

BEFORE THE SECOND SECTION  
EUROPEAN COURT ON HUMAN RIGHTS

## ***Cangi and Others v. Turkey***

**Application no. 48173/18**

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WRITTEN SUBMISSIONS ON BEHALF OF THE INTERNATIONAL COMMISSION OF  
JURISTS (ICJ)

INTERVENER

***pursuant to the Registrar's notifications dated 7 March 2022 that the  
Court had granted permission under Rule 44 § 3 of the Rules of the  
European Court of Human Rights***

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28 March 2022

## 1. Introduction

These submissions are made by the International Commission of Jurists (ICJ) pursuant to the leave to intervene granted by the President of the Section under Rule 44 § 3 of the Rules of Court.

This case raises significant questions regarding the determination of “civil rights and obligations” in environmental cases. As this Court has already found in *Okyay and others v Turkey*, article 56 of the Turkish Constitution and the Turkish Environment Law establish a right to protection against damage to the environment, which can amount to a civil right under Article 6.1 ECHR.<sup>1</sup> The Court has asked the parties whether administrative court proceedings involve the determination of “civil rights and obligations” in respect of all applicants with regards to their claims concerning the right to a healthy environment. In this intervention, the ICJ will first provide the Court with observations on the case law of the Turkish administrative courts, in particular the Council of State, on the right to a healthy environment of individuals who do not live in the vicinity of construction and mining projects that potentially damage the environment. Secondly, the ICJ will examine the Constitutional Court’s jurisprudence in cases where applicants claim that their right to a healthy environment has been violated. Finally, the intervention will discuss the Turkish government’s position in the case of *Chiara Sacchi et al. v. Turkey*, recently decided by the UN Committee on the Rights of the Child., in which the Turkish government successfully argued that applicants that live outside of the Turkish jurisdiction can have access to a remedy for their right to a healthy environment before the Turkish courts.

## 2. Jurisprudence of the Turkish administrative courts

In order to assess whether persons or legal entities under Turkey’s jurisdiction may have access to justice under article 6 ECHR for environmental harm causing human rights violations, the assessment of their standing under Turkish administrative law is important. In its *Okyay and others v. Turkey* judgment, the Court held that the outcome of the proceedings before the administrative courts, taken as a whole, may be considered to relate to the applicants’ civil rights.<sup>2</sup>

Under Turkish administrative law, there are two types of legal actions stipulated under article 2 of Law no. 2577 on the Procedure of Administrative Justice Act (PAJA): full remedy action and annulment action.

Actions seeking full remedy (“full remedy actions”) are brought by those whose personal rights are directly affected by administrative acts or actions. Full remedy actions are undertaken in pursuit of legal remedies constituting compensation and they can be brought exclusively against administrative authorities. When an individual’s and/or legal entity’s rights recognized under the law are breached by an act or action of an administrative body, they are entitled to ask for compensation. This action encompasses material as well as moral damages.

Annulment actions concern administrative acts and actions and are brought by persons who claim that their interests are harmed by such act. In such cases, the claim that the administration action has been taken unlawfully, due to a mistake made in one of the elements of competence, namely, the form, reason, subject or the aim of an administrative action (PAJA, article 2). *Prima facie*, the language of the PAJA would seem to suggest that that annulment actions can be filed by anyone whose interests have been affected by administrative actions. However, although the term “interest” is wider than “right” required in full remedy cases, not all individuals may pursue a

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<sup>1</sup> *Okyay and Others v. Turkey*, ECtHR, Application no. 36220/97, paras, 64-69.

<sup>2</sup> *Ibid.*, para. 67.

case against every administrative action.<sup>3</sup> Anyone, regardless whether or not they are a Turkish citizen, must prove that their interests have been affected by administrative acts or actions.<sup>4</sup> Interpretation and construal of the meaning of “interest” by the Turkish administrative courts is a key factor in deciding whether an individual has standing to pursue a case to the merits stage before administrative courts.<sup>5</sup>

For the case to meet the conditions of 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 domestic law.

Under Turkish Administrative Law, individuals cannot ask for their rights to be recognized and remedied directly by courts. However, State authorities might affect the already existing rights of individuals either by administrative actions or by omissions. If the breach is committed by an omission, individuals might ask administrative authorities to provide or restore their rights. If an action of an administration interferes with a person’s rights protected under national or international law, legal actions to negate the consequences of this action are available by way of an annulment action. In the same vein, if an administration fails to take action to provide or protect a right, individuals have a right ask it to act.

In its early jurisprudence, the Council of State, Turkey’ apex administrative court, interpreted the concept of interest broadly. The Council recognized all citizens as interested parties in issues regarding the protection of environmental, cultural, historical values. This is due to the wording of the Constitution and the Environment Law. Article 56 of the Constitution provides that; “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”. Article 30 of the Environment Law also grants a right to everyone, who becomes aware of activities that damage the environment, to request that administrative authorities take necessary precautions and to stop the offending activities.<sup>6</sup>

The early jurisprudence of the Council of State supports this approach. 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.<sup>7</sup>

This relatively expansive approach to subjective legal standing started to change in 2011<sup>8</sup>, and, in 2015, the Council began to take a drastic turn, significantly narrowing the scope of subjective legal standing. In a 2015 case concerning a hydroelectric power station allegedly constructed without an environmental impact assessment, the

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<sup>3</sup> Council of State, 14th Chamber, 21.9.2011, Case no. 2011/13742, D. no. 2011/796.

<sup>4</sup> The Constitutional Court, in a judgment where it examined the difference between the notions of interest and right under administrative law, stated that in an annulment case the claimant has to show his/her interest in the case but not the existence of a violation of subjective right to have a legal standing in an annulment case. CC, File no.1995/27, D No..1995/47, 21/09/1995.

<sup>5</sup> The rule concerning the annulment actions has been amended several times and its interpretation by the administrative courts have evolved in the last two decades. This has mostly affected the environment cases. See Süheyla Suzan Gökalt Alica, “Çevrenin Korunmasına İlişkin İptal Davalarında Kişisel Menfaat Kavramı” (2018), 139 TBB Dergisi 165.

<sup>6</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>7</sup> 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.

<sup>8</sup> For instance, in a series of cases the Council of State concluded that the Bar Associations have no legal interest to file a case against environment projects. Although the Council of State recognized bar associations’ role to defend the rule of law and human rights in those cases, it also held that this role should be interpreted in the framework of legal profession. As environment issues do not fall within this framework, according to the Council of State, bar associations do not have the legal capacity to file environment cases. Council of State 6. Chamber, 27.06.2012, Case No. E.2010/1097, D. No. 2012/3815; Council of State 14th Chamber, 15.07.2011, Case no. 2011/13296, D No.2011/450 Council of State 14th Chamber, 21.09.2011, Case No. 2011/13742, D. No. 2011/796; Council of State Plenary of the Administrative Cases’ Chambers 28.09.2017, Case no. 2016/4786, D. No. 2017/2860; Council of State, 14th Chamber, 21.9.2011, Case no. 2011/13742, D. no. 2011/796; Council of State 6. Chamber, 08.06.2011, Case No. E.2010/12920, D. No. 2011/2120.

Council of State found an association did not enjoy subjective legal standing, as the association's pre-defined objectives were limited to the neighbouring municipal area.<sup>9</sup>

In a 2016 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 incompetent because they lacked direct links to the area in which the facility was established. In contrast to its established pre-2011 case-law,<sup>10</sup> the Council of State required that complainants either have an ownership of a property, have residence or have been born in the relevant area to have an interest to request the cancellation of the construction plan. As a result, citizenship has no longer been determined sufficient to bring a case about the environment.<sup>11</sup> Administrative courts seek a connection between the individual and the place where the mining or energy projects take place. Therefore, cases are generally rejected where complainants have been unable to prove such a link between the individual and the environmental effects, on the ground that the petitioner has no legal interest in the case.<sup>12</sup>

Administrative courts in their post-2011 case law have held that a balance should be struck between the aim of protecting the rule of law and the stability of administration.<sup>13</sup> Recently, the judiciary has favoured the latter against the former.<sup>14</sup> As a result, individuals can only have legal standing against projects that affect the environment when they can show that projects have a direct link with their personal interests. That means that either they should live there or should have assets in that region or have been born there.

Irrespective of these developments, it should be emphasized that article 56 of the Constitution and article 30 of the Environment Law recognise the right to a healthy environment, and whether an individual has an interest in an annulment case can only be decided through a fair hearing conducted in line with the Constitution and ECHR. The scope of the substantive right under domestic law is not limited by restrictions in the rules of standing. Therefore, it is submitted that, in cases that engage rights under article 56 of the Constitution and / or article 30 of the Environment Law, there exists a genuine and serious "dispute" under article 6.1 ECHR concerning the civil rights of the petitioners in such cases, as affirmed by the Court in *Okay and Others v. Turkey* judgment,<sup>15</sup> and irrespective of the restrictive rules of standing developed by the national courts.

### **3. Jurisprudence of the Turkish Constitutional Court**

In order to have standing before the Turkish Constitutional Court, petitioners need to establish: (i) that their rights are recognized<sup>16</sup> both in the Constitution and in the European Convention on Human Rights; and (ii) that they are personally and directly

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<sup>9</sup> Council of State, 14. Chamber, 2013/3910E, 2015/7841K, 22.10.2015

<sup>10</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>11</sup> Council of State, 6th Chamber, 2015/1575E, 2016/124K, 25.01.2016

<sup>12</sup> Rize Administrative Court, Case no. 2017/503, D. No. 2018/653; Rize Administrative Court, Case no. 2018/11, D. No. 2018/808.

<sup>13</sup> Council of State, Plenary of the Administrative Cases' Chambers., 13.06.1997, Case No. 1997/195, D.1997/400, Council of State. 8th Chamber, 22.01.2015, Case No.2014/1977, D.2015/59, Council of State 10th Chamber, 09.06.1998, Case no.1997/2003, D.1998/2445,.

<sup>14</sup> Council of State 14th Chamber., 09.03.2017, F.2016/6879, C.2017/1443; Council of State 14th Chamber, 27.12.2016, F.2016/5004, C.2016/7979.

<sup>15</sup> *Okay and Others v. Turkey*, ECtHR, *op. cit.*

<sup>16</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, action or negligence that is claimed to result in the violation<sup>17</sup> constituting a breach of the Constitution.<sup>18</sup> These requirements are cumulative.

As the table annexed to this submission illustrates, in cases where one of these requirements are not met, the Constitutional Court will find the application inadmissible *ratione personae*. Therefore, the Constitutional Court's interpretation as to the nature and scope of ECHR rights is crucial in defining the scope of fair trial rights in environmental constitutional complaints.

### 3.1. Rights commonly recognized in the Constitution and the ECHR

Article 56 of the Turkish Constitution provides that "[e]veryone has the right to live in a healthy and balanced environment." However, not all rights protected under the Constitution can be raised in an individual application to the Constitutional Court. 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 right to a healthy environment, while enshrined under article 56, is not included under the ECHR and therefore not actionable under article 148 of the Turkish Constitution.

The Constitutional Court of Turkey (TCC) has ruled that constitutional rights that are not protected under the European Convention may not be subject of individual applications. Such non-protected rights include many economic, social and cultural rights as well as "third generation rights".<sup>19</sup> However, certain claims concerning environmental risks created by the emission of greenhouse gases may engage article 2 of the Convention, protecting the right to life, and/or article 8 of Convention, protecting the right to respect for private and family life.

Therefore, applications concerning human rights and the environment as a general matter, are examined only to the extent that they fall constitutionally either under article 17 (Right to life, personal inviolability, corporeal and spiritual existence of the individual); under article 20 (Privacy of private life) and/or under article 21 (Inviolability of the domicile) of the Constitution.<sup>20</sup> These three constitutional provisions provide a common denominator with the Convention. Claims that do fall within the scope of these rights have not been juridically accepted as falling under the *ratione materiae* scope of the constitutional complaint mechanism.

### 3.2. The requirement of personal and direct victimhood

The Constitutional Court of Turkey has held that the concept of legal interest before administrative courts is not coterminous with the concept of victimhood, which needs to be met in constitutional individual complaints. The concept of victim status with respect to the individual complaint mechanism is separate and autonomous from the concept of legal interest and in fact can be narrower than the concept of legal interest in administrative law cases.<sup>21</sup> A case that is accepted by administrative courts on the ground that the petitioner has a legal interest might nonetheless be found inadmissible

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<sup>17</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>18</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>19</sup> Amongst other authorities, see Binali Özkaradeniz and Others Application, no. 2014/4686, 1.2.2018, para. 45.

<sup>20</sup> Hüseyin Tunç Karlık and Zahide Sadan Karlık Application, No: 2013/6587, 24/3/2016, para. 43

<sup>21</sup> Tezcan Karakuş Candan and Others Application, No: 2013/1977, 9/1/2014, para. 20

on the ground that the applicant has not meet the victimhood criteria before the Constitutional Court.

Unlike article 56 of the Constitution, which protects everyone's right to live in a healthy and balanced environment, articles 17, 20 and 21 of the Constitution 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 *ratione personae* admissible: (i) an actual right of the applicant must be breached by the impugned act or action of the public authorities; and (ii) the applicant must be "personally" and "directly" affected by the breach.<sup>22</sup>

In addition, the Court will also require that there be an enhanced level of gravity as to the harm to entertain an individual application. While concluding whether an application has met this condition, the Court examines the duration and intensity of the environment impact and the physical and "mental" 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>23</sup> Applications filed by individuals not living in the city where a mining operation had been conducted, thus, were found inadmissible.<sup>24</sup>

The Court also stated that there should be a difference between cases where the applicant claims to be a potential victim of harm from an environmental project and cases where the applicant aims to amend national laws and protect societal interest. The latter was said to constitute an *actio popularis* and therefore did not fall within the mandate of the individual complaint mechanism.<sup>25</sup>

It is therefore not sufficient for applicants to show that the environment has been affected negatively by the administration's actions. They must also show that their actual rights that are justiciable as complaints under the Constitution have directly and personally been affected by the impugned measures, and they must do so by showing physical proximity to the environmental harm at stake.<sup>26</sup> The Constitutional Court has thus declared inadmissible applications filed by those who do not have ownership of a property or a residence in close vicinity to the project that was said to adversely affect the environment.<sup>27</sup> Applications lodged by legal persons, as opposed to natural persons, have also been found inadmissible due to lack of victim status.<sup>28</sup>

In deciding a complaint in 2014 against construction in a forest area in Ankara, the Constitutional Court determined that applicants, who were the executives of the Ankara Architects Union, did not satisfy the victim status, as they did not have direct ties to the affected area and they could not prove that they were personally affected by the issue which caused the complaint. The case was declared incompatible *ratione personae*.<sup>29</sup> It should be concluded, therefore, that, even when the petitioners are being directly and personally affected by omissions of the State, the victimhood threshold developed by the Constitutional Court is excessively high and could not be

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<sup>22</sup> Onur Doğanay Application, No: 2013/1977, 9/1/2014, para. 42.

<sup>23</sup> Bilal Özkaradeniz and Others Application [GC], No. 2014/4686, 1.2.2018, para. 48. "The assessment of that minimum is relative and necessitates an independent examination in every concrete case within the scope of criteria such as the intensity and duration of the nuisance, and the physical or mental integrity as well as general environmental context. The most important element to be taken into consideration in the assessments is undoubtedly the proximity of the applicant to the source of environmental pollution".

<sup>24</sup> Ertuğrul Barka and Others Application, No. 2014/2818, 24.1.2018, para. 44.

<sup>25</sup> Tezcan Karakuş Candan, para. 21.

<sup>26</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>27</sup> Adnan Ayan Application, No. 2015/19256, 8/5/2019, para. 32.

<sup>28</sup> Egeçep Derneği Application, N. 2015/17415, 17.4.2019, para. 37.

<sup>29</sup> Tezcan Karakuş Candan a.o., Application no:2014/5809,10/12/2014, Official Gazette Date-No: 4/4/2015-29316

met in this case due to the requirement of a direct tie to the place in Turkey where the cause of environmental harm is located.

In *Fevzi Kayacan*, where the TCC found that the applicant fulfilled the victim status requirement under Constitutional law, that Court paid special attention to the fact he had been living twenty meters away from a telecom base station.<sup>30</sup> Similarly, in *Hüseyin Tunç Karlık ve Zahide Şahan*, the applicant was found to have victim status because his home was six meters away from a telecom base station.<sup>31</sup>

Direct links between the location of environmental harms and the applicants have also been applied in admissibility cases that concern mining activities. In *Arif Ali Cangı and others*, the Court emphasized that all applicants were residents of İzmir and they were able to demonstrate that the gold mine was close to the potable water reserves which provide their drinking water.<sup>32</sup> Similarly, in *Ertuğrul Barka and others*, a case involving multiple applicants concerning a gold mine and its environmental harms, the Court declared the complaints of only one of the applicants to be admissible based on the observation that only this applicant had been living and working as a farmer in the village where the gold mine was located.<sup>33</sup>

In the case of *Ahmet Ayan and others*, the TCC determined that the applicants were unable to show that they had a close relationship to the nickel ore enrichment facility, which was the source of the environmental harm. The TCC stated that the applicants were neither able to demonstrate that they were legally resident in the location (Çaldağı region of Turgutlu province of Manisa municipality) where the ore enrichment facility was based, nor had any property in Çaldağı such that they could show they would be negatively affected by the activities of this facility.<sup>34</sup>

In the case of *Ayşe Sevtap Uzun*, the applicant did live in the city affected by the alleged environmental harm of a coal mine, the municipality of Bartın. Nonetheless, the TCC held that she did not meet the requirement of direct and personal harm, as she was not able to demonstrate how the coal mine in Bartın affected her directly and personally.<sup>35</sup>

In sum, the TCC requires physical residence, or ownership of a property in very close vicinity to a location that is alleged to have caused environmental harm, as well as evidence of how the environmental activity affects them personally when assessing the admissibility of an application before the Turkish Constitutional Court under this 'victim status' requirement.<sup>36</sup>

#### **4. Turkish Government's position before the UN Committee on the Rights of the Child**

In 2019, 16 child complainants brought a joint complaint against five States, including Turkey, under the Optional Protocol to the Convention on the rights of the Child. The complaints claimed that, by recklessly causing and perpetuating life-threatening climate change, the respondent States had failed to take necessary preventive and precautionary measures to respect, protect, and fulfill the petitioners' rights to life

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<sup>30</sup> *Fevzi Kayacan*, Application No. 2013/2513, 21/4/2016.

<sup>31</sup> *Hüseyin Tunç Karlık and Zahide Şahan Karlık* Application No. 2013/6587, 24/3/2016. Also see, *Ahmet İsmail Onat*, Application No. 2013/6714, 21/4/2016 where the TCC held that the fact that high voltage electricity lines were passing through the street where the applicant resides as decisive.

<sup>32</sup> *Arif Ali Cangı and others*, Application No. 2014/1767, 6/12/2017.

<sup>33</sup> *Ertuğrul Barka and others*, Application No. 2014/2818, 24/1/2018.

<sup>34</sup> *Ahmet Ayan and others*, Application No. 2015/19256, 8.5.2019 para 32.

<sup>35</sup> *Ayşe Sevtap Uzun Application*, No: 2013/6260, 13/4/2016, paras. 36-41.

<sup>36</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.

(Article 6), the highest attainable standard of health (Article 24), and to enjoy culture (Article 30) under the CRC.<sup>37</sup>

In its response to the complaint, the Turkish government argued that the authors had failed to exhaust local remedies in respect of their right to healthy environment. The government argued that,

*"[i]n accordance with article 90 of the Constitution, international agreements duly entered into effect have the force of law. Therefore, individuals can bring claims of violations of their rights safeguarded under the Convention before the domestic courts. Furthermore, in accordance with article 148 of the Constitution, anyone may apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms guaranteed by the Constitution has been violated by the public authorities. Article 56 of the Constitution recognizes everyone's right to live in a healthy and balanced environment and places a duty on the State to improve the natural environment, protect environmental health and prevent environmental pollution. Therefore, the authors could have brought a claim for a violation of their rights safeguarded under the Convention and the Turkish legal system before the Constitutional Court".<sup>38</sup>*

In the oral hearing Turkey's representatives also made comments about the legal remedies before administrative courts, which, according to the government provide effective remedies even for people who live outside of the Turkish jurisdiction:

*"As for the other possible avenues for remedy, those whose interests are violated as a result of the actions of administrative authorities can initiate administrative proceedings. The State party notes that the term "violation of interests" has a much wider scope than "violation of rights" and that the Council of State interprets the concept of "violation of interests" quite broadly. The Council of State has, for instance, in a case filed by the Turkish branch of Greenpeace regarding the environmental effects of a nuclear power plant project, concluded that the applicants' personal interests were affected. In addition, pursuant to the law on the environment, anyone who is harmed or who is aware of an activity that pollutes or degrades the environment may request the necessary measures to be taken or the cessation of the activity. The law on the environment does not distinguish between nationals and non-nationals in respect of access to the courts".<sup>39</sup>*

The Committee, having found that the respondent State had jurisdiction over individuals living outside its borders and that the authors had victim status, concluded that the applicants had not exhausted local remedies in the form of an individual application before the Constitutional Court, an administrative proceeding or a suit filed under the law on the environment before the domestic courts. The Committee held that, in the absence of further explanation from the authors as to why they had not attempted to pursue these remedies other than generally expressing doubts about the prospects of success of any remedy, their duty to exhaust local remedies will not have been discharged.

In sum, the Council of State has recently adopted a restrictive approach concerning subjective legal standing of individuals who do not live in the vicinity of construction and mining projects that potentially damage the environment. The Constitutional Court's has through its jurisprudence required the physical residence, or ownership of

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<sup>37</sup> For the complaint against Turkey, see. Chiara Sacchi et al. v. Turkey, UN doc. CRC/C/88/D/108/2019, 9 November 2021.

<sup>38</sup> *Ibid*, para. 4.4.

<sup>39</sup> *Ibid*, para. 7.8



a property in very close vicinity to a location that is alleged to have caused environmental harm, as well as an adequate accounting of how the environmental activity affects them personally when assessing the admissibility of an application. Nonetheless, the Turkish government claims that every individual has a right to challenge projects that might damage the environment. The government's objection concerning local remedies was also accepted by the CRC.

The ICJ considers therefore that according to the domestic law, as Turkey itself it has insisted before international institutions like the CRC, the right to a healthy environment is recognised as a civil right even for individuals who do not live in the vicinity of construction and mining projects that potentially damage the environment.

## **5. Conclusions**

**Recent developments in Turkish administrative and constitutional law have acted to restrict the standing of persons to challenge construction and mining projects that potentially damage the environment. The ICJ submits, however, that the core legal basis recognising the right to a healthy environment, namely Article 56 of the Constitution and Article 30 of the Environment Law, has remained unaltered since the *Okay and Others* judgment, by which Turkey's courts affirmed that the right to a healthy environment recognized as a civil right under the Turkish law and the concept of a "civil right" under Article 6 § 1 cannot be construed as limiting an enforceable right in domestic law within the meaning of Article 53 of the Convention. Therefore, it is submitted that those relying on the right to a healthy environment should benefit from article 6 guarantees before the Turkish courts.**

**The Turkish Government, in its written and oral observations before the UN Committee on the Rights of the Child, has also expressly recognized every individual's right to a healthy environment regardless the distance of the project alleged to cause the harm, to the location of the applicants. Indeed, according to the Turkish government even those who live outside Turkey's jurisdiction have subjective legal standing before administrative courts to challenge a project impacting on the environment on the basis that it might affect their rights and interests.**

**As a result, the ICJ emphasized that the right to a healthy environment must be taken as a civil right recognised under the Turkish law and any dispute concerning this right falls within the scope of Article 6 of the ECHR.**

### **Annex 1**

<b>Name and of judgment</b>	<b>Date of judgment</b>	<b>Environmental Issue at stake</b>	<b>Victim status</b>	<b>Reason for finding/not finding victim status</b>	<b>Outcome</b>	<b>Article 6 Examination</b>
Tezcan Karakuş Candan and others (2014/5809)	10/12/2014	Construction	No	No direct and personal link between the source of alleged environmental harm and the applicants	Inadmissible	No separate fair trial examination was made
Fevzi Kayacan (2) 2013/2513	21/4/2016	Base stations	Yes	Twenty meters between the base station and the applicant's home	Admissible, no violation	No separate fair trial examination was made
Ayşe Sevtap Uzun 2013/6260	13/4/2016	Coal mine	No	The applicant lives in the province of the coal mine, but cannot demonstrate direct and personal effects	Inadmissible	No separate fair trial examination was made
Hüseyin Tunç Karlık ve Zahide Şahan Karlık 2013/6587	24/3/2016	Base station	Yes	The applicants' home is 6 meters away from the GSM base station	Admissible, No violation	No separate fair trial complaint was brought by the applicants
Öznur Çiçek Bildik 2013/6595	21/4/2016	Genetically modified organisms	No	No concrete evidence that the applicants or suffered harm due to eating genetically modified organisms	Inadmissible, Manifestly ill founded	Applicant's complaint concerning principle of natural judge (article 37 of the Constitution) was found inadmissible
Orhan Afacan 2014/2266	16/6/2016	Noise and odor pollution	Yes	Pollution comes from the neighboring apartment	Inadmissible due to lack of exhaustion of domestic remedies	No separate fair trial complaint was brought by the applicant
Arif Ali Cangı and others 2014/1767	6/12/2017	Gold mining	Yes	Applicants are resident in Izmir and show that the gold mining is close to the	Admissible, No violation	No separate fair trial examination was made

				potable water reserves which provide their drinking water		
Ertuğrul Barka and others 2014/2818	24/1/2018	Gold mining	Yes for one applicant  No for all others	Applicant Mustafa Sakaryalı lives and earns his living through farming in the village where the gold mine is located.  Others neither reside in or own property in the close vicinity of the gold mine.	Admissible for one applicant, no violation	No separate fair trial examination was made
Gülcan Tukun Berk 2015/2334	29/11/2018	Construction	Yes	Living right across the construction site	Manifestly ill founded ratione materia	No separate fair trial examination was made
Ahmet Bilgin and others 2015/11709	12/12/2018	Hydroelectric powerplant	Yes for some of the applicants	Living and owning homes and agricultural fields in the village	Partly admissible, no violation	No separate fair trial examination was made
Adnan Ayan and others 2015/19256	8/5/2019	Nickel ore enrichment facility	No	Applicants do not live or own property near the facility	Inadmissible	No separate fair trial examination was made