decide to suspend the execution by showing justification after the plea of the defendant administration is taken or after the end of the time limit for the plea if the implementation of the administrative procedure both results in damage that are hard to recover or impossible to recover from and if the administrative procedure is expressly in contradiction to the law".

<sup>188</sup> Despite the stay of execution decision of İzmir Administrative Court, olive trees were cut down in Seferihisar during the construction of a Geothermal Energy Station. <https://listelist.com/orhanli-zeytin-agaclari-katliami/>, Despite the stay of execution decision of Muğla Administrative Court, Yeniköy Kemerköy thermal power plant continued its activities in an archaeological site. <https://www.cumhuriyet.com.tr/haber/akbelen-ormanlarina-mahkeme-kararina-ragmen-is-makineleri-soktular-1864357> ,

<sup>189</sup> In order to continue a hydroelectric power station project on Zorava river, Siirt Provincial Assembly changed the zoning plan in order to circumvent a judgment cancelling of the environmental impact assessment of the project. <https://www.evrensel.net/haber/440890/siirte-danistayin-durdurdugu-hes-icin-imar-degisikligi-yapildi> , Mayor of Sivas approved a second construction plan for Gökpinar lake area, <https://bianet.org/bianet/cevre/235668-sivas-valiligi-gokpinar-golu-icin-bir-imar-planini-daha-onayladi>

<sup>190</sup> A "Rule 9 Submission" is a submission by civil society providing information to the Committee of Ministers of the Council of Europe on the implementation of a judgment of the European Court of Human Rights.



since the judgment in *Taşkın and others*.<sup>191</sup> The submission illustrates that even the longstanding *Taşkın and others* case have not been properly implemented in good faith. The developments in the implementation of *Taskin and others* lead and repetitive cases show that the Gold Mining company was able to apply and secure new positive environmental impact assessment (EIA) reports every time the activities of the company were found unlawful by administrative courts in previous court judgments. The company was able to circumvent the judgment in the Taskin case by securing a new EIA report on 18 February 2009. On 25 April 2017, the Izmir 3rd Administrative Court annulled the 2009 EIA positive report and the Izmir Governor canceled the license of the mining company and notified that its operations would be closed 30 days from 18 July 2017. The company, however, was able to secure a new EIA report as there is nothing under Turkish law precluding a company from securing new EIA reports even though its activities had been found unlawful by domestic courts. In fact, this practice is expressly allowed under domestic legal framework, and, in particular, Circular 2009/7.<sup>192</sup>

The Supreme Administrative Court, instead of giving effect to Taskin and others judgment of the European Court of Human Rights, has also allowed this practice by approving the new EIA reports secured by companies that exclude plaintiffs from any form of public participation.<sup>193</sup>

## **ii. Summary procedure and urgent expropriations**

Another source of obstruction to access to justice in environmental cases is the application of the summary procedure, which is an accelerated trial procedure aimed at shortening trial periods through reduced time limits for petitions and finalization of requests for the stay of execution without receiving objections. The summary procedure was introduced in 2014 through an amendment to Law no. 2577. Pursuant to Article 20/A (1) (e), “[d]ecisions taken as a result of the environmental impact assessment pursuant to the Environmental Law no. 2872 dated 9 October 1983, except for the administrative sanction decisions” shall be subject to this procedure. According to subparagraph (b) of the same provision, urgent expropriation proceedings are also subject to summary procedure.

In the summary procedure, the initial examination must be held within seven days. The petition and its annexes must be notified to the administration within the same time frame.. The time limit for the preparation of the defence for the administration is fifteen days as of the notification of the lawsuit petition and this period can be extended once only for no more than fifteen days. However, the most important deficiency of this procedure concerning environment cases relates to the stay of execution decisions. According to article 20/A, no objection can be made against the decisions to be taken with respect to the request for the stay of execution. In most cases, reduced time limits and prevention of judicial review of decisions rejecting the stay of

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<sup>191</sup> Rule 9.2 Communication from IHOP (in the *Taşkın and others* group of cases v. Turkey (Application No. 46117/99) . Available at [https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)425E](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)425E)

<sup>192</sup> Circular 2009/7 of the Ministry of Environment and Forest, which informs about the implementation of EIA Regulation, states that if the certain part of the EIA has been found to be in violation of law, a new EIA might be prepared only by correcting the deficient parts, without following the entire proceedings from the beginning. The Circular is available at: [https://webdosya.csb.gov.tr/db/ced/icerikler/2009-7\\_say-i- genelge-20180729174058.pdf](https://webdosya.csb.gov.tr/db/ced/icerikler/2009-7_say-i- genelge-20180729174058.pdf)

<sup>193</sup> With respect to the summary of this second round of litigation, see, <https://www.evrensel.net/haber/327041/bergama-altin-madeni-muhurlendi-ama-yeni-izin-yolda> .

execution requests cause accelerated and summary litigation without proper judicial review.

“Urgent expropriation” is an exceptional and expedited procedure allowing the administration to immediately seize the immovables belonging to individuals if certain extraordinary circumstances are present. It is a court order giving authorization to seize an immovable asset upon request of an administrative authority. Article 27 of Law n. 2942 (Law on Expropriation) enumerates extraordinary circumstances to decide an urgent expropriation. The first one is based on national security considerations based on Law on National Defense Obligations. Secondly, urgent expropriation” can be applied if it is purported to be required because of the extraordinary cases stipulated in special laws. For instance, pursuant to the second paragraph of Article 6 of Law on Transformation of Areas Under Disaster Risks, in case a decision with a two thirds majority of the owners is not reached, the immovable property in question can be immediately expropriated.

There are an increasing number of cases where urgent expropriations have been used for razing an area, constructing power plants, highways, canals, mines and evicting local dwellers from an area.<sup>194</sup> In practice, this expedited expropriation process is also used to forcibly move the population of villages or persuade villagers to sell their homes and land. In most cases, urgent expropriations interfere with the right to housing, engaging article 11(1) of the ICESCR, as well as the right to property. For example, in 2018, with the expansion of the coal mines in the region, the village of İkizköy in Muğla was expropriated and evacuations were commenced. Many İkizköy residents had to settle in agricultural fields near the Karadam, a few kilometers away. However, the license granted for the mines covers such a large area that the region where the villagers settled remains within the mining license area.<sup>195</sup> Many villagers reported that they were forced to move out of their homes because of urgent expropriations for mining projects.<sup>196</sup> Another example is from İkizdere, Rize, where locals resisted against the construction of a stone quarry, a decision of urgent expropriation was used to force villagers to sell their homes and take action for demolition.<sup>197</sup>

The UN Committee on Economic, Social and Cultural Rights in its General Comment 7, established that evictions that are carried out in connection with conflict over land rights, development and infrastructure projects, such as the construction of dams or other large-scale energy projects, with land acquisition measures are considered forced evictions.<sup>198</sup> The prohibition of forced evictions is an aspect of the right to housing that is of immediate effect and breaches should be able to be challenged in

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<sup>194</sup> News reports available at <https://www.aljazeera.com/news/2021/6/17/the-quarry-threatening-turkeys-pristine-paradise-valley>, <https://www.raillynews.com/2021/09/The-urgent-expropriation-decision-has-been-published%2C-the-fields-will-lead-to-the-canal-istanbul/>, <https://bianet.org/english/environment/226304-locals-struggle-against-mining-company-in-konya-can-anybody-hear-us>, <https://bianet.org/english/environment/249274-president-issues-urgent-expropriation-decrees-for-regions-affected-by-floods-wildfires>, <https://www.raillynews.com/2020/11/Urgent-expropriation-will-be-made-for-the-northern-marmara-highway-in-5-districts-in-istanbul/>.

<sup>195</sup> News reports available at <https://www.evrensel.net/haber/439937/akbelen-ormanindan-mudahaleyle-cikarilan-koyluler-limaki-degil-ormani-koruyun>

<sup>196</sup> Also villagers from Yeşilyurt, Isparta whose houses were evacuated due to the risk of landslides caused by debris poured from the marble quarry spent the winter in their relatives' houses. <https://yesilgazete.org/mermer-ocagi-yuzunden-magdur-olan-koyluler-kisi-evlerinden-uzakta-gecirdi/>.

<sup>197</sup> News report available at <https://m.bianet.org/english/environment/244144-sell-your-land-pro-government-company-threatens-villagers-with-expropriation>.

<sup>198</sup> General Comment No. 7, *The right to adequate housing: forced evictions*, CESCR, UN Doc. HRI/GEN/1/Rev.9 (Vol.I), 20 May 1997.

court, whether the eviction is by State or third party actors.<sup>199</sup> Eviction affects not only the right to housing, but may also, depending on the circumstances, “the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.”<sup>200</sup> In order not to be arbitrary, evictions must take place pursuant to a precise, fair and open procedure, with the opportunity for genuine consultation with those affected, information made available within a reasonable time<sup>201</sup> and reasonable notice for all affected persons prior to the scheduled date of eviction. The evicted person must be provided with access to effective legal remedies and, where possible, legal aid to persons who are in need of it to seek redress from the courts.<sup>202</sup>

### **iii. High expert fees in environment cases**

The right of access to a court will effectively be impaired, if the court fees are excessive. There are two types of administrative actions in Turkish law:

- i. Actions for annulment filed by those whose legal interests are alleged to have been adversely affected by administrative procedures seeking the annulment of an administrative act, based on their illegality due to one of its aspects such as competence, form, reason, subject and purpose;
- ii. Full remedial actions filed by those whose personal rights are alleged to have been directly violated due to the administrative actions and procedures.

Environmental rights are raised generally in the first type of cases.

Court fees in annulment cases are typically reasonable. However, as environment cases generally require a scientific inquiry about the impact of the project on the environment, administrative courts often appoint expert panels to review the challenge brought against administrative acts. During interviews with environmental rights defenders, high and repetitive expenses in court proceedings were raised as conditions obstructing access to justice in environmental disputes.

According to the Procedure of Administrative Justice Act, on issues for which there is no direct and specific provision prescribed in the Act itself, the provisions of the Code of Civil Procedure shall apply. Appointment of experts is one such issue not covered in the Administrative Justice Act. Pursuant to Civil Procedure Law, expenses of expert witnesses are initially covered from deposited advance payments of plaintiffs. Courts might decide to appoint new experts to remove any inconsistency in reports or upon objection raised by one of the parties to the first report. In some cases, these fees are so high and repetitive that they overburden individuals and NGOs in filing cases against projects that endanger the environment. Regarding the financial disparity between construction companies and local dwellers, repeated expert assessments of harmful projects are frequently used by companies to financially exhaust the opposing locals.

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<sup>199</sup> *Ibid.*, para. 8.

<sup>200</sup> *Ibid.*, para. 4.

<sup>201</sup> See, Miloön Kothari, “Basic Principles and Guidelines on development-based evictions and displacement”, in *Annual Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, UN Doc. A/HRC/4/18, 5 February 2007, Annex 1.

<sup>202</sup> CESCR, *General Comment No. 7*, *op. cit.*, para. 15.

#### **iv. Narrow interpretation of concept of “interest” by judicial authorities**

The current jurisprudence by Turkish administrative courts adopts a narrow interpretation of the concept of “interest” in order to bring an action, effectively precluding legal standing for many petitioners in environmental disputes.

Under Turkish administrative law, annulment actions against administrative actions may be brought by persons whose interests are affected by the action, where such persons claim that the action is unlawful due to one or more errors present in one of the elements of competence, namely; the form, reason, or subject or the purpose of an administrative action.<sup>203</sup> This wording would seem to suggest that annulment actions can be filed by anyone whose interests have been affected by administrative actions. However, although the term “interest” is wider than the “right” required in full remedy cases, it has not been construed broadly. Anyone, regardless whether they are a citizen or not, must prove that their interests have been affected by administrative acts or actions. Interpretation of the concept of “interest” by the Turkish administrative courts is a decisive factor in deciding whether foreign individuals can successfully pursue a case to the merits stage before administrative courts.

For the case to meet the conditions of subjective legal standing, the petitioners must have a legally recognized, actual and personal interest in an annulment case. A legally recognized interest is an interest that is protected by law. In other words, interests that cannot be claimed under the law cannot be raised in an annulment case.

In its early jurisprudence, the Council of State, which is the appellate court for administrative cases, interpreted the concept of interest broadly and recognized all individuals subject to Turkish jurisdiction as interested parties in issues regarding the protection of environmental, cultural and historical values. This is due to the wording of the Constitution and the Environment Law. Article 56 of the Constitution states that “[e]veryone has the right to live in a healthy and balanced environment. It is the duty of the State and citizens to improve the natural environment, to protect the environmental health and to prevent environmental pollution”. Article 30 of the Environment Law also grants a right to everyone who becomes aware of activities that damage the environment to request administrative authorities to take necessary precautions and to stop relevant activities.<sup>204</sup>

The early jurisprudence of the Council of State supported this approach to subjective legal standing, which was relatively favourable to petitioners.<sup>205</sup> The Council drastically changed its approach after 2015, significantly narrowing the scope of subjective legal standing. In 2015, in a case concerning the construction of a hydroelectric power station without an environmental impact assessment, the Council of State found that

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<sup>203</sup> Article 2 (1) (a) of the Law on Procedure of Administrative Justice Act.

<sup>204</sup> Some scholars, based on this provision, even claimed that there should be no subjective legal capacity requirement in environmental cases. Nühket Turgut, *Çevre Hukuku*, s.292; Yasemin Özdek, “İptal Davasında Menfaat Koşulu”, *Amme İdaresi Dergisi*, C.24, 1991, s.112.

<sup>205</sup> For example, in 2001, in a case concerning the burial of a deceased person on the grounds of a historic mosque, the Council of State found that every citizen had an interest in filing a lawsuit for the protection of cultural and natural assets. Council of State Plenary of the Administrative Cases’ Chambers, 19.10.2001, 2001/415E, 2001/737K. As will be seen this approach was changed after 2010 Constitutional Referandum. However, some chambers of the Council of State held this approach even until 2015. See for instance, Council of State, 10th Chamber, 20.11.2012, Case no. 2012/703, D. no. 2012/5849.

an association did not enjoy subjective legal standing as the association's pre-defined objectives were limited to the neighboring municipal area.<sup>206</sup>

In 2016, in a case concerning the environmental impacts of an ore enrichment facility, the Council of State decided that environmental activists did not have an interest to file a lawsuit. The Court found the litigants did not have legal standing because they lacked direct links to the area in which the facility was established. In contrast to its established pre-2011 case-law,<sup>207</sup> the Council of State required litigants to have ownership of a property, to have a residence or to have been born there to have an interest to request the cancellation of the construction plan. Citizenship itself was no longer sufficient to bring a case about the projects that might damage the environment.<sup>208</sup> Administrative courts seek a connection between the individual and the place where the mining or energy projects take place. Therefore, cases in which citizens are unable to prove a link between the individual and the environmental effects are typically rejected on the ground that the petitioner has no legal interest in the case.<sup>209</sup>

This abrupt and sharp turn in the jurisprudence of the Council of State is also visible from decisions on legal standing of professional organizations to file lawsuits against practices impacting the environment. According to the early jurisprudence of the Council of State, legal persons such as Bar Associations and Architect Unions were found to have interest to file environmental cases as environmental values concern everyone including legal persons.<sup>210</sup> In spite of its previous case-law, after 2015, the Council of State favored the opposite approach and repeatedly found Bar Associations, Engineers' and Architects' Unions incompetent in litigating environmental matters.<sup>211</sup>

Professional organizations are integral elements of a democratic civil society that cumulate expertise in their areas of work. Finding these institutions incompetent in litigating environmental matters, while narrowing down the scope of subjective legal standing to persons with direct link to a place, disregards the widespread effects of climate crisis and disrupts access to justice venues for many.

## **v. Legal Standing Before the Constitutional Court**

In order to have standing before the Turkish Constitutional Court, the petitioners must prove: (i) that their rights are commonly recognized<sup>212</sup> in the Constitution and the European Convention on Human Rights; and (ii) that they are personally and directly

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<sup>206</sup> Council of State, 14. Chamber, 2013/3910E, 2015/7841K, 22.10.2015

<sup>207</sup> Council of State 10th Chamber, 13.10.1992, Case No. 1990/4944, D. No. 1992/3569; Council of State, Plenary of the Administrative Cases' Chambers, 19.10.2001, Case No. 2001/415, D. No. 2001/737; Council of State, Plenary of the Administrative Cases' Chambers, 6.10.2005, Case No. 2004/3, D. No. 2005/2371

<sup>208</sup> Council of State, 6th Chamber, 2015/1575E, 2016/124K, 25.01.2016

<sup>209</sup> Rize Administrative Court, Case no. 2017/503, D. No. 2018/653; Rize Administrative Court, Case no. 2018/11, D. No. 2018/808.

<sup>210</sup> For example, in 2014, the Administrative Grand Chamber of the Council of State found that a Bar Association has interest in filing a lawsuit against an amendment in Environmental Impact Assessment Regulation. Council of State 10. Chamber, 2012/703E, 2012/5849K, 20.11.2012, Council of State, 14. Chamber, 2011/13742E, 2011/796K, 21.09.2011 and Administrative Grand Chamber of the Council of State, 2012/52E, 2014/91K, 27.01.2014

<sup>211</sup> Numerous times after 2015, the Court decided that professional organizations do not have interest in pleading against for example the expropriation of archeologic sites or lease of forest area to private parties. Council of State 6th Chamber, 2016/11534E, 2018/1580K, 27.02.2018 and 13th Chamber, 2013/2763E., 2019/306K, Council of State 6. Chamber, 2014/9027E, 2015/103K, 22.01.2015, Council of State, 14. Chamber, 2013/3910E, 2015/7841K, 22.10.2015, Council of State 6th Chamber, 2015/7800E, 2016/231K, 27.01.2016

<sup>212</sup> On individual application right to the Constitutional Court, Article 45 of Law no.6216 states that, "Everyone can apply to the Constitutional Court based on the claim that any one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights and the additional protocols thereto, to which Turkey is a party, which are guaranteed by the Constitution has been violated by public force."

affected due to the act or omission that is claimed to result in the violation<sup>213</sup> instituting a breach of the Constitution.<sup>214</sup> These requirements are cumulative.

The Constitutional Court has ruled that constitutional rights that are not protected under the Convention may not be subject of individual applications. As a number of rights, including economic, social and cultural rights and environmental rights are not directly protected by the ECHR, Article 56 does not fall within scope of individual application.<sup>215</sup> Claims concerning various environmental risks, including those created by the emission of greenhouse gases, may be engaged by Articles 2 and 8 of the ECHR that covers the right to life and the right to respect for private and family life.

As a result, applications concerning the environment can only be examined before the Constitutional Court to the extent that they fall under the respective rights under the Constitution, i.e. either under article 17 (Personal inviolability, corporeal and spiritual existence of the individual) or under article 20 (Privacy of private life) and/or 21 (Inviolability of the domicile),<sup>216</sup> constituting a common denominator under the Constitution and the ECHR. Claims that cannot fall within the scope of these rights would not proceed under the subject matter jurisdiction (*ratione materiae*) scope of the Constitutional complaint mechanism.

The requirement of personal and direct victimhood must also be fulfilled by the applicants. The Constitutional Court has held that the concept of legal interest before administrative courts is not coterminous with the concept of victimhood that needs to be met in constitutional individual complaints. The concept of victim status with respect to the individual complaint mechanism is autonomous from that of legal interest and can in turn be narrower from the concept of legal interest in administrative law cases.<sup>217</sup> A case that is accepted by administrative courts on the ground that the petitioner has legal interest might be found inadmissible on the ground that the applicant has not meet the victimhood criteria before the Constitutional Court.

Unlike article 56 that protects everyone's right to live in a healthy and balanced environment, Articles 17, 20 and 21 protect rights that have been held to require a personal and direct link to the person who complains about the violation. The Constitutional Court seeks at least two prior conditions to find an application admissible on the basis of personal jurisdiction (*ratione personae*) : (i) an actual right of the applicant must be breached by the impugned act or omission-of the public authorities; and (ii) the applicant must be "personally" and "directly" affected by the breach.<sup>218</sup>

In addition, the Court seeks a certain degree of gravity in respect of harm to entertain an individual application. While concluding whether an application has met this seriousness condition, the Court examines the duration and intensity of the

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<sup>213</sup> Article 46 (1) of Law no.6216 on the Establishment of the Constitutional Court and its Judicial Procedures stipulate that "The individual application may only be lodged by those, whose current and personal right is directly affected due to the act, action or negligence that is claimed to result in the violation. (2) Public legal persons cannot make individual applications. Legal persons of private law can make individual application only with the justification that only the rights of the legal person they are have been violated. (3) Foreigners cannot make individual applications regarding rights that have been vested only to Turkish citizens."

<sup>214</sup> Article 46 (1) of Law no.6216 and in Constitutional Court, Tezcan Karakuş Candan a.o., Application no:2014/5809,10/12/2014, Official Gazette Date-No: 4/4/2015-29316, para 17.

<sup>215</sup> Amongst other authorities, see *Binalı Özkaradeniz and Others* Application, no. 2014/4686, 1.2.2018, para. 45.

<sup>216</sup> *Huseyin Tunç Karlık and Zahide Sadan Karluk* Application, No: 2013/6587, 24/3/2016, para. 43

<sup>217</sup> *Tezcan Karakuş Candan and Others* Application, No: 2013/1977, 9/1/2014, para. 20

<sup>218</sup> *Onur Doğanay* Application, No: 2013/1977, 9/1/2014, para. 42

environment impact and the physical and spiritual effects on the individual separately in every case.

In this assessment, the most important factor is the physical proximity of the applicant to the source of environmental harm.<sup>219</sup> In the *Ertuğrul Barka and Others* case, therefore, applications filed by individuals not living in the city where a mining operation had been conducted, were found inadmissible.<sup>220</sup>

The Court also stated that there should be a difference between cases where the applicant claims to be a potential victim of an environment project and cases where the applicant aims to amend national laws and protect social interest. The latter constitutes a certain type of collective complaint in the form of an “*actio popularis*” and does not fall within the mandate of the individual complaint mechanism.<sup>221</sup>

As a result, it is not enough for the applicants to show that the environment has been affected negatively by the administration’s actions, they must also show that they actual rights have directly and personally been affected by the impugned measures by showing physical proximity to the environmental harm at stake.<sup>222</sup> The Court has found inadmissible applications filed by those who do not have ownership of a property or a residence in close vicinity to the project that affects the environment inadmissible.<sup>223</sup> Applications lodged by legal persons have also been found inadmissible due to lack of victim status.<sup>224</sup> In a 2014 complaint against construction in a forest area in Ankara, the Constitutional Court decided that applicants who were the executives of Ankara Architects Union did not satisfy the victim status as they did not have direct ties to the area and they could not prove that they were personally affected by the issue which caused the complaint. The case was declared inadmissible for lack of personal jurisdiction.<sup>225</sup> Consequently, very few environment cases have been able to pass the jurisdictional barriers imposed d by the Constitutional Court.

## **vi. Prevention of public participation**

Under article 25 ICCPR, every citizen of a country has the right “[t]o take part in the conduct of public affairs, directly or through freely chosen representatives.”<sup>226</sup> The right to public participation is also spelled out in the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.<sup>227</sup> The Aarhus Convention provides certain standards that should be followed by states in handling environmental matters. Although Turkey is not a party to the Convention, these standards are widely accepted internationally and should be at least applied in the interpretation of legal obligations. They have been referred to by treaty body authorities of human rights treaties to which Turkey is a party, including by the

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<sup>219</sup> *Bilal Özkaradeniz and Others Application* [GC], No. 2014/4686, 1.2.2018, para. 48.

<sup>220</sup> *Ertuğrul Barka and Others Application*, No. 2014/2818, 24.1.2018, para. 44.

<sup>221</sup> *Tezcan Karakuş Candan*, para. 21.

<sup>222</sup> *Ayşe Sevtap Uzun Application*, No: 2013/6260, 13/4/2016, paras. 36-41; *Ertuğrul Barka and others Application*, No: 2014/2818, 24/1/2018, para. 44.

<sup>223</sup> *Adnan Ayan*, Application, No. 2015/19256, 8/5/2019, para. 32.

<sup>224</sup> *Egeçep Derneği Application*, N. 2015/17415, 17.4.2019, para. 37.

<sup>225</sup> *Tezcan Karakuş Candan a.o.*, Application no:2014/5809,10/12/2014, Official Gazette Date-No: 4/4/2015-29316

<sup>226</sup> Article 25, ICCPR.

<sup>227</sup> UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UNGA Resolution, A/RES/53/144, 8 March 1999.

European Court of Human Rights.<sup>228</sup> To enable access to justice in environmental matters, ensuring public participation is essential. The Aarhus Convention affords great importance to providing information at an early stage to the concerned public in environmental matters for enabling public participation in decision making.<sup>229</sup>

Environmental mechanisms generally require public participation, including providing information should be designed to include and inform stakeholders at an earlier stage of a project as their effectiveness depends on their timing. For these reasons, environmental impact assessment (EIA) processes, preventive mechanisms that aim to assess environmental effects of a plan or project prior to a decision, should include public participation mechanisms.

In the Turkish legal system EIA assessments came into effect in 1993 within the scope of EU harmonization process. EIAs are currently conducted pursuant to Article 56 of the Constitution,<sup>230</sup> Article 10 of Law on Environment (n.2872)<sup>231</sup> and the EIA Regulation.<sup>232</sup>

According to the EIA Regulation, an EIA is compulsory for certain high scale activities listed in the first annex of the Regulation.<sup>233</sup> The EIA regulation has a second annexed list for activities that fall outside the scope of Annex-1 and are subject to a selection and elimination criteria.<sup>234</sup> Upon application, the Ministry of Environment and Urbanization or authorized provincial governorships decide whether an activity requires an EIA or not in a very short period of time considering the complex nature of designated industrial activities.<sup>235</sup> Only EIA compulsory projects and EIA requiring projects are subject to public participation meetings.<sup>236</sup> Decisions taken during this public participation meetings, however, are not binding.

During interviews, environmental rights defenders reported that public participation meetings during an EIA process were in almost all cases conducted in pro forma manner and treated as a hollow legal technicality rather than with a view to ensuring meaningful public participation of local stakeholders. According to interviewees, on numerous occasions, meetings were held in secret without announcing their time or place, and sometimes ended swiftly after construction companies made their

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<sup>228</sup> In *Taşkın a.o v. Turkey* (para.99) and *Okay a.o v. Turkey* (para.52), the European Court of Human Rights have given reference to the standards set in Aarhus Convention.

<sup>229</sup> Article 6 of Aarhus Convention.

<sup>230</sup> Article 56 of the Constitution: "Everyone has the right to live in a healthy and balanced environment. It is the duty of the State and citizens to improve the natural environment, to protect the environmental health and to prevent environmental pollution".

<sup>231</sup> According to Article 10 of Law n.2872: "Institutions, organizations or businesses that may cause environmental problems as a result of their activities are liable to prepare an EIA Report or a Project Information File. Unless a decision of EIA Affirmative or EIA Not Required are taken, approval, consent, incentive or permits shall not be granted for projects (...)".

<sup>232</sup> Environmental Impact Assessment Regulation, Published at Official Gazette on 25.11.2014, n. 29186, Available in Turkish at : <https://www.resmigazete.gov.tr/eskiler/2014/11/20141125-1.htm>

<sup>233</sup> Among these activities there are refineries, thermal power stations, nuclear fuel facilities, industrial metal facilities, asbestos facilities, industrial chemical facilities, explosive facilities, mining facilities. Annex-1 also has limit values for each type of a designated activity. For example, mining facilities planned on a land surface of less than 25 hectares or wind power plants with less than 20 turbines fall outside the scope of EIA compulsory activities.

<sup>234</sup> Businesses that are planning to pursue activities that fall under Annex-2 apply to Ministry of Environment and Urbanization or authorized provincial governorships for a selection and elimination process.

<sup>235</sup> According to article 17 of EIA regulation, Ministry may request opinions from authorized institutions after receiving an application. The opinion requests that are not responded in 30 days are considered as positive. Selection and elimination process is completed within 15 business days. The decision of "EIA Required" or "EIA Not Required" is announced in 5 days after the completion of selection and elimination process.

<sup>236</sup> EIA compulsory projects: EIA regulation has two annexed lists. Annex-1 enumerates high scale projects that EIA should be applied directly without a selection process. EIA requiring projects : Annex-2 enumerates projects are relatively smaller in comparison to Annex-1. These projects will be subject to a selection and elimination criteria on whether or not an EIA is required. EIA for Annex-2 projects are decided case by case. In cases where the Ministry of Environment decides that EIA is required, EIA assesment will be conducted for these projects. An important number of cases, perhaps the majority of cases in environmental litigation in Turkey concerns the Ministry's "EIA is not required" decisions.



presentations or disrupted by protests.<sup>237</sup> There is compelling information to show that public participation meetings do not ensure public participation during environmental impact assessments.

In most cases, practices that fail to ensure public participation result in public protests. Although Turkey has a legal obligation under international human rights law to respect and protect the right to freedom of peaceful assembly,<sup>238</sup> on countless occasions peaceful environmental assemblies have been banned, and their participants dispersed<sup>239</sup> and prosecuted<sup>240</sup> by the authorities. A recent example is the ban imposed by the Governorship of Rize on meetings and demonstrations in İkizdere.<sup>241</sup>

## **vii. Lack of transparency and attacks on media freedoms**

The right to freedom of expression and information is guaranteed under article 19 ICCPR and article 10 ECHR. Transparency in decision making and a freedom of expression for all media, online and offline, are essential to a rule of law based and democratic society because public scrutiny of environmental policies would only be possible through ensuring that the public is well informed. As in other fields involving public benefit, in cases concerning the environment, stakeholders aim to receive and impart information, increase awareness, and gather public support in order to prevent environmental harm. Intolerance of State authorities against critical opinions and lack of transparency in environmental decision-making processes frustrate efforts in preventing environmental harm. In the case of *Association BURESTOP 55 and Others v. France*, the European Court of Human Rights underlined the importance of honest, accurate and sufficient information in environment cases.<sup>242</sup>

As observed by international media NGOs, most, if not all, of the Turkish mainstream media is controlled by the government.<sup>243</sup> Therefore, the main source of information has gradually become the social media.<sup>244</sup> As a result the government has increased its pressure on alternative and social media in recent years through the Law on Internet (no. 5651). According to a new book released by the Freedom of Expression Association ("İFÖD") by Yaman Akdeniz and Ozan Güven, access to 467,011 websites was blocked from Turkey by the end of 2020 with a total of 408,808 separate orders issued by 764 separate institutions including criminal judgeships of peace and other

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<sup>237</sup> Residents of Bilecik, who did not want an industrial district to be established in their villages, protested the public participation meeting with tractors. <https://www.haberler.com/bilecik-te-koylerine-osb-kurulmasini-istemeyen-14539276-haberi/>, Before the Public Participation Meeting held for the Halilağa Copper Mine project, the gendarmerie set up search points on the roads leading to the meeting place. People who oppose the project are waited. Saraylı locals prevented the Public Participation Meeting held for wind turbines <https://yesilgazete.org/cengiz-holdinge-jandarma-destegi-halkin-katilimi-toplantisi-oncesi-koy-kusatildi/>, <https://yesilgazete.org/saraylilar-res-icin-duzenlenen-halkin-katilimi-toplantisina-mani-oldu/>

<sup>238</sup> Article 21 of the International Covenant on Civil and Political Rights, Article 11 of the European Convention on Human Rights are some of these main provisions.

<sup>239</sup> There are incidents in which police interventions caused loss of life. Affected by pepper gas during a police intervention in 2011, Metin Lokumcu had a heart attack and lost his life. <https://m.bianet.org/english/human-rights/242869-metin-lokumcu-case-is-just-beginning-now>

<sup>240</sup> Charges were pressed against 48 people for opposing mining activities in Cerattepe district of Artvin province, <https://m.bianet.org/english/human-rights/174108-48-resisting-in-cerattepe-sued>

<sup>241</sup> News reports available at <https://m.bianet.org/english/politics/244156-demonstration-ban-in-ikizdere-amid-resistance-against-stone-quarry>, Also <https://m.bianet.org/english/human-rights/174061-11-opposing-coast-filling-detained>. There are also certain measures imposed by authorities that interfere with the right to association. For example, the Ministry of Internal Affairs have not issued a proof of receipt and interrupted the establishment of the Green Party for months. <https://yesilgazete.org/icisleri-bakanligindan-iraf-yesiller-partisinin-kurulus-surecini-bekletiyoruz/>

<sup>242</sup> *Association BURESTOP 55 and Others v. France*, ECtHR, *op. cit.*

<sup>243</sup> RSF, Media Ownership Monitor: Government control over Turkish media almost complete, available at <https://rsf.org/en/news/media-ownership-monitor-government-control-over-turkish-media-almost-complete>

<sup>244</sup> IPI, 'The New Mainstream Media' is Rising (And It Seeks Support), IPI TURKEY DIGITAL MEDIA REPORT, available at <https://freeturkeyjournalists.ipi.media/wp-content/uploads/2021/03/ENG-IPI-Turkey-Digital-Media-Report-01032021-finaI-.pdf>.

authorised public institutions. Furthermore, the report highlights that 150.000 URLs, 7,500 Twitter accounts, 50,000 tweets, 12,000 YouTube videos, 8,000 Facebook content items, and 6,800 Instagram content items were blocked subject to Law No. 5651 and other legal provisions by the end of 2020.<sup>245</sup>

Blocking and removal of content orders issued by criminal peace judges under article 9 of Law no. 5651, relating to environment constructions are widespread. According to a reported list of banned websites published by the Freedom of Expression Association, access to some news concerning environmental issues including the spilling of boric acid on the shores, destruction of a lake and pollution caused by a company were banned by local courts.<sup>246</sup> It is not certain whether these allegations are correct or not. However, it is certain that widespread censorship decisions prevent public scrutiny in environmental matters that may result in environmental damage.

Challenges brought against these decisions are routinely rejected by criminal peace judges. In a recent pilot judgment concerning the application of article 9 to block digital content, the Constitutional Court found that the systemic problem stems from the wording and implementation of the provision of Article 9 of Law no. 5651. The Court has submitted the judgment to the Parliament requesting the latter to amend the law.<sup>247</sup>

Another strategy to prevent transparency in environment issues is to sue investigative journalists libel and defamation actions where companies request excessive amounts of money. Çiğdem Toker, an award winning journalist, has faced numerous lawsuits for her reports about companies blamed for corruption. For instance, the Şenbay Mining company was seeking 1.5 million TL in damages from Toker due to an article she wrote in which she claimed that the company was essentially handed a contract to help build a metro route to Istanbul's new airport without having to compete in a tender. The case was dropped in 2019.<sup>248</sup> However, there is no doubt that abuse of legal proceedings creates a chilling effect over journalists.

There is a special role of environmental associations in disseminating information on the actions of the public authorities. In a number of cases, the European Court of Human Rights has recognized that environmental associations exercise a public watchdog function of similar importance to that of the media.<sup>249</sup> Lack of transparency in environmental decision-making causes these associations and their members to be denied information concerning environmental harm.

In *Cangı v. Turkey*, the European Court ruled in favour of the applicant, who claimed that State authorities had violated his right to receive and impart information protected under article 10 of ECHR, by not sharing the minutes of a meeting on planning of construction of a dam project that threatened an ancient city. Similarly, in some other cases, the Court found that these associations enjoy a high level of protection in terms

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<sup>245</sup> Yaman Akdeniz and Ozan Güven (2021), Fahrenheit 5651: The Scorching Effect of Censorship, available at [https://ifade.org.tr/reports/EngelliWeb\\_2020\\_Eng.pdf](https://ifade.org.tr/reports/EngelliWeb_2020_Eng.pdf)

<sup>246</sup> <https://ifade.org.tr/engelliweb/ekolojik-enerji-a-s-haberleri/>, <https://ifade.org.tr/engelliweb/define-kazisi-sonucu-yok-olan-dipsiz-gol-ile-ilgili-icerikler/>, <https://ifade.org.tr/engelliweb/bodrumda-kiyiya-borik-asit-dokulmesiyle-ilgili-haberler/>, <https://ifade.org.tr/engelliweb/orman-yangini-sebebiyle-tahliye-edilen-otel-ile-ilgili-haberler/>

<sup>247</sup> Keskin Kalem Yayıncılık ve Ticaret A.Ş. and others application [GK], B. No: 2018/14884, 27/10/2021.

<sup>248</sup> New report available at <https://www.duvarenglish.com/media/2019/10/17/lawuit-dropped-against-investigative-journalist-toker>.

<sup>249</sup> *Vides Aizsardzības Klubs v. Latvia*, ECtHR, 2004, para. 42; *Animal Defenders International v. United Kingdom*, ECtHR, GC, 2013, para. 103; *Cangı v. Turkey*, ECtHR, 2019, para. 35; *Margulev v. Russia*, ECtHR, 2019, para. 47.

of exercising their freedom of expression. The Court also afforded a narrow “margin of appreciation”<sup>250</sup> to State authorities in assessing the necessity of an interference in freedom of expression of environmental associations.<sup>251</sup>

In some instances, interferences against freedom of expression take the form of harassment of environmental rights defenders through judicial actions. Interferences against environmental rights defenders aim to suppress expressions that warn public on environmental issues, raise awareness and criticize responsible actors. For example, Deniz Gümüşel, an environmental engineer was taken into custody while she was protesting a coal mine company’s sponsorship to an olive festival in Milas.<sup>252</sup> Also, a food engineer, Dr. Bülent Şık has been sentenced to one year and three months in prison based on disclosing information about the products that cause cancer in Turkey.<sup>253</sup>

### **viii. Absence of Health Impact Assessment in Legislation**

Climate change and environmental harm have serious negative effects on the health of individuals and violate their right to health, protected under article 12 of the ICESCR. According to scientific studies, lung cancer, heart disease, asthma, cardiovascular diseases, disabilities are among the health problems caused by environmental pollution.<sup>254</sup>

Turkey has one of the highest rates of premature deaths due to air pollution in Europe and ranks second after China in the world for the number of planned coal-fired power plant projects that have serious and adverse implications for health.<sup>255</sup>

Health Impact Assessments, similar to EIAs, are preventive mechanisms that aim to assess health effects of a plan or project prior to a decision making. Health impact assessment (HIA) processes are absent in the current legislation of Turkey. In the EIA processes, public health data is not handled in the broad scope and detail as in an HIA process. Accordingly, permits and authorizations for construction projects are usually given without proper health assessment.

Turkey is party to a number of international human rights instruments that protect the right to health. These instruments include Article 12 of the International Covenant on Economic, Social and Cultural Rights,<sup>256</sup> Article 11 of the European Social Charter, Article 24 of the Convention on the Rights of the Child, and Article 25 of the Convention on the Rights of Persons with Disabilities. The right to live in a healthy and balanced

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<sup>250</sup> The “margin of appreciation” is a doctrine in the jurisprudence of the European Court of Human Rights according to which, under certain circumstances and related to specific obligations under the ECHR articles, States Parties enjoy a certain discretion in the “appreciation” of the measures required to implement such obligations.

<sup>251</sup> *Animal Defenders International v. United Kingdom*, ECtHR, GC, 2013, para. 104; *Artun and Güvener v. Turkey*, ECtHR, 2007, para. 29.

<sup>252</sup> News report available at <https://bianet.org/english/law/253550-environmental-rights-cannot-be-a-subject-of-investigation>.

<sup>253</sup> News report available at <https://bianet.org/english/health/213609-bulent-sik-sentenced-to-1-year-3-months-in-prison>.

<sup>254</sup> Right to Clean Air Platform, Eskişehir Alpu Coal-Fired Power Plant Health Impact Assessment Report, page 9, available at : <https://www.temizhavahakki.com/wp-content/uploads/2020/11/ALPU-SED-RAPORU-ENG-dusuk.pdf>, Climate Change and Public Health in Turkey, Turkish Academy of Sciences, <http://www.tuba.gov.tr/files/yayinlar/raporlar/Climate%20Change%20%20and%20%20Public%20Health%20in%20Turkey.pdf>, <https://m.bianet.org/english/politics/249815-stone-quarry-opens-again-in-kocaeli-it-threatens-public-health>

<sup>255</sup> Eskişehir Alpu Coal-Fired Power Plant Health Impact Assessment Report, Right to Clean Air Platform, <https://www.temizhavahakki.com/wp-content/uploads/2020/11/ALPU-SED-RAPORU-ENG-dusuk.pdf>, [https://env-health.org/IMG/pdf/150220\\_factsheet\\_air\\_and\\_health\\_turkey\\_en\\_final.pdf](https://env-health.org/IMG/pdf/150220_factsheet_air_and_health_turkey_en_final.pdf), <https://www.dailysabah.com/turkey/turkeys-13-cities-had-high-air-pollution-in-2020/news>

<sup>256</sup> See, also CESCR, *General Comment No. 14*, UN Doc. E/C.12/2000/4, 11 August 2000.

environment is also protected under Article 56 of the Constitution. As noted above, article 8 of the ECHR protects aspects of right to life and the right to health.<sup>257</sup>

HIA reports are scientific studies that are capable of establishing causal links between health problems and harmful projects. The absence of an HIA system also places the burden of proof on victims in proving a causal link between environmentally harmful activities and disease. The above mentioned high expenses of expert witnesses and legal fees in court proceedings further complicate access to justice venues for victims of negative health consequences of environmentally harmful projects and activities.

## **VI. Conclusions and Recommendations**

As everywhere across the world, environmental degradation and the effects of climate change are on the rise in Turkey. Negative environmental effects of mining, construction projects and waste disposal practices pose serious threats to the right to a safe, clean, healthy, and sustainable environment. Furthermore, other human rights of individuals living under the jurisdiction of the Turkish Republic as well as others who suffer from the transboundary damages resulting the activities conducted in Turkey are directly affected from this regression.

International human rights law and international environmental law are inextricably linked. The right to a safe, healthy and sustainable environment is now well established as self- standing right, and the impacts on the enjoyment of other rights due to environmental degradation is well documented. The protection of a full range of human rights and fundamental freedoms is also necessary for the enjoyment of the right to a healthy environment. These include, among others, the rights to an effective remedy and reparation for human rights violations; freedom of expression and information, freedom of association; the right to peaceful assembly; the right to public participation; the right to a fair hearing. Only with the use of this wider human rights framework, can the goal to protect the environment through the law be achieved.

The cost of infrastructure projects that affect environmental human rights runs to billions of dollars and non-compliance with international law and standards developed to protect the environment in construction projects is especially pronounced in jurisdictions like Turkey where serious threats to the rule of law are growing.

As this report and other earlier studies conducted by the ICJ and KAGED have show, there are strong links between the deterioration of the human rights and rule of law situation in general and access to justice problems in the field of environment law. Most of the concerns of environment lawyers interviewed for this report were directly connected to the general rule of law and human rights crisis in the country. These problems derive from the problems relating to independence and impartiality of judiciary and the fair administration of justice. However, the problem is not only limited to the structural problems relating to judiciary. Taken together with increased media censorship, harassment through legal action against academics and environmental and human rights defenders, weakened local administrations and lack of judicial independence, achieving access to justice in environmental matters became a highly prominent issue in the country. Structural problems surrounding the rule of

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<sup>257</sup> See section ii on the jurisprudence of The European Court of Human Rights (ECtHR) above in Chapter IV.

law crisis in Turkey has aggravated the difficulty in access to justice for violations of the right to a healthy environment.

The ICJ and KAGED stress, therefore, that there are serious general and specific rule of law problems to be addressed to protect and promote the right to healthy environment. The undue influence of the executive over the judiciary, which mainly stems from the structure of the Judges and Prosecutors Board reorganized with the 2017 Constitutional amendments, renders the judicial review in environmental cases illusory, as the government is directly or indirectly involved all those cases. Another direct result of the rule of law decay is the rising corruption in environmental projects.

Furthermore, specific obstacles to access to justice in environment cases exacerbate the situation in these cases. As noted in this report, these problems include

- non-implementation of court decisions,
- failure to ensure fair hearings arising from the summary procedure and urgent expropriations,
- high expert fees,
- excessively narrow interpretation of the concept of “interests” in administrative justice, and
- Jurisdictional impediments stemming from the implementation of constitutional complaint mechanism.
- failure to ensure the right to public participation in proceedings affecting environmental rights;
- lack of transparency and variety of impediments before the right to information;
- pressure and chilling of media covering environmental developments;
- the absence of health impact assessments in construction projects.

The resolution of all these problems requires the adoption of a holistic approach in line with development in international environmental and human rights law. Meaningful and free participation of all stakeholders including environmental activists and human rights defenders is also necessary. However, Turkish lawyers working on environmental issues have not typically used international human rights mechanisms to challenge the environment projects that affect environmental human rights.

The effective use of international human rights mechanisms may help environmental and human rights defenders in advocacy on government as well as corporate compliance with international standards. A strong solidarity and cooperation between environmental and human rights lawyers and organizations is therefore crucially needed to realise this goal.

**In order for Turkey to ensure access to justice in environmental matters, the ICJ and KAGED recommend the following:**

**A. To the President and the Parliament**

**General Measures:**

**1. The independence of the judiciary in Turkey should be fully ensured. Detailed recommendations are contained in ICJ and IHOP Joint Statement on the State of Access to Justice for Human Rights Violations in Turkey (December 2020). Among them key reforms include:**

- a. The adoption of constitutional amendments to restore the rule of law and, in particular to reform the appointment of members of the Council of Judges and Prosecutors to ensure that a majority of the board are judges and prosecutors elected by their peers. chambers dealing with appointment, career, transfer and dismissals of judges and prosecutors should be made up only of judges and prosecutors elected by their peers, and introduce the right of a judge or prosecutor who is subjected to discipline, suspension or removal to judicial review of the relevant decision of the CJP.**
- b. Ensure the independence of the legal profession and of its members, as well as their freedom of expression and association, by protecting their human rights mandate and reversing the 2020 reform to legal professional bodies imposed against the objections of the legal profession or for improper aims.**
- c. Abolish Article 26 of Law no. 7145, which essentially extended the emergency powers over judges and prosecutors for a further three years as well as the Commission on State of Emergency Measures; and provide direct access to administrative courts in compliance with due process guarantees, full legal representation, access to all files, and the opportunity to have a hearing with an adversarial procedure.**

**2. Ratify or accede to all relevant international treaties on environmental protection and ensure their full implementation. In particular, Turkey should become party to the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, and Espoo Convention on environmental impact assessment in a transboundary context, the Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal, the Council of Europe Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment, the Council of Europe Convention on the Protection of the Environment through Criminal Law, the UN Convention on the Law of the Sea and its related Protocols**

**3. Accede to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights allowing for individual communications**

**4. Ensure that major construction projects having a significant effect on human rights and the environment should only proceed following an effective and participative and accessible environmental, health and human rights impact assessment and that any person or entity expressing an interest in the protection of the environment and the potential harm arising from the project has the right to accede to administrative court to challenge the project and its assessment both in terms of procedure and merit.**

**Specific Measures related to access to justice**

**1. Provisions on legal aid mechanisms should be amended to facilitate access to justice venues for victims of environmental harm. Excessive financial burdens on victims in environmental matters through high and repetitive judicial fees should be prevented.**

**2. Health Impact Assessments, in compliance with international standards, should be integrated into legislation to prevent serious negative effects of climate change and environmental harm on the health of individuals.**

**3. Article 20/A (1) of Law no. 2577 and Article 27 of Law n.2942 should be amended to exclude the application of summary procedures and urgent expropriations in environmental matters.**

**4. Harassment and intimidation of environmental rights defenders through legal actions must end, including against environmental and human rights defenders, academics and peaceful protesters.**

**5. State authorities must refrain from any censorship or similar interference with on media expression, whether on online or offline.**

**6. Environmental impact assessment mechanisms should be conducted with a view to ensure full and meaningful public participation.**

**To the Judiciary:**

**1. The narrow interpretation of the concept of "interest" in the environmental law cases should be revised.**

**2. The victimhood requirement in the constitutional complaint mechanism should be widened to include complaints submitted by NGOs and professional organisations.**

**3. Full and effective implementation of environmental human rights as provided under international treaties, including human rights treaties, should be secured. International treaties concerning environment should be treated as human rights treaties according to article 90 of the Constitution.**

**4. The practice of unnecessary repetitive expert appointments in environment cases which weakens the access to justice opportunities of environmental activists and other individuals should discontinue.**

**To civil society actors:**

- 1. Solidarity and cooperation among organisations engage with environmental issues and human rights are critical. Cooperation between the two types of organisations should be strengthened.**
- 2. Those pursuing environmental case should include, wherever applicable and appropriate, of human rights law and standards**
- 3. The effective use of international human rights mechanisms in environmental issues should be secured.**
- 4. Advocacy activities before intergovernmental institutions should, where appropriate, be planned with the support of international networks.**

**To business enterprises:**

- 1. Respect human rights and environmental law in their activities**
- 2. Fully implement the UN Guiding Principles on Business and Human rights**
- 3. In all activities with potential adverse impact on human rights, ensure an effective and appropriate due diligence human rights, health and environmental independent assessment.**



## **Annex – Environmental treaties ratified by Turkey**

<b><i>Environmental Treaties</i></b>	<b><i>Date of signature</i></b>	<b><i>Date of ratification, acceptance or accession</i></b>
<b><u>Climate</u></b>		
United Nations Framework Convention on Climate Change		24 February 2004
Kyoto Protocol to the United Nations Framework Convention on Climate Change		28 May 2009
Amendment to Annex B of the Kyoto Protocol to the United Nations Framework Convention on Climate Change		12 October 2017
Doha Amendment to the Kyoto Protocol		
Paris Agreement	22 April 2016	11 October 2021
United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa	14 October 1994	31 March 1998
<b><u>Biodiversity and Preservation</u></b>		
Convention on Biological Diversity	11 June 1992	14 February 1997
Cartagena Protocol on Biosafety to the Convention on Biological Diversity	24 May 2000	24 October 2003
Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity		
Nagoya - Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety		
Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)		23 September 1996
CITES Amendment Article IX		23 September 1996
CITES Amendment Article XXI on accession of regional economic integration organizations		
Convention on Migratory Species		
Convention on the Conservation of European Wildlife and Natural Habitats (Council of Europe)	19 September 1979	2 May 1984
Council of Europe Landscape Convention (Council of Europe)	20 October 2000	13 October 2003
Protocol amending the European Landscape Convention (Council of Europe)		1 August 2018
<b><u>Pollution, Waste, Toxic and Hazardous Substances</u></b>		
Vienna Convention for the Protection of the Ozon Layer		20 September 1991
Montreal Protocol on Substances that Deplete the Ozone Layer		20 September 1991
London Amendment		13 April 1995

Copenhagen Amendment		10 November 1995
Montreal Amendment		24 October 2003
Beijing Amendment		24 October 2003
Kigali Amendment		
Amendments to the Text and to Annexes I, II, III, IV, VI and VIII to the 1998 Protocol on Persistent Organic Pollutants		
Amendments to Annexes I and II to the 1998 Protocol on Persistent Organic Pollutants - 18 December 2009		
Amendment of the text and annexes II to IX to the Protocol to the 1979 Convention on Long-range Transboundary Air Pollution to Abate Acidification - Eutrophication and Ground-level Ozone and the addition of new annexes X and XI		
Amendments to the Text of and Annexes Other than III and VII to the 1998 Protocol on Heavy Metals - 13 December 2012		
Stockholm Convention on Persistent Organic Pollutants	23 May 2001	14 October 2009
Minamata Convention on Mercury - 10 October 2013	24 September 2014	
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal	22 March 1989	22 June 1994
Amendment to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal		27 August 2003
Amendments to Annexes II, VIII and IX to the Convention with the objectives of enhancing the control of the transboundary movements of plastic waste and clarifying the scope of the Convention as it applies to such waste		Not accepted
Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal Basel, 10 December 1999		
Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade	11 September 1998	21 September 2017
Annex VII to the Rotterdam Convention		6 November 2020
Stockholm Convention on persistent organic pollutants (POPs)	23 May 2001	14 October 2009
Convention on Long-range Transboundary Air Pollution	13 November 1979	18 April 1983
1. h Protocol to the 1979 Convention on Long-range Transboundary Air Pollution to Abate Acidification, Eutrophication and Ground-level Ozone of 30 November 1999		

1. k Amendment of the text and annexes II to IX to the Protocol to the 1979 Convention on Long-range Transboundary Air Pollution to Abate Acidification of 4 May 2012 Eutrophication and Ground-level Ozone and the addition of new annexes X and XI		
1. g Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants		
1. j Amendments to Annexes I and II to the 1998 Protocol on Persistent Organic Pollutants		
1. i Amendments to the Text and to Annexes I, II, III, IV, VI and VIII to the 1998 Protocol on Persistent Organic Pollutants		
1. f Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Heavy Metals		
1. l Amendments to the Text of and Annexes Other than III and VII to the 1998 Protocol on Heavy Metals		
1. e Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions		
1. d Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution concerning the Control of Emissions of Volatile Organic Compounds or their Transboundary Fluxes		
1. c Protocol to the 1979 Convention on long-range transboundary air pollution concerning the control of emissions of nitrogen oxides or their transboundary fluxes		
1. c Protocol to the 1979 Convention on long-range transboundary air pollution concerning the control of emissions of nitrogen oxides or their transboundary fluxes		
Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on the Reduction of Sulphur Emissions or their Transboundary Fluxes by at least 30 per cent		
Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Long-term Financing of the Co-operative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP)	3 October 1984	20 December 1985
European Agreement on the Restriction of the Use of certain Detergents in Washing and Cleaning Products (Council of Europe)		
Protocol amending the European Agreement on the Restriction of the Use of certain Detergents in Washing and Cleaning Products (Council of Europe)		
Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment (Council of Europe)		
Convention on the Protection of the Environment through Criminal Law (Council of Europe)		
<b>Participation and procedures</b>		
Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention)		
Amendment to the Convention on Environmental Impact Assessment in a Transboundary Context		
Amendment to the Convention on Environmental Impact Assessment in a Transboundary Context		
Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context		
Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)		

Protocol on Pollutant Release and Transfer Registers to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters		
Amendment to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters		
<b>Law of the Sea</b>		
United Nations Convention on the Law of the Sea		
Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982		
Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks		
Protocol 1978 relating to the International Convention for Prevention of Pollution from Ships, 1973, (MARPOL)		10 October 1990
Optional Annex III to MARPOL		14 October 2014
Optional Annex IV to MARPOL		14 October 2014
Optional Annex V to MARPOL		10 October 1990
Protocol of 1997 to Amend the International Convention for Prevention of Pollution from Ships, 1973, as Modified by the Protocol of 1978 Relating Thereto (MARPOL PROT 1997)		4 November 2013
International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 (INTERVENTION 1969)		
International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC 1969)		
Protocol of 1976 to the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC PROT 1976)		
Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC PROT 1992)		17 August 2001
Protocol of 1992 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND PROT 1992)		17 August 2001
Protocol of 2000 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND PROT 2000)		5 March 2013
International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC 1990)		1 July 2004
Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000 (OPRC-HNS 2000)		3 September 2013
International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS 1996)		
Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS PROT 2010)		23 April 2018

International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001(BUNKERS 2001)		12 September 2013
Nairobi International Convention on the Removal of Wrecks, 2007 (NAIROBI WRC 2007)		
Hng Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 (HONG KONG CONVENTION)		31 January 2019
Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, as amended (LC 1972) <sup>1</sup>		
1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (LC PROT 1996)		
Convention on the Protection and Use of Transboundary Watercourses and International Lakes		
Amendments to Articles 25 and 26 of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes		
Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lake		
Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes and to the 1992 Convention on the Transboundary Effects of Industrial Accidents		
Convention on the Law of the Non-Navigational Uses of International Watercourses		
Convention on the Transboundary Effects of Industrial Accidents		
<b><i>Mediterranean Region</i></b>		
Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean	16 February 1976	6 April 1981
Barcelona Convention Amendments of 1995		18 September 2002
1976 Dumping Protocol	16 February 1976	6 April 1981
Dumping Protocol 1995 Amendment		18 September 2002
1976 Emergency Protocol	16 February 1976	6 April 1981
2002 Prevention and Emergency Protocol		3 June 2003
1980 Land-Based Resources Protocol		21 February 1983

Land-Based Resources Protocol Amendments of 1996		11 May 2008
Specially Protected Areas Protocol 1982		6 November 1986
SPA and Biodiversity Protocol of 1995		18 September 2002
SPA and Biodiversity Protocol Amendments to Annexes II and II		16 April 2015
SPA and Biodiversity Protocol Amendments to Annex II		14 September 2018
Offshore Protocol of 1994		
Hazardous Wastes Protocol of 1996	1 October 1996	3 April 2004
Integrated Coastal Zone Management Protocol 2008		
Convention on the Law of the Non-Navigational Uses of International Watercourses		

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