

BEFORE THE SECOND SECTION
EUROPEAN COURT ON HUMAN RIGHTS

Cangi and Others v. Turkey

Application no. 65087/19

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

INTERVENER

***pursuant to the Registrar's notifications dated 1 February 2022 that the
Court had granted permission under Rule 44 § 3 of the Rules of the
European Court of Human Rights***

23 February 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 application of procedural guarantees, including under article 6 of the European Convention on Human Rights (ECHR), in cases concerning the right to a healthy environment and the impact of environmental harm on the enjoyment of human rights.

In its intervention, the ICJ will first provide the Court with observations on the international law, standards and jurisprudence concerning the application of procedural rights in accessing justice in cases of potential environmental harm affecting the enjoyment of human rights. Secondly, the ICJ will examine whether, in practice, the Constitutional Court recognizes NGOs access to justice in case of violations of human rights in environmental cases.

2. Rights to participation and access to justice in environmental cases

Access to justice is protected by international environmental law and is enshrined in States' obligations under articles 6 and 13 ECHR, as well as under the procedural obligations of several rights under the Convention.

The European Convention on Human Rights provides for the right to an effective remedy under article 13 ECHR and the right to a fair hearing under Article 6.1 ECHR, which is *lex specialis* in relation to article 13. These are typically the gateways to access to justice for rights violations arising from potential or occurred environmental harm. although other substantive convention rights will also be engaged, such as the right to life under article 2. Since their interpretation must be practical and effective in ensuring access to justice, including with effective remedies in environmental cases, this Court has often interpreted them in light of environmental law. This occurred, for example, in the case *Burestop 55 and Others v France*, in which the Court identified civil society and NGOs as constituting part of the "public" referred to in the Aarhus Convention that is entitled to participation, information and access to justice in environmental matters.¹

In international environmental law, the *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (Aarhus Convention), concluded under the auspices of the UN Economic Commission for Europe, provides that 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'.² 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.

¹ *Burestop 55 and Others v France*, Applications nos. 56176/18 and others, 1 July 2021, para. 54. See *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (Aarhus Convention), articles 2.4 and 2.5, for this Convention's definition of "public" and "public concerned".

² See, article 1 of the Aarhus Convention.

As a general principle, the ICJ submits that the interpretation of the Convention rights in light of international environmental law implies that environmental associations, as well as individuals, have the right to have access to information, rights to participation and access to justice in order to seek remedies for violations of Convention rights in environmental cases.

2.1. The right to an effective remedy

Under article 13 ECHR, individuals alleging that their Convention rights, including in environmental matters, have been violated, have the right to an effective remedy at the national level.³ One of the primary elements which go to effectiveness is that the remedies are prompt, accessible, and adjudicated before an impartial and independent authority and be capable of reviewing and overturning the decision.⁴ Judicial bodies should in principle be empowered to provide an effective remedy in all such cases, and in any event any remedy-granting body must fulfil the requirements set out above if it is to qualify as effective - i.e. the power to bring about cessation of the violation and full reparation⁵ The forms of reparation include compensation, rehabilitation, restitution, satisfaction and guarantees of non-recurrence. The remedy must be prompt and effective in practice as well as in law, and must not be unjustifiably hindered by the acts of State authorities.⁶

The right to an effective remedy for violations of the Convention rights applies also for violations ensuing from a lack of respect of obligations under international environmental law when these manifest themselves in violations of Convention human rights obligations, including positive obligations under articles 2 and 8 ECHR.⁷ The right to an effective remedy is also reflected under international environmental instruments. Principle 10 of the Rio Declaration, for example, states: "Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

The UN Human Rights Council mandated Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, has elaborated the Framework Principles on human rights and the environment. The Principles, many of which are reflective of existing human rights obligations in the environmental context, affirm that "States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment."⁸ With regard to the characteristics of the remedy itself, they should be provided by "judicial and administrative procedures that meet basic requirements, including that the procedures: (a) are impartial, independent, affordable, transparent and fair; (b) review claims in a timely manner; (c) have the necessary expertise and resources; (d) incorporate a right of appeal to a higher body; and (e) issue binding

³ Article 8 of the Universal Declaration of Human Rights (UDHR), article 2.3 of the International Covenant on Civil and Political Rights (ICCPR), article 8.2 of the International Convention for the Protection of All Persons from Enforced Disappearance (CED), article 13 ECHR. See also articles 2 and 3 of the UN Basic Principles and Guidelines on the right to a remedy and reparation.

⁴ For a thorough analysis of the right to a remedy please access: ICJ, *Practitioners' Guide No. 2. The right to a remedy and reparation for gross human rights violations*, 2018 edition, available at <https://www.icj.org/the-right-to-a-remedy-and-reparation-for-gross-human-rights-violations-2018-update-to-practitioners-guide-no-2/>.

⁵ See, *ibid.*, pp. 49-54. See also, UN Basic Principles and Guidelines on the right to a remedy and reparation; UN Human Rights Committee, *General Comment No. 31, The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, UN Doc. CCPR/C/21/Rev.1/Add.13; UN Committee against Torture, *General Comment No. 4 on the implementation of article 3 of the Convention in the context of article 22*, UN Doc. CAT/C/GC/4, 4 September 2018, para. 13.

⁶ *Muminov v Russia*, ECtHR, Application no. 42502/06, Judgment of 11 December 2008, para. 100; *Isakov v Russia*, ECtHR, Application no. 14049/08, Judgment of 8 July 2010, para. 136; *Yuldashev v Russia*, ECtHR, Application no. 1248/09, Judgment of 8 July 2010, paras. 110-111; *Garayev v Azerbaijan*, ECtHR, Application no. 53688/08, Judgment of 10 June 2010, paras. 82 and 84.

⁷ See, *Di Sarno and Others v Italy*, ECtHR, Application No. 30765/08, 10 January 2012, para. 117. See also, paras 86 and 87.

⁸ Principle 10, *Report of the UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc. A/HRC/37/59, 24 January 2018, p. 13.

decisions, including for interim measures, compensation, restitution and reparation, as necessary to provide effective remedies for violations. The procedures should be available for claims of imminent and foreseeable as well as past and current violations. States should ensure that decisions are made public and that they are promptly and effectively enforced.”⁹

2.2. The right to a fair hearing (article 6 ECHR)

The right to a fair hearing under article 6 ECHR is applicable to environmental disputes whenever an independent and impartial tribunal established by law is called upon to decide on the enjoyment of a civil right.¹⁰ For article 6 to apply, the “civil rights or obligations”¹¹ of the applicant or applicants must be affected, reflecting *inter alia* this Court’s jurisprudence that the Convention generally does not confer any right to an *actio popularis* or other collective actions.¹² Nevertheless, in the environmental field, the Court has found that rights under article 6.1 may apply in cases brought by associations as well as by individuals, where the civil rights of the association itself, or of its members are affected.

It is established in the Court’s caselaw that environmental disputes may engage “civil rights and obligations” under article 6.1. ECHR where national law protections of rights to life, physical integrity, private life or property, amongst others, are engaged. Furthermore, in States that recognize the right to a healthy environment, this is generally considered to constitute a civil right.¹³

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, as increasing the capacity of the 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.¹⁴

In *Gorraiz Lizarraga and Others*, this 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.¹⁵

In the case of *Collectif national d’information et d’opposition à l’usine Melox – Collectif Stop Melox et Mox v. France*, this Court affirmed that article 6.1 ECHR was applicable to proceedings brought by an environmental-protection group of local people, not describing itself as “an association,” 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 “dispute” raised by the applicant association also had a sufficient link with a “right” to which it

⁹ *Ibid.*, para. 29.

¹⁰ See also, article 14 ICCPR.

¹¹ Article 6.1 ECHR.

¹² *Athanassoglou and Others v. Switzerland*, ECtHR, Application No. 27644/95, 6 April 2000. The European Court of Human Rights dismissed the case on the grounds that the dispute did not concern a right, let alone a civil right, since the applicants were alleging not so much a specific and imminent danger in their personal regard as a general danger in relation to all nuclear power plants. The European Court considered that article 6.1 required that individuals be granted access to a court whenever they had an arguable claim that there had been an unlawful interference with the exercise of one of their civil rights recognised under domestic law. However, the outcome of the procedure before the Federal Council was decisive for the general question 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

¹³ See, *Okay and Others v. Turkey*, ECtHR, Application No. 36220/97, 12 July 2005, paras. 67-69.

¹⁴ *L’Erablière asbl v. Belgium*, ECtHR, Application No. 49230/07, 24 February 2009.

¹⁵ *Gorraiz Lizarraga and Others v. Spain*, ECtHR, Application No. 62543/00, 27 April 2004, para. 46.

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.¹⁶ The decision was prompted by "the reality of present civil society, where association play an important role, notably by defending certain causes before the authorities or domestic courts, particularly in the field of environmental protection."¹⁷ The principles contained in the *Aarhus Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters* were also important in this regard.¹⁸ Indeed, the approach of the Court to the civil rights and obligations of associations in cases relating the environment is supported by the principles of international environmental law which, as described above, include the rights to participation, access to justice and remedies.

In the recent case *Burestop 55 and Others v France*, the Court confirmed that associations have a "civil right" under article 6.1 ECHR when their dispute is related to the right of the public to information and participation in the decision-making process, in this case when it was related to the authorisation of an activity that may be dangerous for health or the environment.¹⁹

The importance of access to justice in environmental matters is also emphasised by the Inter-American Court of Human Rights.²⁰ In its *Advisory Opinion on the Environment and Human Rights*, the Court said that access to justice "guarantees the full realization of the rights to public participation and access to information, through the corresponding judicial mechanisms."²¹ Following these premises, the Court held that, in cases where human rights are affected by environmental harm:

*"States must guarantee that the public have access to remedies conducted in accordance with due process of law to contest any provision, decision, act or omission of the public authorities that violates or could violate obligations under environmental law; to ensure the full realization of the other procedural rights (that is, the right of access to information and to public participation), and to redress any violation of their rights as a result of failure to comply with obligations under environmental law."*²²

2.3. Environmental Impact Assessments and procedural rights

Fair procedures in the conduct of Environmental Impact Assessments are crucial in ensuring effective access to justice in environmental cases. As the UN Special Rapporteur on human rights and the environment pointed out, environmental impact assessments (EIAs), among other things, "should provide meaningful opportunities for the public to participate, ... should result in a written report that clearly describes the impacts; and the assessment and the final decision should be subject to review by an independent body."²³

¹⁶ *Collectif national d'information et d'opposition à l'usine Melox – Collectif Stop Melox et Mox v. France*, ECtHR, Decision, Application No. 75218/01, 28 March 2006.

¹⁷ *Ibid.*, para 4.

¹⁸ *Tatar v. Romania*, ECtHR, Application no. 67021/01, 27 January 2009, para. 118; *Taşkın and Others v. Turkey*, ECtHR, Application no. 46117/99, 10 November 2004, paras. 98-100.

¹⁹ See, *Burestop 55 and Others v France*, ECtHR, *op. cit.*, paras. 54-55.

²⁰ *Advisory Opinion on the Environment and Human Rights*, IACtHR, Advisory Opinion OC-23/17, 15 November 2017, para. 233.

²¹ *Ibid.*, para. 234.

²² *Ibid.*, para. 237.

²³ *Report of the UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc. A/HRC/37/59, *op. cit.*, para. 20.

Such EIAs “should also examine the possible effects of the environmental impacts of proposed projects and policies on the enjoyment of all relevant rights, including the rights to life, health, food, water, housing and culture. As part of that assessment, the procedure should examine whether the proposal will comply with obligations of non-discrimination ..., applicable domestic laws and international agreements ... and the obligations owed to those who are particularly vulnerable to environmental harm The assessment procedure itself must comply with human rights obligations, including by providing public information about the assessment and making the assessment and the final decision publicly available ..., facilitating public participation by those who may be affected by the proposed action ..., and providing for effective legal remedies”²⁴

This Court has affirmed that, in the assessment of the necessity and proportionality of restrictions under Article 8.2 ECHR, the respect of procedural rights in decision-making is crucial. The process “must be fair and such as to afford due respect for the interests of the individual as safeguarded by Article 8. ... It is therefore necessary to consider all the procedural aspects, including the type of policy or decision involved, the extent to which the views of individuals were taken into account throughout the decision-making process, and the procedural safeguards available.”²⁵

Crucially, this Court has held that:

*Where a State must determine complex issues of environmental and economic policy, the decision-making process must firstly involve appropriate investigations and studies in order to allow them to predict and evaluate in advance the effects of those activities which might damage the environment and infringe individuals’ rights and to enable them to strike a fair balance between the various conflicting interests at stake The importance of public access to the conclusions of such studies and to information which would enable members of the public to assess the danger to which they are exposed is beyond question Lastly, the individuals concerned must also be able to appeal to the courts against any decision, act or omission where they consider that their interests or their comments have not been given sufficient weight in the decision-making process*²⁶

Under article 10 ECHR, the Court has underscored the particular role of “watchdog” that associations, and in particular environmental associations, play to ensure the respect of the right of the public to information and participation in environmental matters.²⁷ The ICJ submits that the same role is crucial not only in ensuring the respect of the right to public information under article 10 ECHR, but also the respect of due process and transparency during a EIA procedure and its judicial review, under article 8 ECHR.

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 commonly recognized²⁸ in the Constitution and the European Convention on Human Rights; and (ii) that they are personally and directly

²⁴*Ibid.*, para. 21.

²⁵ *Taşkın and Others v. Turkey*, ECtHR, Application No. 46117/99, 10 November 2004, para. 118.

²⁶ *Ibid.*, para. 119.

²⁷ *Cangi v. Turkey*, ECtHR, Application No. 24973/15, 29 January 2019; *Burestop 55*, *op. cit.*.

²⁸ 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 violation²⁹ instituting a breach of the Constitution.³⁰ 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 does not examine the application. Therefore, the interpretation of the Constitutional Court concerning the scope of ECHR rights is crucial to define the scope 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.”, which is not the case for article 56.

The Constitutional Court of Turkey (TCC) has ruled that constitutional rights that are not protected under the Convention may not be subject of individual applications, including economic, social and cultural rights as well as “third generation rights” are not directly protected by the ECHR.³¹ Claims concerning environmental risks created by the emission of greenhouse gases may correspond to articles 2 and 8 of the ECHR that cover the right to life and the right to respect for private and family life.

As a result, applications concerning environment can only be examined to the extent that they fall 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 21 (Inviolability of the domicile) of the Constitution,³² 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 *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 that 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 that of legal interest and can in turn be narrower than the concept of legal interest in administrative law cases.³³ 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 did not meet the victimhood criteria before the Constitutional Court.

²⁹ 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.”

³⁰ 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.

³¹ Amongst other authorities, see Binali Özkaradeniz and Others Application, no. 2014/4686, 1.2.2018, para. 45.

³² Huseyin Tunç Karlık and Zahide Sadan Karluk Application, No: 2013/6587, 24/3/2016, para. 43

³³ Tezcan Karakuş Candan and Others Application, No: 2013/1977, 9/1/2014, para. 20

Unlike article 56 of the Constitution which protects everyone's right to live in a healthy and balanced environment, articles 17, 20 and 21 protect civil and political rights and 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.³⁴

In addition, the Court also seeks a certain 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 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.³⁵ Applications filed by individuals not living in the city where the mining operation had been conducted, thus, were found inadmissible.³⁶

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 constitutes *actio popularis* and does not fall within the mandate of the individual complaint mechanism.³⁷

As a result, it would not be enough for the 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 by showing physical proximity to the environmental harm at stake.³⁸ The Constitutional Court has found 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 to be inadmissible.³⁹ Applications lodged by legal persons have also been found inadmissible due to lack of victim status.⁴⁰

In 2014, regarding a 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 incompatible *ratione personae*.⁴¹ It should be concluded, therefore, that despite the petitioners being directly and personally affected by the omissions of the respondent state, the victimhood threshold developed by the Constitutional Court is higher and could not be met by them due to the requirement of a direct tie to a location in Turkey that is the cause of environmental harm.

In *Fevzi Kayacan*, when the TCC found that the applicant fulfilled the victim status requirement under Constitutional law, that Court paid special attention to the fact he was living twenty meters away from a telecom base station.⁴² Similarly in *Hüseyin*

³⁴ Onur Doğanay Application, No: 2013/1977, 9/1/2014, para. 42

³⁵ Bilal Özkaraman and Others Application [GC], No. 2014/4686, 1.2.2018, para. 48.

³⁶ Ertuğrul Barka and Others Application, No. 2014/2818, 24.1.2018, para. 44.

³⁷ Tezcan Karakuş Candan, para. 21.

³⁸ 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

³⁹ Adnan Ayan Application, No. 2015/19256, 8/5/2019, para. 32.

⁴⁰ Egeçep Derneği Application, N. 2015/17415, 17.4.2019, para. 37.

⁴¹ Tezcan Karakuş Candan a.o., Application no:2014/5809,10/12/2014, Official Gazette Date-No: 4/4/2015-29316

⁴² *Fevzi Kayacan*, Application No. 2013/2513, 21/4/2016.

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.⁴³

Direct links between the location of environmental harms and the applicants were also 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.⁴⁴ Similarly in *Ertuğrul Barka and others*, a case involving multiple applicants concerning a gold mine and its environmental harms, the Court declared only one of the applicants admissible based on the observation that only this applicant was living and working as a farmer in the village where the gold mine was located.⁴⁵

In the case of *Ahmet Ayan and others*, the TCC held 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.⁴⁶

In the case of *Ayşe Sevtap Uzun*, even though the applicant lived in the city affected by the alleged environmental harm of a coal mine, the municipality of Bartın, the TCC held that she was unable to show direct and personal harm as she was not able to demonstrate how the coal mine in Bartın affected her directly and personally.⁴⁷

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 harms as well as an account 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.⁴⁸

4. Conclusion

The ICJ submits that on the basis of this Court's jurisprudence, environmental protection associations generally enjoy a civil right to obtain information and participate in decision making on activities that may entail environmental harm. This right is also reflected in the obligations of States to undertake effective and independent environmental assessments under article 8 ECHR in these situations. Therefore, and in light of the principles of international environmental law, such associations have a right to access courts under article 6.1. ECHR to seek a remedy for these violations.

Turkey's legal provisions for ensuring access to justice, based on this assessment of the jurisprudence of the Constitutional Court of Turkey are insufficient to meet Turkey's obligations under article 6.1 ECHR. This is because they fail to provide adequately for the standing of environmental

⁴³ 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.

⁴⁴ Arif Ali Cangı and others, Application No. 2014/1767, 6/12/2017.

⁴⁵ Ertuğrul Barka and others, Application No. 2014/2818, 24/1/2018.

⁴⁶ *Ahmet Ayan and others*, Application No. 2015/19256, 8.5.2019 para 32.

⁴⁷ *Ayşe Sevtap Uzun Application*, No: 2013/6260, 13/4/2016, paras. 36-41

⁴⁸ *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

protection associations to bring claims before courts and ensure an effective remedy. This is also constitutes a deficiency in respect of obligations under article 13 ECHR.

Annex 1

Name and of judgment	Date of judgment	Environmental Issue at stake	Victim status	Reason for finding/not finding victim status	Outcome	Article 6 Examination
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 Karluk 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 Cangi and others 2014/1767	6/12/2017	Gold mining	Yes	Applicants are resident in Izmir and show that the	Admissible, No violation	No separate fair trial examination was made

				gold mining is close to the 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