

Enforcement of the Right to Environment and European Court of Human Rights: Challenges and Implications

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Abstract: The European Court of Human Rights (the Court or ECtHR) is considered one of the most accomplished human rights institutions in the world; this court also attained a certain prominence in environmental cases. The right to a safe and healthy environment has gained the center of attention currently where the court emphasized preserving these environmental concepts. The relevant challenges to protect this right and to provide the best possible solution to the member states have become a concerning matter in this regard. The implication of laws and the assessment derived from the pertinent cases can play a meaningful representation in enforcing the right to environment. The prevailing status of environmental protection under this court and offered under the ECHR regime outlines possible future developments that encourage the other regions to work together. The right to a healthy environment is recognized in the ECtHR case-law through an extensive interpretation of the applicability of certain other rights including right to life (Article 2 ECHR), the right to private and family life (Article 8 ECHR), the right to property (Article 1- Additional Protocol n. 1 to ECHR) though the word “environment” is not mentioned in the ECHR. This study will explore the role of European Court of Human Rights in establishing right to environment and will find out the challenges existing behind its success.

Keywords: Environmental rights, The European Court of Human Rights, The European Convention of Human Rights, Challenges.

Introduction

The environment is a basic word for some people and a prominent issue. We usually talk about the right to life, protection of law, right for equality, but the right of environment is another option we need to seek as our basic rights. International organizations are much conscious about this right as it directly affects humans and other surrounding life. Our Human Rights help us to enlarge our inherent traits, aptitude, talent, and scruples to meet our objects and religious needs. Life, livelihoods, culture, and society are elementary aspects of human subsistence, and their maintenance is a fundamental human right. And here the Devastation of the environment is therefore a violation of human rights. And to extreme human rights cannot be enjoyed at all if the environment becomes impaired past a certain

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grave plane. Healthy environment includes fresh air, sufficient natural light, free of sound pollution etc. which is very important for growing up of all ages of human being. So, the Human rights and the environment are intertwined. At present with the increasing population as well as development of industrialization, the pollution of environment is also rising which are being tried to be controlled through various national and international legal instruments including constitution, domestic laws, conventions, and conferences. Fundamental rights cannot be enjoyed without a safe, clean and healthy environment whilst sustainable environmental governance cannot exist without the establishment of and respect for human rights. So, the right to environment is so far reflected as to human rights.

This study will explore relevant provision of environmental rights in European Convention of Human right and will find out the role European court of Human rights in ensuring right to environment with existing challenges. The establishment of the European Court of Human Rights has contributed in safeguarding the right to environment. Right from its inception the ECtHR is working on balancing the interests and persuade the Contracting Parties to back up its choice. Sometimes by chance or by the calculated choice the Court managed to become the most effective human rights tribunal in the history of international law (Dzehtsiarou, 2022).

Right to Environment

Environmental rights mean any proclamation of a human right to environmental conditions of a specified quality, rights are composed of substantive rights (fundamental rights) like those in which the environment has a direct effect on the existence or the enjoyment of the right itself. Substantive rights comprise of civil and political rights, and procedural rights (tools used to achieve substantial rights) that includes a key point of intersection between environmental and human rights law; they prescribe formal steps to be taken in enforcing legal rights. Procedural rights include rights to free, prior and informed consent, access to information, participation in decision-making, and access to justice. Substantive rights and procedurals rights are of (UN Environment)

- To a safe, clean, healthy and sustainable environment.
- To protect against discrimination and have equal protection of the law, in relation to the enjoyment of a safe, clean, healthy and sustainable environment?
- To freedom from threats, harassment, intimidation and violence whilst working on human rights and the environment.
- To freedom of expression and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Procedurals rights are of,

- To seek, receive, and impart environmental information.
- To participate in public decision-making about environmental matters.
- To equal access to public service in his country
- To effective legal remedies for violations of these rights.

Human Rights and the Environment

Human rights are linked up with environmental rights and the human rights are linked here as such issues like the,

- Human Rights relating to the environment are set out in basic human rights treaties and it includes: The human rights to a safe and healthy environment.
- The human rights as to the highest attainable standard of health.
- The human rights to ecologically sustainable development.
- The human rights of the child to live in an environment appropriate for physical and mental development.
- The human rights to safe working conditions, including adequate safeguards for pregnant and lactating women.

European Court of Human Rights

The European Court of Human Rights (ECHR or ECtHR; French: Cour européenne des droits de l'homme) is a supranational or international court established by the European Convention on Human Rights. The court hears applications alleging that a contracting state has breached one or more of the human rights provisions concerning civil and political rights set out in the Convention and its protocols. It was established on 21 January 1959 on the basis of Article 19 of the **European Convention on Human Rights** when its first members were elected by the Consultative Assembly of the Council of Europe. The Convention charges the Court with ensuring the observance of the engagement undertaken by the contracting states in relation to the Convention and its protocols that is ensuring the enforcement and implementation of the European Convention in the member states of the Council of Europe. The jurisdiction of the court is divided into inter-state cases, applications by individuals against contracting states, and advisory opinions in accordance with Protocol No.2. Applications by individuals constitute most cases heard by the Court. A Committee is constituted of three judges, Chambers of seven judges and a Grand Chamber of 17 judges. This is how the Court's work goes.

The Protection of the Environment in the European Convention on Human Rights (ECHR) System

The word “environment” is not mentioned properly in the provisions of the European Convention on Human Rights (ECHR) and even less the concept of a right to a healthy environment. Similarly, the Convention does not directly determine whether an individual has the right to a healthy environment. Therefore, the main concern consists of the question: to what extent can individuals invoke such a new right to a healthy environment, therefore. Actually, the right to a healthy environment is recognized in European case-law through an extensive interpretation of the applicability domain of certain other rights, expressly provided for in the Convention. It derives consequently that any infringement of the right to a healthy environment cannot be invoked as such before the European Court of Human Rights (ECtHR), since it is not protected specifically by the Convention.

According to the **Manual on Human Rights and Environment** drafted by the Council of Europe, “Environmental factors may affect individual Convention rights in three different ways, the First one is the human rights protected by the Convention may be directly affected by adverse environmental factors for instance, toxic emissions from a factory or rubbish tip might have a negative impact on the health of individuals. Public authorities may be obliged to take measures to ensure that human rights are not seriously affected by adverse environmental factors for instance, toxic emissions from a factory or rubbish tip might have a negative impact on the health of individuals. Public authorities may be obliged to take measures to ensure that human rights are not seriously affected by adverse environmental factors. Second, adverse environmental factors may give rise to certain procedural rights for the individual concerned. The Court has established those public authorities must observe

certain requirements as regards information and communication, as well as participation in decision-making processes and access to justice in environmental cases. Third, the protection of the environment may also be a legitimate aim justifying interference with certain individual human rights. For example, the Court has established that the right to peaceful enjoyment of one's possessions may be restricted if this is considered necessary for the protection of the environment (EFFACE 2015).

Right to environment and European Court of Human Rights

There is no explicit right to a healthy environment in the European Convention; the Court has developed a strong jurisprudence on environmental issues through its interpretation of civil and political rights in the Convention. Specifically, ECHR case law has addressed environmental issues as components of Articles 2 says on right to life and 8 for right to respect of private and family life; of the Convention, as well as Article 10 on right to receive and impart information (ECHR 1953 ar-2,8,10) so the convention stated the need of right to environment to be established so the court of human rights is providing that remedies when the right to environment is violated. Through the European Court of Human Rights, the cases are filed, the judgments are given regarding any environmental issue indicates the right to environment to be established properly.

Case laws under the European Court of Human Rights

There are many more case laws in the European Court of Human Rights where there are several examples of the implications of environment as a right is established. Analyzing the case-law of ECtHR it is possible to observe that the violation of the right to a healthy environment has been considered in connection with other fundamental rights expressly provided for, such as the right to life (Article 2 ECHR), the right to private and family life (Article 8 ECHR), the right to property (Article 1- Additional Protocol n. 1 to ECHR), the right to a fair trial (Article 6 ECHR) and the freedom of speech (Article 10 ECHR). The cases given here are just sort of examples of precedent.

Due to Natural Disaster

In the case of *Murlio saldias* where, the applicants were survivors of the disaster which struck the Biescas campsite (Spanish Pyrenees) in August 1996 when 87 people were killed in severe flooding following torrential rain. Here the first applicant lost his parents and brother and sister in the catastrophe while the other applicants all received injuries. The other the applicants complained in particular that Spain had not taken all the preventive measures that were necessary to protect users of the Biescas campsite they also alleged that the authorities had granted permission to use the land as a campsite despite being aware of the potential dangers (*Murlio saldias and others vs Spain*, 2006).

The European Court of Human Rights declared the application inadmissible. Noting that, in December 2005, the Audiencia Nacional had awarded the first applicant compensation in an amount that could not be regarded as unreasonable and would probably be confirmed or even 2 Factsheet – Environment and the ECHR increased by the Supreme Court when it examined the applicant's appeal on points of law, it considered that, after the decision of the Audiencia Nacional, he could no longer claim to be a victim of a violation of rights set forth in the Convention within the meaning of Article 34 (right of individual petition).

As regards the remaining applicants, they had merely joined the criminal proceedings as civil parties and had declined to bring administrative proceedings against the authorities before

lodging their application with the Court. They had therefore failed to exhaust domestic remedies.

In the case of *Budayeva* 20 March 2008, In July 2000 the town of Tyrnauz, situated in the mountain district adjacent to Mount Elbrus in the Republic of Kabardino-Balkariya (Russia), was devastated by a mudslide where eight people were killed, including the first applicant's husband. Because of the disaster, the applicants sustained injuries and psychological trauma and lost their homes. So, the applicants alleged that the Russian authorities had failed to mitigate the consequences of the mudslide and to carry out a judicial enquiry into the disaster (*Budayeva and Others vs. Russia*, 2008).

The Court held that there had been a violation of Article 2 of the Convention under its substantial limb, on account of the Russian authorities' failure to protect the life of the first applicant's husband, and the applicants and the residents of Tyrnauz from mudslides which devastated their town in July 2000. There had indeed been no justification for 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. The Court also held that there had been a violation of Article 2 of the Convention under its procedural limb, on account of the lack of an adequate judicial enquiry into the disaster.

In the case of *Viviani* where concerned the risks attached to a potential eruption of Vesuvius and the measures taken by the authorities to combat those risks. The applicants, those who live in various municipalities located near the volcano alleged that in omitting to put in place an appropriate regulatory and administrative framework to deal with the risks. Their government had failed in their obligation to protect their right to life, so they complained that the lack of adequate information on the risks they faced was in breach of their right to respect their private and family life. The Court declared the application inadmissible for failure to exhaust domestic remedies, in accordance with Article 35 § 1 (admissibility criteria) of the Convention. It noted that the applicants had had several domestic remedies available to them which they had not exhausted before the administrative courts or in the form of a class action. However, they had merely asserted that the remedies in question were ineffective (*Budayeva and Others vs. Russia*, 2015).

These upper cases were related to natural disaster of environment that was affecting the people, and the Court of Human Rights gave justice as far as they could. Here is another case due to passive smoking in public that creates environmental issues.

Due to Passive Smoking

In the case of passive smoking issue, *Elefteriadis* on 25 January 2011 where the applicant, was suffering from chronic pulmonary disease, was serving a sentence of life imprisonment. Between February and November 2005, he was placed in a cell with two prisoners who smoked. In the waiting rooms of the courts where he had been summoned to appear on several occasions between 2005 and 2007, he was also held together with prisoners who smoked. Here The Court held that there had been a violation of Article 3 of the Convention, observing in particular that a State is required to take measures to protect a prisoner from the harmful effects of passive smoking where, as in the applicant's case, medical examinations and the advice of doctors indicated that this was necessary for health reasons (*Elefteriadis v. Romania*, 2011).

Due to Causing Harm to People's Health

In the case of **Taskin**, the applicants lived in and around the village of Bergama, all resided within 10 kilometers of a mining site. In February 1992, authorities granted a mining company rights to operate a gold mine, which included authorization to use cyanide leaching to extract the gold. The Court ruled that the State violated Article 8 of the ECHR, because the authorities should have provided the applicants with the necessary information to assess the danger to their health. This constituted a failure to take reasonable and appropriate steps to safeguard the interests of the applicant's right to private and family life and home and thus violated Article 8 so the authority found guilty (Taskin and Others v. Turkey, 2004).

The Proportionality Test and Procedural Aspects

According to Article 8 of **ECHR**, if the States want to successfully pass the above mentioned second level of the proportionality test, trying to strike a fair balance between the individuals rights and the interests of the community as a whole, they must show that they have recognized and made effective a set of procedural guarantees. Provisions of Article 8 will also be applicable to the individuals involved in the decision-making process dealing with dangerous environmental issues. In this context, the Court also quotes EU and international environmental standards, as the Directive 2004/35/EC, the 1992 Rio Declaration on Environment and Development and the Aarhus Convention which provide for the public's right to information and the right of access to information in cases of environmental danger. Here the right to life, regulated in article 2 (1) of the Convention, the right to private and family life provided for in article 8 (1) has been most frequently used in cases involving damages to the environment caused by pollution. The evaluative interpretation of the Court concerning these concepts has allowed for these damages produced to the environment to fall within the scope of the notions of right to 'life', 'private life' and that of 'family life' (Lucretia 2013)

The Role of the European Court of Human Rights in the Fight against Environmental Crime

The court of human rights put their significance all over the issues of environment and in establishing the right to environment. This, therefore can be explained as- (EFFACE 2015)

- The provision of such positive obligations directly influences the criminal law system of the State sentenced by the European Court of Human Rights, which must comply with the judgment of the Court, to prevent the non-compliance procedure provided for Article 46 ECHR that can ensure proper justice.
- The provision of such positive obligations influences indirectly also the criminal law systems of the other Contracting States, since they could be considered also liable for not fulfilling such obligations, in the case their citizens made a complaint before the Court and the proceeding starts.
- A proper harmonization effect affects the criminal law domestic systems, based on the standards of human rights protection identified by the Court. Such a harmonization effect is further improved by the obligation of an ECHR consistent interpretation of the domestic legislations, provided for in many Contracting States.

Challenges as to the Enforcement

The interim measures provided are used in a narrow aspect. The cases on extradition, the interim measures are being followed. The pending applications for claiming justice where the applications are hardly getting the reach towards the prime authority. when years after submission of the application the Court decides a particular case, the stated judgment become

less impactful as the victims could have already moved on, the political situation in the respondent state changes or for many other reasons (Dzehtsiarou, 2022).

The concept of 'a 'denial of the right to individual application' had developed through a case called the *Brumych case* for such delaying of applications. By this continuous process, the Court does not only undermine its technical function by discarding applications but also questions its meta-function because the standard developed by the Court is left unenforced (*Burmych and Others v. Ukraine* 2017).

Not treating all the states equally is another factor that is hampering in enforcing the rights under this court. Here the Court needs to apply distinct approaches to the other Member States depending on their overall human rights compliance unless this attitude will let them be accused of double standards and its reputation can suffer as a result (Follesdal and others 2013). Though the concept of judicial independence is being followed in dealing with the cases, yet few challenges cannot be avoided.

Enforcement of Right to Environment

The court has already established its effectiveness through several judgments in protecting the right to the environment. There might be issues with the variable geometry human rights, there might have few bars in enrolling the judicial independence at its full fledged, yet the Court has essentially extended the meaning of Article 6 by allowing judges access to court in relation to their disciplinary or other work-related disputes for a better understanding of their role (*Eminağaoğlu v Turkey* 2021). As we know the ambit of article 6 has allowed the court and judges to be impartial, the enforcement has enlarged the way through its case decisions.

Findings of the Study

The formation of the European Court of Human Rights has always been towards the protection of human rights, specifically the right to the environment. This finding shows the success rate through the case decisions. From the concept of passive smoking to the extraction from a mine all queries are being answered by giving an accurate judgment by the court. Environment conservation is a significant part, there cases where both the compact are key issues are being focused here with a view to creating awareness concerning the conservation of the environment. Few barriers are visible to sustain this large scale of activism. All we believe in the judicial activism such conceive might get impacted when the relevant challenges come in. The small scaled application of the interim measures, the different level of human right approaches by the member state cause hurdles in dealing things, in providing the utmost benefit for the comprehensive purpose.

Recommendations

The conferred knowledge, strategies regarding the European Court of Human Rights where the basic substance is they uplifted the matters of human rights must, and that shall be protected first. Here the case laws created precedents where if the Court finds no direct reference of law or article of the convention then the case laws put their significance though few observations can be initiated-

- The right to environment should get the equal status as to the fundamental rights.
- A few Protocols or policy making decisions can be inaugurated.
- The influence of the developed nation and the variable geometry of human rights should be controlled.
- Finally, the court structure and the function can be availed and implemented to the other continents too.

Conclusion

If we perceive from a human rights standpoint, the right to a healthy and quality environment is a fundamental right whose nature and characteristics do not change over time, passage or because of circumstance changes. The environmental protection provided by human rights instruments like the ECHR is mostly anthropocentric that concerns the safeguarding humans from infringements of their individual human rights by environmental threats (Peters 2021). The fundamental human rights are inalienable, and this inalienability applies likewise in the case of the right to a healthy environment. In conclusion, there is certainly evidence of convergence in the environmental case-law and a cross-fertilization of ideas between the different legal systems at different level international, European and national - which allow a virtuous circle of preventive and repressive legal patterns, that can from one hand improve the respect of the principles guiding the criminal law policies by the legislators and on the other hand heighten the standard of protection of individuals rights where environmental issues are at stake. Consequently, establishing the right of environment by the European Court of Human Right provides a significant role in this era in endowing justice.

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