

# CHALLENGES OF INVOKING ENVIRONMENTAL RIGHTS BEFORE THE TURKISH CONSTITUTIONAL COURT: MEHMET KURT CASE

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## Abstract

The increased industrial activities of corporations have triggered the occurrence of many major incidents that have led to concomitant environmental degradation. The increasing amount of greenhouse gases, the loss of biodiversity, the exploitation of natural resources and the dispersal of hazardous substances are just a few of the incidents that have occurred. Victims of man-made environmental disasters seek legal remedies for a greater protection of environmental rights. One possible legal response is to rely on human rights litigation such as filing individual applications before constitutional courts. The Turkish Constitutional Court has jurisdiction to review individual applications regarding the fundamental rights and freedoms. In Article 56, the 1982 Constitution of Turkey recognizes the right to live in a healthy and balanced environment; however, a question arise as to whether the implementation of individual application allows to invoke Article 56 effectively in environmental matters. This study aims to demonstrate the potential and pitfalls of individual application to protect environmental rights in Turkey with specific reference to Mehmet Kurt case. A prominent environmental litigation in Turkey, Mehmet Kurt Case illustrates the challenges of individual application and highlights the positive obligations of the state regarding environmental matters.

**Key words:** *Right to live in a balanced and healthy environment, The Turkish Constitutional Court, Individual application, Environmental litigation, Positive obligations*

## ÇEVRE HAKKININ ANAYASA MAHKEMESİ ÖNÜNDE İLERİ SÜRÜLMESİNDEKİ ZORLUKLAR: MEHMET KURT BAŞVURUSU

### Öz

Şirketlerin artan endüstriyel faaliyetleri, beraberinde çevresel tahribata yol açan birçok vahim olayın meydana gelmesini tetiklemiştir. Artan miktarlardaki sera

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gazları, biyolojik çeşitliliğin kaybolması, doğal kaynakların tüketilmesi ve zararlı maddelerin salınımı, meydana gelen olaylardan sadece birkaç tanesidir. İnsan yapımı çevre felaketlerinin mağdurları çevre haklarının korunması adına yasal telafi yollarını aramaktadırlar. Yasal yollardan bir tanesi de anayasa mahkemeleri huzurunda bireysel başvuruda bulunma gibi hak temelli yollara başvurmadır. Türk Anayasa Mahkemesi'nin de temel haklar ve özgürlüklere ilişkin bireysel başvuruları inceleme yetkisi bulunmaktadır. 1982 Anayasasının 56. maddesinde sağlıklı ve dengeli bir çevrede yaşama hakkı tanınmıştır. Bu kapsamda çevresel meselelere ilişkin bireysel başvurularda 56. maddenin etkili biçimde uygulanıp uygulanmayacağı sorusu ortaya çıkmaktadır. Bu çalışma, Mehmet Kurt başvurusu özelinde, Türkiye'de çevresel hakların korunmasında bireysel başvurunun potansiyelini ve eksiklerini ortaya koymayı hedeflemektedir. Çevresel meselelerle öne çıkan başvurulardan biri olan Mehmet Kurt başvurusu, bireysel başvurunun sorunlu alanlarını ortaya koymakta ve devletin çevresel meselelerdeki pozitif yükümlülüklerini vurgulamaktadır.

**Anahtar Kelimeler:** *Sağlıklı ve dengeli bir çevrede yaşama hakkı, Anayasa Mahkemesi, Bireysel başvuru, Çevre davaları, Pozitif yükümlülükler*

## I. INTRODUCTION

Environmental problems are mainly resulted from industrialization, commercial activities and economic developments.<sup>2</sup> Air pollution, nuclear disasters, mining activities, oil tanker accidents resulting marine pollution, chemical spills and flows are just a few examples of environmental disasters.<sup>3</sup> People cannot be expected to enjoy their human rights in a degraded and polluted environment since for instance soil degradation, deforestation and exposure to toxic chemicals, hazardous wastes and contaminated drinking water threaten the right to life, right to a private life, right to a safe drinking, right to food, right to property and etc.<sup>4</sup> The enjoyment of human rights depends upon environmental protection and quality.<sup>5</sup> The insertion of an environmental right clause in 1982 Constitution of

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<sup>2</sup> HALATÇI ULUSOY, Ülku, "Türk Çevre Hukuku Politikaları Açısından Ticaret Ve Çevre İlişkisi," **Türk Çevre Hukuku ve Politikaları: Dünden Bugüne Ve Geleceği**, Ed. Zerrin Savaşan, Hakan Ünay, Seçkin, Ankara, 2021, p. 272.

<sup>3</sup> MORGERA, Elisa, **Corporate Accountability in International Environmental Law**, OUP, New York, 2009, p. 18 vd.; ERDOĞAN, Mustafa, **İnsan Hakları Teorisi ve Hukuku**, 7. bs., Hukuk, Ankara, 2019, p. 288.

<sup>4</sup> YOKUŞ SEVÜK, Handan, **Çevre Hukuku: Doğal Çevrenin Korunması**, 2. bs, Adalet, Ankara, 2017, p. 58.

<sup>5</sup> The linkage of human rights and environment is first declared in Stockholm in 1972 the United Nations Conference on the Human Environment as follows: "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being and he bears a solemn responsibility to protect and improve the environment for present and future generations." Principle I, 1972 Stockholm Declaration on the Human Environment.; The purpose of this study excludes the examination of the relationship between human rights and the environment. Therefore, the historical background and international

the Republic of Turkey (Constitution) reflects a global trend in recognition of the relation between human rights and environment. Article 56 of the Constitution sets forth 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.” The constitutional recognition of linkage between human rights and environment could provide a legal remedy to mitigate, adapt, or restitution for environmental damage. Individuals could utilize human rights litigation such as filing individual applications before constitutional courts to compel public authorities and business to comply with obligations arising from environmental rights.<sup>6</sup> The Turkish Constitutional Court (TCC) has jurisdiction to review individual applications regarding fundamental rights and freedoms. Individual application provides a legal remedy to protect against the infringements of the rights and freedoms caused by public authorities. As an exceptional constitutional jurisdiction review and the last resort mechanism, individual application can be filed by everyone asserting that the public power has violated one of his/her fundamental rights and freedoms secured under the Constitution which falls into the scope of the European Convention on Human Rights (ECHR).<sup>7</sup> The TCC examined several environmental matters so far such as electromagnetic radiation<sup>8</sup>, water pollution<sup>9</sup>, hydroelectric power plants<sup>10</sup>, biological pollution<sup>11</sup> in its relevant jurisdiction. A couple of questions arise within this context. Does the TCC implements individual application to provide victims with a legal remedy for environmental protection? Does the constitutional recognition of 'the right to live in a healthy and balanced environment' ensure greater protection for people

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legal documents on this subject are not included in the study. Just to note that apart from the Paris Agreement which refers to the relationship between human rights and environment in its preamble, there is still a lack of a specific clause for human rights and environment in an international treaty. ATAPATTU, Sumudu, SCHAPPER Andrea, **Human Rights and the Environment: Key Issues**, Routledge, New York, 2019, s.3.; Leaving aside the limited impact of the Stockholm Declaration on international level, the proliferation of environmental provisions in national constitutions can be traced back to it. BIRNIE, Patricia/ BOYLE, Alan/ REDGWELL, Catherine, **International Law and the Environment**, 3<sup>th</sup> Ed., OUP, Oxford, p. 275.

<sup>6</sup>German Federal Constitutional Court, BVerfG, Order of the First Senate of 24 March 2021 - 1 BvR 2656/18 -, paras. 1-270, See <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2021/bvg21-031.html>.

<sup>7</sup> KANADOĞLU, Korkut, **Anayasa Mahkemesi'ne Bireysel Başvuru**, On İki Levha, İstanbul, 2015, p. 72 vd.

<sup>8</sup> Turkish Constitutional Court, Hüseyin Tunç Karlık Ve Zahide Şadan Karlık, Application No: 2013/6587, Date of Decision: 24/3/2016 Official Gazette Date: 6/5/2016, Number: 29704.

<sup>9</sup> Turkish Constitutional Court, Binali Özkaradeniz Ve Diğerleri, Application No:2014/4686, Date of Decision: 1/2/2018, Official Gazette Date: 4/5/2018, Number:30411

<sup>10</sup> Turkish Constitutional Court, Mehmet Kurt, Application No: 2013/2552, Date of Decision: 25/2/2016, Official Gazette Date: 20/5/2016, Number: 29717. See the link for English version of the case <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/2552?Dil=en> (Mehmet Kurt Case)

<sup>11</sup> Turkish Constitutional Court, Öznur Çiçek Bildik, Application No: 2013/6595, Date of Decision: 21/04/2016.

confronted serious interference with their livelihood and surroundings as a result of environmental problems in Turkey? What are the challenges of invoking 'the right to live in a healthy and balanced environment' via filing an individual application before the TCC? In order to answer questions posed above, Mehmet Kurt case is selected as a reference point since it embodies challenges of invoking 'right to live in a healthy and balanced environment' before the TCC. Additionally, the case emphasized positive obligations of the State.

After giving a general summary of Mehmet Kurt case, this study will turn on the discussion for a legal definition of the environment by the TCC. Having determined that the TCC's definition of the environment is anthropocentric rather than ecological, the practical outcomes of such a human-centred approach will be presented. Then it will focus on the the legal status of the right to live in a healthy and balanced environment to question if it cannot be enforced directly in individual applications or not referring to the TCC's method overcoming the direct inapplicability of the right will also be displayed. The issue of whether categorization of Article 56 of the Constitution among social and economic rights limits state's obligations deriving from environmental rights will also be discussed. Last but not least, the study will show that positive obligations doctrine is an effective tool in providing protection to the victims to remedy environmental harms of the corporations.

#### **A. The Summary of Mehmet Kurt Case**

A brief summary of the facts and merits of Mehmet Kurt case will be presented in this section. Mehmet Kurt, who lived in a village close to the Black Sea city of Rize, lodged an individual application before the TCC.<sup>12</sup> The applicant alleged that the Project of the Cevizlik Regulator and Hydroelectric Power Plant, to build a switchyard in his village, violated his right to life and the right to live in a healthy and balanced environment.<sup>13</sup> According to the national Environmental Act No. 2872 and the Environmental Impact Assessment By-law<sup>14</sup> then in effect, the Hydroelectric Power Plant Project is required to receive a positive environmental impact assesment (EIA) report in order to obtain a licence for construction, approval and promotion. The applicant alleged that the high-voltage transmission lines, which form part of the switchyard, were located very close to his house, so he faced a threat of developing cancer due to the radiation being emitted by the transmission lines. Additionally, the applicant complained that the unbearable noise made by the plant prevented residents from sleeping well at night or carrying out their daily life. As a result, the applicant claimed that, in the absence of the

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<sup>12</sup> Turkish Constitutional Court, Mehmet Kurt, Application No: 2013/2552, Date of Decision: 25/2/2016, Official Gazette Date: 20/5/2016, Number: 29717. See the link for English version of the case <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/2552?Dil=en> (Mehmet Kurt Case)

<sup>13</sup> Ibid., para. 33.

<sup>14</sup> Environmental Impact Assesment By-Law, O.G. 17.7.2008, No. 26939.; The 2008 Environmental Impact Assesment By-Law abolished with the adoption of the 2014 Environmental Impact Assesment By-Law. O.G. 25.11.2014, No. 29186.

EIA, the operation of the plant violated his 'right to life' and 'right to live in a healthy environment', which are guaranteed by Article 17 and Article 56 of the Constitution, respectively.

Article 17 of the Constitution recognizes the the right to protect and develop the material and spiritual existence. In case of a direct interference of an environmental issue with the right defined in Article 17, the TCC could examine the case by forming a connection with the legal interests within the scope of the Article 17. The TCC acknowledges the deference to the discretion of the public authorities on environmental matters, as the construction and operation of the hydroelectric power plant requires political expediency. On the other hand the TCC emphasised the importance to determine whether the public authorities took necessary steps to ensure the guarantees of the right. Within this context, a fair balance between an individual's right and the public interest should be achieved. It also needs to be ascertained that the duties are completed in compliance with the due process with regard to environmental matters.<sup>15</sup>

The TCC observes the requests and objects made by the applicant in the first instance proceedings to consider the effects of the plant on his and his neighbours' health and quality of their lives. Despite the applicant's objections, the first instance court did not resort to a new expert examination and did not reveal the justification of its rejection. The first instance decision was quashed by specifying that the legal procedure pertaining to the Switchyard for which additional authorization had been granted was not fulfilled. Upon the request of the defendant administration for the rectification of the judgment before the Supreme Administrative Court, the previous judgment rendered by the Chamber of the Supreme Administrative Court was revoked, and the first instance decision was upheld.<sup>16</sup>

One of the procedural safeguards that should be provided to individuals subject to environmental decision-making processes is the opportunity to bring acts or omissions of public authorities before an independent judicial authority and have them examined as necessary.<sup>17</sup> Besides, the judicial authorities should establish a fair balance by considering all relevant interests.<sup>18</sup> For this, the relevant public authorities should enable individuals to participate the proceedings actively by presenting their objections and evidences. Public authorities should examine all the claims which could effect merits with due diligence.<sup>19</sup>

The most important factor in determining whether a just balance is sustained among interests of public authorities, applicant and the public is the basic accusations of the applicant claiming that the environmental disturbance due to

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<sup>15</sup> Mehmet Kurt Case, para. 75.

<sup>16</sup> Ibid., para. 7-31.

<sup>17</sup> Ibid., para. 66.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid., para. 78.

the facility's operation affected the quality of health and life negatively. The applicant alleged that the environmental evaluation by the administration is insufficient. Nevertheless, the TCC observed that the applicant's requests and objects are not taken into account at the first instance courts. It is revealed that the evaluation and justification of the first instance court for not taking an EIA report is substantially limited, with this respect it does not directly respond to the basic claims of the applicant, and the applicant's claims on aforementioned environmental activities could not have a chance to be evaluated in front of judicial authorities.<sup>20</sup>

Given these evaluations, it is evaluated that the public authorities have not fulfilled their positive obligations regarding the applicant's right to protect and develop his corporeal and spiritual existence.<sup>21</sup> In conclusion, it is decided that the applicant's right to protect and develop his corporeal and spiritual existence under the guarantee of Article 17 of the Constitution has been violated.<sup>22</sup>

It is important to note here that the TCC mainly focuses on due diligence issues rather than directly assessing the impact of the construction and operation of the plant on the protection and improvement of the applicant's corporeal and spiritual existence. The TCC found that the legal claims and objections of the plaintiff have not been evaluated by the national courts adequately, and therefore his basic claims had not been responded.<sup>23</sup> In this context, the TCC reached the conclusion that the public authorities failed to comply with their commitments and breached 'the right to protect and improve one's corporeal and spiritual existence.'<sup>24</sup>

## **B. The Court's Anthropocentric Approach to Define the Environment and Its Practical Outcomes**

This section will focus on the concept of the environment and how it is defined by the TCC. The TCC's approach to the legal definition of the environment and its practical outcomes will be analysed.

A legal definition of the environment enables the delineation of the scope of the subject, the determination of the rules to be applied, and the delineation of liability in case of harm.<sup>25</sup> The environment can be generally defined as all physical, chemical and biological factors external to the human host, as well as those factors impacting related behaviors.<sup>26</sup> The environment includes natural resources such

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<sup>20</sup> Ibid., para.81-82.

<sup>21</sup> Ibid., para. 83.

<sup>22</sup> Ibid., para. 84

<sup>23</sup> Ibid., para. 82.

<sup>24</sup> Ibid., para. 83.

<sup>25</sup> ANTON, Donald K., SHELTON Dinah L., **Environmental Protection and Human Rights**, New York, CUP, 2011, p.2.

<sup>26</sup> WHO, "What is the Environment in the Context of Health," (Online) [https://www.who.int/quantifying\\_chimpacts/publications/preventingdisease2.pdf](https://www.who.int/quantifying_chimpacts/publications/preventingdisease2.pdf) Access Date: 01.09.2021.

as air, water, soil, flora and fauna and their mutual interaction.<sup>27</sup> The term 'environment' could refer to anything in the planet from the whole biosphere to the limited area of a smallest organism or creature.<sup>28</sup> As a broad term encompassing different factors, it is difficult to delineate the scope of the environment.<sup>29</sup> As a matter of fact, there is no agreed legal definition of environment in international conventions, declarations and documents.<sup>30</sup> The 1972 Stockholm Declaration on the Human Environment does not offer any definition on environment.<sup>31</sup> The Declaration categorizes man's environment as natural and man-made, underlining that these are essential for his well-being and to the basic rights.<sup>32</sup> The Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment defines "Environment" as natural resources both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors; property which forms part of the cultural heritage; the characteristic aspects of the landscape.<sup>33</sup> The environment is defined as the biological, physical, social, economic and cultural milieu in which living things maintain their relations and interact with each other throughout their lives in the Environmental Law No. 2872.<sup>34</sup>

Differences though between the definitions given above, they share a common ground that they all display an anthropocentric (human-centred) approach in which human beings are at the centre of concerns for environmental protection. The justification for environmental protection relies on the value added by the ecosystem and other natural resources to human existence.<sup>35</sup> The anthropocentric view, based on the grounds of equality since the environment is perceived as a common value for humanity, aims to make the environment habitable for present and future generations.<sup>36</sup> The prevention of environmental damage is justified on the grounds that environmental degradation harm human being.<sup>37</sup> It is rejected by the ecological approach that places the environment as a value to be protected by environmental rights per se.<sup>38</sup> Ecological approach attributes value on all living organisms and their habitat, no matter what their usefulness or importance to

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<sup>27</sup> YÜZER ELTİMUR, DİLARA, "AİHM Ve Anayasa Mahkemesi İçtihatları Işığında Çevrenin Korunmasında Devletin Pozitif Yükümlülükleri," *Terazi Hukuk Dergisi*, Vol.13, 1.45, 2018, p. 95.

<sup>28</sup> BIRNIE/ BOYLE / REDGWELL, p. 5.; ANTON, SHELTON, p. 3.

<sup>29</sup> YÜZER ELTİMUR, p. 94.

<sup>30</sup> BIRNIE/ BOYLE / REDGWELL, p. 2.

<sup>31</sup> UN General Assembly, United Nations Conference on the Human Environment, 15 December 1972, A/RES/2994.

<sup>32</sup> Ibid.

<sup>33</sup> European Treaty Series-No. 150.

<sup>34</sup> The Environmental Law No. 2872, Official Gazette Date: 11/8/1983, No: 18132.

<sup>35</sup> BIRNIE/ BOYLE / REDGWELL, p. 7.

<sup>36</sup> GEMALMAZ, Mehmet Semih, "Bir İnsan Hakkı Olarak Çevre Hakkı ve Türk Düzenlemesi" *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası*, Vol. 52, Issue. 1-4, 1987, p. 255.

<sup>37</sup> BIRNIE/ BOYLE / REDGWELL, p. 7

<sup>38</sup> YOKUŞ SEVÜK, p. 7.

human being.<sup>39</sup> From the lens of ecological approach, humans have equal standing with the other living organisms in the biological community. The same ecological approach can be traced in the Law of the Rights of Mother Earth.<sup>40</sup> This law recognizes the right of Nature (Pachamama) and has been adopted by Bolivia's national legislation and Ecuador's Constitution.<sup>41</sup>

The consequence of adopting different views gains importance in assessing environmental damages and mitigating environmental effects.<sup>42</sup> The anthropocentric view limits the scope of environmental litigation only with environmental matters which are proven to harm human beings. Animals, forests, rivers or other living organisms and their natural habitat in biodiversity is excluded from legal protection so long as any damage to them harms human being. Ecological view, on the contrary, protects environment as a value per se and therefore all living organisms are able to benefit from the protection. Since ecological view puts nature itself at the center, a direct link between harm and human being should not be sought for environmental protection. Accordingly, in possible litigation, the scope of environmental protection should be extended to other living organisms when they are damaged. Climate change, ecosystem loss, biodiversity depletion, and pollution are only some of the environmental concerns we face today, and an ecological approach could be the tool for a holistic strategy to address them. According to this approach, the environment has a legal value in and of itself that should be protected, and such an approach could help to improve environmental democracy and implementing participatory rights.<sup>43</sup>

Having briefly defined the approaches to justification for the protection of environment, another question arises as to which approach the Constitution and the TCC follow. The Constitution displays an anthropocentric view as the subject of 'the right to live in a healthy and balanced environment' is human being and not the nature itself.<sup>44</sup> The Constitution does not entitle nature to a right to maintain and renew its existence, life cycle, structure, function and evolutionary processes. The Constitution does not guarantee nature's rights as quite opposingly did the

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<sup>39</sup> HELP course on The Environment and Human Rights (Çevrimiçi) [http://help.elearning.ext.coe.int/mod/scorm/player.php?a=10869&currentorg=EHR\\_-\\_M1\\_ORG&scoid=22952&sesskey=BDExKDWPbQ&display=popup&mode=normal](http://help.elearning.ext.coe.int/mod/scorm/player.php?a=10869&currentorg=EHR_-_M1_ORG&scoid=22952&sesskey=BDExKDWPbQ&display=popup&mode=normal), Accessed Date .10/09/2021.

<sup>40</sup> Ibid.

<sup>41</sup> SAVAŞAN, Zerrin, "Çevre Hakları: İnsan Hakları İle Korumadan Asli Korumaya," **Çevre Hukuku ve Politikaları: Kavramlar, Teoriler ve Tartışmalar**, Ed. Zerrin Savaşan, Çağlar Söker, Fırat Hakan Yılmaz, Seçkin, Ankara, 2021, p. 59.

<sup>42</sup> GÜVEYİ, Ümit, "1982 Anayasası Kapsamında Çevre Hakkının Karşılaştırmalı Kısa Bir Tahlili", **MÜHF-HAD**, Vol. 24, Issue 2, 2018, p. 651-652.

<sup>43</sup> HELP course on The Environment and Human Rights (Çevrimiçi) [http://help.elearning.ext.coe.int/mod/scorm/player.php?a=10869&currentorg=EHR\\_-\\_M1\\_ORG&scoid=22952&sesskey=BDExKDWPbQ&display=popup&mode=normal](http://help.elearning.ext.coe.int/mod/scorm/player.php?a=10869&currentorg=EHR_-_M1_ORG&scoid=22952&sesskey=BDExKDWPbQ&display=popup&mode=normal), Accessed Date .10/09/2021.

<sup>44</sup> GÜVEYİ, p. 652.



Ecuador's Constitution.<sup>45</sup> The object of the right encapsulated in Article 56 which forms a connection between 'the right to life' and 'right to environment' is 'the right to live in a healthy and balanced environment.'<sup>46</sup> Everyone is entitled to live in a healthy and balanced environment. On the other hand, Article 56 places the burden of improving the natural environment, protecting the environmental health and preventing environmental pollution merely to the State and citizens. It should not be interpreted in a way that corporations, businesses, associations and other actors from private sector does not carry any obligations to comply with Article 56 though.<sup>47</sup> Because, it is unlikely to enforce protection of environment, prevention of pollution and improvement of the environment without the participation and mutual efforts of all.<sup>48</sup>

The TCC prefers an anthropocentric approach to the subject of the right to the environment in Mehmet Kurt case.<sup>49</sup> In fact, the Constitutional Court has overtly expressed its opinion that the ecological approach has left its place to the anthropocentric approach in its relevant decisions of individual application.<sup>50</sup> The TCC states as follows:

"Having considered the aforementioned definitions, which refer to the ecological approach, the environment per se is protected as a value. On the other hand, the Court observes that the ecocentric (ecological) approach leaves its place to the idea enunciating a clear link between human rights and the protection of environment. Within this context, considering the anthropocentric (human-centred) approach towards environment, a considerable amount of international documents are formed on the basis that a link between environment and the right to life and health is to be established.<sup>51</sup>

A technical problem lies in the TCC's view aforementioned. Quite the opposite, there is a tendency to return to the ecological approach. Especially with the World Charter for Nature accepted in 1982, the anthropocentric approach has been replaced by the ecological approach.<sup>52</sup> Therefore, a holistic view of life have to be adopted because by detaching the connection with the Mother Earth, we are

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<sup>45</sup> Ibid.

<sup>46</sup> SEMİZ, Yasemin, "Anayasa Mahkemesi'nin Çevre Hakkı Perspektifi", **Hacettepe HFD**, Vol. 4, Issue 22, 2018, p. 10.

<sup>47</sup> ÖZDEK, E. Yasemin, İnsan Hakkı Olarak Çevre Hakkı, Todaie Yayınları, Ankara, 1993, s. 127. aktaran SEMİZ, p. 11.

<sup>48</sup> SEMİZ, p. 11

<sup>49</sup> Turkish Constitutional Court, Fevzi Kayacan (2), Application No:2013/2513, Date of Decision: 21/4/2016, para. 47.; Turkish Constitutional Court, Hüseyin Tunç Karlık Ve Zahide Şadan Karluk, Application No: 2013/6587, Date of Decision: 24/3/2016, Official Gazette Date: 6/5/2016, No: 29704, para. 51.; Mehmet Kurt Case, para. 54.; Turkish Constitutional Court, Öznur Çiçek Bildik, Application No: 2013/6595, Date of Decision: 21/4/2016, para. 59.

<sup>50</sup> Ibid.

<sup>51</sup> Mehmet Kurt Case, para. 54

<sup>52</sup> UN General Assembly Resolution 37/7, 1983.; UN General Assembly, World Charter for Nature, A/RES/37/7.

jeopardising our own survival.<sup>53</sup> Thus, the term “humanity” is specifically important as we can’t harm Nature by will, because by doing so, we will harm ourselves.<sup>54</sup> The literature on “ecological law” has exponentially increased, culminating with the foundation of the Ecological Law and Governance Association (ELGA) in 2017.<sup>55</sup> ELGA is a new think tank in University of Siena that embeds Oslo Manifesto as its cornerstone.<sup>56</sup> Meanwhile, a new initiative by the UN called ‘the Harmony with Nature’ has been initiated in 2009, and has triggered ten resolutions, along with several transnational dialogues.<sup>57</sup> Moreover, following is from 2011 High Commissioner for Human Rights report, “[...] the need to protect and promote a healthy environment is indispensable not only for the sake of human rights, but also to protect the common heritage of mankind”.<sup>58</sup> Still, the anthropocentric approach is partially valid with a difference: “extractive anthropocentrism” is now replaced with “immersive anthropocentrism”. The motto behind this overtake is as follows: “man is immersed in Nature, mainly because he is a body; man’s duties ought to follow...naturally”.<sup>59</sup>

The adoption of an anthropocentric approach as in Mehmet Kurt case, has practical outcomes in meeting the standards to be deemed victim. In order to make an individual application, an applicant should prove that s/he is a victim as one of her/his right under the common protection of the Constitution and the ECHR was berached as a result of actions or omissions of public authorities.<sup>60</sup> According to Article 46 of the Code on Establishment and Rules of Procedures of the Constitutional Court "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."<sup>61</sup> 'Current' means that the victim status should continue at the time of application. 'A directly affected

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<sup>53</sup> LAMBERT, Elisabeth, The Environment And Human Rights: Introductory Report to the High-Level Conference: Environmental Protection and Human Right," (Çevrimiçi) <https://rm.coe.int/report-e-lambert-en/16809c827f> Access Date: 09.09.2021.

<sup>54</sup> Ibid.

<sup>55</sup> GARVER, G., “Confronting remote ownership problems with ecological law”, **Vermont Law Review** Vol. 43, p. 428.; JENNINGS B., **Ecological Governance: Toward a New Social Contract with the Earth**, West Virginia University Press, Morgantown, 2016.; LAMBERT, p. 4.

<sup>56</sup> <https://www.elga.world/oslo-manifesto/> Para. 6: “In other words, ecological law reverses the principle of human dominance over nature, which the current iteration of environmental law tends to reinforce, to a principle of human responsibility for nature.” directly from LAMBERT, p. 4.

<sup>57</sup> UN Documents on Harmony with Nature (Çevrimiçi) <http://harmonywithnatureun.org/> Accessed date: 04/09/2021.

<sup>58</sup> UN General Assembly, Human Rights Council (2011), “Analytical study on the relationship between climate change and human rights”, Report of the United Nations High Commissioner for Human Rights, A/HRC/19/34, 2011, para. 24.

<sup>59</sup> LAMBERT, p. 4.

<sup>60</sup> ŞİRİN, Tolga, **Bireysel Başvuru Usul Hukuku: Anayasa Mahkemesine Bireysel Başvuru El Kitapları Serisi-7**, 2th Ed., Ankara, Avrupa Konseyi, 2018, p.46-49.

<sup>61</sup> Code on Establishment and Rules of Procedures of the Constitutional Court, Code No:6216, See for English version <https://www.anayasa.gov.tr/en/legislation/law-on-constitutional-court/>

personal right' means that a close connection between the relevant action or act and an identifiable victim.<sup>62</sup>

Another consequence of displaying an anthropocentric approach is that only the activities that harm and violate human health and well-being can be evaluated under the scope of the right to environment. In order to invoke environmental rights before the TCC, a link between an environmental issue and a concrete damage to a human being shall be proven. The anthropocentric view places a disproportionate burden on the applicant in determining and proving the damage to their health or well-being resulting from environmental issues. For instance, environmental pollution results from more than one pollutant. It is difficult to determine and prove the extent to which pollutants are involved in pollution.<sup>63</sup> Proving any concrete damage to the ecosystem caused by an extinct species is also a very complex issue. The requirement of a direct link between the hardly proven damage and a specific human right aggravates the situation for claimants.

In Mehmet Kurt case, however, the applicant was not required to prove the damage directly. The TCC concluded that the applicant's allegations as to whether the damage exists, were not properly investigated.<sup>64</sup> The TCC states as follow:

"Regarding the environmental disturbance resulting from the operation of the facility, the applicant's basic claims are that his health and quality of life have been affected and the environmental assessment made by the administration is insufficient. His basic claims constitute the most important factor of the case in determining whether a fair balance between the interests of the applicant and the public is established by the public authorities. The Court observes that the applicant's claims and objections in question were not evaluated by the administrative courts. The EIA report was not received due to the administrative court's limited examination and justification and therefore the applicant's basic claims had not been responded. The applicant could not take the possibility to have his claims regarding the environmental disturbance properly evaluated before judicial authorities."<sup>65</sup>

As the applicant's claims on damage were not properly investigated by the national courts, the TCC did not focus on the question of proof; but rather the negligence in investigating the applicant's claims.

The scope of this study is limited to individual applications and thus norm-based decisions of the TCC are excluded from analysis. On the other hand, it would be appropriate to refer to the TCC's exceptional norm-based decisions including ecological approach to show that the TCC does not completely excludes ecological approach and hence could extend the scope of environmental protection. In one of its judgments, the TCC stated that game and wild animals

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<sup>62</sup> ŞİRİN, p. 47-49.

<sup>63</sup> GÜNEŞ, AHMET M., *Çevre Hukuku*, 3. Edition, Adalet, Ankara, 2020, p. 74.

<sup>64</sup> Mehmet Kurt Case, para. 82.

<sup>65</sup> Ibid.

and their natural habitats are included into the natural assets of the environment.<sup>66</sup> The TCC extends the scope of the concept of environment to include game and wild animals. In another judgment, the TCC emphasizes biological diversity and completely focuses on nature by excluding human beings while defining the environment.<sup>67</sup> The TCC's ecological approach reflects as follows:

"It is clear that exploration activities excluded from the scope of the EIA may cause changes on biological diversity or in nature, these changes may have long-term effects and therefore carry risks for the environment. The provision of an EIA in order to eliminate and prevent existing risks is a requirement of the environmental protection obligation given to the State in Article 56 of the Constitution within this respect."<sup>68</sup>

As can be seen, any possible harm that the exploration activities could cause to a human being has not been taken into account when examining the exclusion of exploration activities from the scope of the EIA. The TCC focuses merely on the biological diversity and includes it to the concept of the environment. Exceptional though, it is of noteworthy as it shows that no hindrance stands on extending the scope of environmental protection by utilising ecological approach.

### **C. Direct Inapplicability of The Right to Live in a Healthy and Balanced Environment (Article 56) before the Court**

Individual application is a last resort mechanism for enhancing and promoting fundamental rights and freedoms. Article 148 of the Constitution provides that "Everyone may apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms within the scope of the ECHR which are guaranteed by the Constitution has been violated by public authorities". Violations of fundamental rights and freedoms can be subject to individual application only if they fall under the common protection area of the Constitution, the ECHR and the Convention's additional protocols to which Turkey is a party. The right to live in a healthy and balanced environment is protected as a separate fundamental right in the Constitution. Unlike the Constitution, the ECHR does not include an explicit provision on the right to environment.<sup>69</sup> The European Court of Human Rights (ECtHR) concluded that the Convention has not been designated to provide a general protection for environmental loss and that it only protects the victims of a specific convention's rights.<sup>70</sup> This textual void is surpassed by the ECtHR thanks to its dynamic interpretation method. Accordingly, the Convention "as a living

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<sup>66</sup> Turkish Constitutional Court, E. 2010/51, K. 2011/137, 12/10/2011, O.G. 25/01/2012, No. 28184.

<sup>67</sup> Turkish Constitutional Court, E. 2006/99, K. 2009/9, 15/1/2009, O.G. 08/07/2009, No. 27282.

<sup>68</sup> Ibid.

<sup>69</sup> ECtHR, Hatton/United Kingdom, Application No:36022/97, 08/07/2003, para. 96.; ECtHR, Kyrtatos/Greece, Application No: 41666/98, 22.05.2003, para. 52.; BIRNIE/ BOYLE / REDGWELL, p. 301.; ARSLAN ÖNCÜ, Gülay **Özel Yaşama ve Aile Yaşamına Saygı Hakkı: Anayasa Mahkemesi Bireysel Başvuru El Kitapları Serisi-8**, Ankara, Avrupa Konseyi, 2018, p. 49.

<sup>70</sup> Ibid.

instrument that should be interpreted within the light of the present-day conditions".<sup>71</sup> The ECtHR reviewed nearly 300 applications on environmental issues as it extended the scope of its jurisdiction on examining the right to environment.<sup>72</sup> The first symbolic case that needs to be emphasized within this context is Lopez Ostra/Spain.<sup>73</sup> The ECtHR found breach of right to privacy of private life on the grounds of the incompetence and negligence of public authorities in solving locals' health problems and inconvenience due to fumes and effluvia of recycling facilities.<sup>74</sup> Even though it does not directly threaten applicants seriously, the presence of heavy environmental pollution breaches the right to respect for private and family life and property. It is a pioneer approach as it demonstrates that ECtHR sees living in a clean environment as a prerequisite for other conventional rights and shows that human rights can be used as an effective tool in environmental issues.

Article 56, entitled the right to live in a healthy environment, is listed in the social and economical rights section of the Constitution. Since Article 56 is beyond the scope of the common protection area of the ECHR and the Constitution, it cannot be invoked in individual applications before the TCC. The TCC follows the same dynamic interpretation method as that of ECtHR to overcome the direct inapplicability of Article 56 in Mehmet Kurt case.<sup>75</sup> The TCC concludes that the right to live in a healthy and balanced environment corresponds to values of physical and mental integrity, self-actualization and self-determination covered under the right to privacy in Article 20 of the Constitution.<sup>76</sup> The TCC further expresses that the values aforementioned are arranged as a separate right, namely the right to protect and improve his/her corporeal and spiritual existence, in Article 17 of the Constitution and should be evaluated accordingly.<sup>77</sup> Thus, the direct inapplicability of the right to live in a healthy environment is surmounted by the TCC's solution of forming the normative grounds under the scope of Article 17 of the Constitution.

#### **D. The Classification of the Right to Live in a Healthy and Balanced Environment (Article 56)**

With specific reference to the Mehmet Kurt case, the question as to whether regulating environmental rights under the social and economic rights section of the Constitution limits any demand that the State should fulfill its obligations regarding environmental matters will be discussed in here.

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<sup>71</sup> ECtHR, Selmouni/France, Application No:25803/94, 28/07/1999.; ECtHR, Soering/United Kingdom, Application No: 14038/88, 07/07/1989, para.102.

<sup>72</sup> Ibid.

<sup>73</sup> ECtHR, Lopez Ostra/Spain, Application No: 16798/90, 9/12/1994.

<sup>74</sup> Ibid.

<sup>75</sup> Mehmet Kurt Case, para. 45-46. The TCC followed a similar approach in its further decisions after this. See Öznur Çiçek Bildik, para. 49.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

The general tendency to analyze human rights is to classify them into three categories.<sup>78</sup> The classification is parallel with the historical development of human rights doctrine and practice.<sup>79</sup> 'First generation rights' corresponds to civil and political rights recognized since the 18th century. 'Second generation rights' are considered to correspond to the social, economic and cultural rights that emerged at the beginning of the 20th century. The third generation rights, on the other hand, is begun to emerge from the 1970s.<sup>80</sup> Environmental pollution, nuclear weapons, regional war and conflicts, large differences between development levels triggered the recognition of 'third generation rights' in international conferences and meetings to find a common solidarity and common solutions to these problems.<sup>81</sup> In that regard, the third generation rights or to put in another way 'solidarity rights' requires to respond to the universal problems as such with the participation of all humanity. The right to environment could only be enjoyed with the combination of efforts of all those who participate in social life.<sup>82</sup> The right to environment represents all the features of the third generation rights in terms of its subject, object and duty bearer.

Having been classified under the third generation rights, the right to live in a healthy and balanced environment is regulated in the social and economic rights section of the Constitution though. As might be remembered, 'social and economic rights' correlate with the second-generation rights. Notwithstanding the textual arrangement, the classification of environmental rights as one of the social and economic rights does not reflect the global trend in human rights doctrine and practice.<sup>83</sup> Environmental rights differ from traditional human rights in terms of the dialectic of rights and duties.<sup>84</sup> A holistic approach should be adopted when examining environmental rights, as the right holders and duty bearers intersect to a certain extent.<sup>85</sup> The right holders also have duties with respect to leaving a healthy and balanced environment for future generations. States are obliged to force individuals to provide due process rights, such as access to information, participation in environmental decisions, and application mechanisms, in environmental matters.<sup>86</sup> Environmental matters exceed the limit of individual's

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<sup>78</sup> ERDOĞAN, p. 178.; KABOĞLU, İbrahim Ö., **Özgürlükler Hukuku 1-İnsan Hakları Genel Kuramına Giriş**, 7th Ed., İmge, Ankara, 2013, p. 41. An additional category of 'fourth-generation rights' is also added to the classification. With the aim of protecting human rights against the threat of misusing science and technology, the fourth generation rights emerged in the 21st century. UYGUN, p. 530.

<sup>79</sup> UYGUN, Oktay, **Devlet Teorisi**, 7th Ed, On İki Levha, İstanbul, 2020, p. 530.

<sup>80</sup> ERDOĞAN, p. 178.; KABOĞLU, **Özgürlükler Hukuku...**, p. 41. SEMİZ, p. 12.; SAVAŞAN, p. 52-53.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> SEMİZ, p. 11.

<sup>84</sup> YILMAZ TURGUT, Nükhet, **Çevre Politikası ve Hukuku**, 2. Edition, İmaj, Ankara, 2012, p. 79.

<sup>85</sup> GEMALMAZ, p. 235

<sup>86</sup> GÜNEŞ, Ahmet M. "Çevre Hakkının Bireysel Başvuruya Konu Edilebilirliği Üzerine" **Türkiye Adalet Akademisi Dergisi**, Vol.5, Issue 16, 2014, p. 85.

or state's power to challenge them on their own. Environmental rights classified under the term 'third-generation rights' require collectivity and solidarity of all humankind.<sup>87</sup> Human rights, as a holistic concept, can be instrumentalized to meet the basic needs of human beings.<sup>88</sup> The holistic nature of human rights does not allow prioritizing a specific right to another. The classifications of rights in constitutions are made to offer differentiated methods of protection and guarantees.<sup>89</sup> Within this context, the right holders and duty bearers remain intersected even if the right to environment is evaluated within the scope of third-generation rights. The right holders shall also undertake duties to promote the right to environment. The TCC avoided addressing the question of whether environmental rights can be classified as the third generation-solidary rights in Mehmet Kurt case.

One possible reason for the TCC's avoidance of categorising environmental rights under third generation rights might be to make a room for the government to implement its political preferences. Because categorising environmental rights as social and economic rights results in having some practical consequences regarding the limitation clause outlined in Article 65 of the Constitution of Turkey. Article 65 provides that "The State shall fulfil its duties as laid down in the Constitution in the social and economic fields within the capacity of its financial resources, taking into consideration the priorities appropriate with the aims of these duties".<sup>90</sup> Views on the interpretation of Article 65 with respect to environmental rights and the duties of the State are threefold.<sup>91</sup> According to the first view, the capacity of the State's financial resources can only serve as a limitation cause regarding reparation projects and programmes requiring a considerable amount of expenses.<sup>92</sup> Therefore, the State's duty of the improvement of the environment, namely, the protection of environmental health and the prevention of environmental pollution shall not be restricted on the grounds of financial capacity.<sup>93</sup> The second view reflects that environmental rights and civil rights are interrelated. Thus, it hinders the State to invoke Article 65 as a justification for not implementing environmental duties.<sup>94</sup> The compulsory nature of the link between the right to environment with civic rights removes the liability requirement to the extent of the adequacy of financial resources. Failure to fulfill the obligations arising from environmental rights by asserting the limited financial

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<sup>87</sup> Ibid., p. 84

<sup>88</sup> UYGUN, p. 537.

<sup>89</sup> Ibid.

<sup>90</sup> "Constitution of the Republic of Turkey", [https://global.tbmm.gov.tr/docs/constitution\\_en.pdf?TSPD\\_101\\_R0=08ffcef486ab2000aecd4e14f192ea2fe010f72a73da3e46fbbff22e1f10b3d855c9094e3399705082b91f220143000d26af520aba9a7dc3895e5e88c838e0b64310f07be3600be1b82c87763677a254b4b5f7f7e9d972cf6f4e02a5f9d758f](https://global.tbmm.gov.tr/docs/constitution_en.pdf?TSPD_101_R0=08ffcef486ab2000aecd4e14f192ea2fe010f72a73da3e46fbbff22e1f10b3d855c9094e3399705082b91f220143000d26af520aba9a7dc3895e5e88c838e0b64310f07be3600be1b82c87763677a254b4b5f7f7e9d972cf6f4e02a5f9d758f), Access Date: 03.03.2021.

<sup>91</sup> SEMİZ, p. 14

<sup>92</sup> KABOĞLU, İbrahim, *Çevre Hakkı*, İletişim, İstanbul, 1992, p. 42.

<sup>93</sup> Ibid.

<sup>94</sup> YILMAZ TURGUT, p. 79.

capacity may result in the non-fulfilment of obligations arising from civil rights such as right to life where the adequacy of financial resources are irrelevant. The third view is that environmental rights are part of socio-economic rights and therefore do not entitle the right holders to demand.<sup>95</sup> The disregard for duties that socio-economic rights entail may cause the degradation of environmental rights status. Thus, environmental rights could hold a programme norm status, which means that they are not directly enforceable or directly applicable.<sup>96</sup>

The socio-economic status of environmental rights has not been elaborated in the norm-based reviews of the TCC.<sup>97</sup> However, the TCC declared that the State shall commit its obligations such as protecting the environment, preventing pollution and improving the environment, in order to promote environmental rights.<sup>98</sup> On the other hand, it was stated that environmental duties will be fulfilled within the limit of financial resources in the dissent.<sup>99</sup> Fortunately, the shallow argument in the dissent remained as a dissent and did not spread on the TCC's overall approach to environmental rights.

The TCC explicitly classified environmental rights as social and economic rights in case-based reviews.<sup>100</sup> In Mehmet Kurt, The TCC reiterates the State's obligations regarding environmental rights as it did in aforementioned norm-based reviews.<sup>101</sup> In the context of environmental matters, the State's positive obligations are the prevention of environmental pollution and protection and development of the natural environment.<sup>102</sup> The TCC also refers to Article 48 of the Constitution as a basis for the positive obligations of public authorities in environmental issues.<sup>103</sup> The provision in question emphasizes the balance to be achieved between public interests in an economic activity and individual interests in protecting and improving one's corporeal and spiritual existence. The right to environment cannot be waived on the grounds that it will cause economic and bureaucratic liabilities or production activities will be affected.<sup>104</sup> The TCC cannot waive the right to live in a healthy and balanced environment for the sake of

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<sup>95</sup> Turkish Constitutional Court, E. 2011/110, K. 2012/79, 24/05/2012, O.G. 21/07/2012, No: 28360.

<sup>96</sup> SEMİZ, p. 16.

<sup>97</sup> Ibid., p. 13.

<sup>98</sup> Ibid.; Turkish Constitutional Court, E. 2001/106, K. 2012/192, 29/11/2012; O.G. 02/04/2013, No: 28606.

<sup>99</sup> Turkish Constitutional Court, E. 2011/110, K. 2012/79, 24/05/2012, O.G.21.07.2012, No: 28360 (Judge Özgüldür's Dissent.)

<sup>100</sup> Hüseyin Tunç Karlık Ve Zahide Şadan Karlık, para. 43.; Öznur Çiçek Bildik, para. 51.

<sup>101</sup> Mehmet Kurt, para. 50.

<sup>102</sup> Ibid.

<sup>103</sup> Ibid. para. 51. "The State shall take measures to ensure that private enterprises operate in accordance with national economic requirements and social objectives and in security and stability." "Constitution of the Republic of Turkey", [https://global.tbmm.gov.tr/docs/constitution\\_en.pdf?TSPD\\_101\\_R0=08ffcef486ab2000aec4e14f192ea2fe010f72a73da3e46fbbbf22e1f10b3d855c9094c3399705082b91f220143000d26af520aba9a7dc3895e5e88c838e0b64310f07be3600be1b82c87763677a254b4b5f7f7e9d972cf6f4e02a5f9d758f](https://global.tbmm.gov.tr/docs/constitution_en.pdf?TSPD_101_R0=08ffcef486ab2000aec4e14f192ea2fe010f72a73da3e46fbbbf22e1f10b3d855c9094c3399705082b91f220143000d26af520aba9a7dc3895e5e88c838e0b64310f07be3600be1b82c87763677a254b4b5f7f7e9d972cf6f4e02a5f9d758f), Access Date: 03.03.2021.

<sup>104</sup> Mehmet Kurt, para. 51.



prioritizing economic obligations.<sup>105</sup> Hence, the adequacy of financial resources will not be asserted to limit the protection and development of environment, even in the case of right to environment being classified as a social right. The TCC's approach regarding the limits of positive obligations of public authorities in environmental protection matters resembles that of ECtHR.<sup>106</sup> The ECtHR notes that environmental concerns cannot be superseded by financial obligations or various fundamental rights such as the right to property<sup>107</sup>

### **E. Positive Obligations of the State and the Horizontal Effects Doctrine**

Considering the increased industrial activities, corporations are the major contributors to environmental problems such as pollution, climate change, national resource depletion or loss of biodiversity.<sup>108</sup> Environmental rights are violated mostly as a direct result of corporate activities. The terms 'corporate accountability', 'corporate social responsibility' and 'liability' are used inconsistently in academic literature and several international instruments.<sup>109</sup> The concept of 'liability' is used to encompass an obligation to provide a remedy for harmful but not necessarily unlawful activities of corporations.<sup>110</sup> 'Responsibility' is used when there is a breach of international law by international actors.<sup>111</sup> 'Accountability' refers to a broader context than responsibility and liability, as it also raises non-legal mechanisms which are political or administrative.<sup>112</sup> The term 'liability' is preferred to be used here for the purposes of this study. Leaving aside international law documents aiming to incur corporate liability for environmental damages, this study focus on the function of individual application in environmental protection. Thus, the discussion will be revolved around the question as to whether individual application could be utilised to ensure corporate liability for environmental harms in this section. 'Positive obligations doctrine' and

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<sup>105</sup> Ibid.

<sup>106</sup> ECtHR, Turgut and others/Turkey, Application No: 4860/09, 26.03.2013, para. 90.; Financial imperatives and even certain fundamental rights, such as ownership, should not be afforded priority over environmental protection considerations, in particular when the State has legislated in this regard. See Hamer/Belgium, Application No: 21861/03, para. 79.

<sup>107</sup> Ibid.

<sup>108</sup> BAKAN, Joel, **The Corporation: the Pathological Pursuit of Profit and Power**, 2th Ed, Cornstable 2005, p. 57-58.

<sup>109</sup> ERSON ASAR, Bilge, "Uluslararası Hukuk Bağlamında Devler-Dışı Aktörlerin Çevresel Sorumluluğu: Uluslararası Örgütler, Hükümetdışı Örgütler ve Ticari Kuruluşlar," **Uluslararası Çevre Hukuku ve Politikaları Dünden Bugüne ve Geleceğe**, Ed. Zerrin Savaşan, Hakan Ünay, Yetkin, Ankara, 2021, p. 644.; VALOR, Carmen, "Corporate Social Responsibility and Corporate Citizenship: Towards Corporate Accountability" **Business and Society Review**, Vol.110, 2005, p. 191.

<sup>110</sup> ERSON ASAR, p. 645, 663-669.

<sup>111</sup> Ibid., p. 645

<sup>112</sup> HOBE, Stephan, "Legitimacy, Recognition, Democratic Control, Transparency and Accountability of Non-Governmental Organizations" **From Government to Governance: 2003 Hague Joint Conference on Contemporary Issues of International Law**, Ed. Wybo P. Heere, TMC Asser Press, 2004.

the 'horizontal effects of rights' are the powerful tools that the TCC could use in that regard.

'Positive obligations doctrine' developed by dynamic interpretation method by the ECtHR which sees the Convention as a living instrument, is one of the important tools consulted for environmental protection.<sup>113</sup> Positive obligation, in a nutshell, can be defined as the precautions that the State should actively take in order to guarantee the rights and freedoms under the ECHR.<sup>114</sup> The obligations can be either preventive for state's or third parties' actions or corrective for secondary harms in the context of precautionary principle.<sup>115</sup> Although to present a full list of circumstances for state's positive obligations regarding individuals' right to a healthy environment is not possible, there are relevant case law that embodies state's positive obligations regarding substantive rights such as right to life, right to privacy of private life, right to property, prohibition of torture, and procedural rights such as right to access to court, right to an effective remedy, right to access information in environmental matters.<sup>116</sup> The substantive and procedural obligations regarding the right to environment in the relevant jurisprudence of the ECtHR can be listed as follows<sup>117</sup>:

- (i) an obligation to grant access information in environmental matters<sup>118</sup>
- (ii) an obligation to guarantee participation on environmental decision making<sup>119</sup>
- (iii) an obligation to provide access to courts on environmental matters<sup>120</sup>,
- (iv) an obligation to enact environmental legislation<sup>121</sup>,
- (v) an obligation of evaluation on employment, research and environmental effect in compliance with precautionary principle,<sup>122</sup>
- (vi) an obligation to take necessary measures<sup>123</sup>,

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<sup>113</sup> DUYMAZ, Erkan, "Avrupa İnsan Hakları Mahkemesi'nin Çevrenin Korunmasına Katkısı,"**İstanbul Üniversitesi Siyasal Bilgiler Fakültesi**, C.0, S.42, 2013, s.124.; YÜZER ELTİMUR, p. 96.; ARSLAN ÖNCÜ, p. 50.; BRAIG, Katharina Franziska/PANOV, Stoyan, "The Doctrine of Positive Obligations as a Starting Point for Climate Litigation in Strasbourg: The European Court of Human Rights as a Hilfssheriff in Combating Climate Change," **Journal of Environmental Law and Litigation**, Vol.35, 2020, p.272-273.

<sup>114</sup> ECtHR, Öneriyıldız/Turkey, 30.11.2004, para. 71.; HARRIS, David/O'BOYLE, Michael/BATES Ed/ BUCKLEY, Carla, **Law of the European Convention on Human Rights**, 4th Ed, OUP, 2018, p. 19

<sup>115</sup> BRAIG/PANOV, p. 273.

<sup>116</sup> Council of Europe, **Manual on Human Rights and the Environment**, 2th Ed, 2012, p. 31-32.

<sup>117</sup> For the list of examples on case law, see BRAIG/PANOV, p. 273.

<sup>118</sup> ECtHR, Guerra/Italy, Application No: 116/1996/735/932, 19.02.1998, para. 60

<sup>119</sup> Hatton/United Kingdom

<sup>120</sup> ECtHR, Moor/Switzerland, Application No: 52067/10 and 41072/11,

<sup>121</sup> ECtHR, Öneriyıldız/Turkey, Application No: 48939/99, 30.11.2004, para. 79.

<sup>122</sup> ECtHR, Tatar/Romania, Application No: 67021/01, 27.01.2009, para.114

<sup>123</sup> ECtHR, Budayeva and others/Russia, Application No:15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, 29.09.2008, para.156.

(vii) an obligation to investigate and punish environmental damage due to pollution<sup>124</sup>,

(viii) an obligation to fight with neglect and insufficient precautions of public authorities<sup>125</sup>

As an extension of positive obligations doctrine the horizontal effects of rights offers an alternative solution.<sup>126</sup> The horizontal effects doctrine enables constitutional rights to be applied not only to relations between the state and the individual; but also to relations among individuals or legal entities.<sup>127</sup> Horizontal violations refer to the human right violations that occur on the relations of individual level. The horizontal effect requires public authorities to be held accountable for the horizontal violations occurred among individuals. To avert or eliminate horizontal violations, public authorities have an obligation to adopt necessary norms and guarantees, to take operational measures, to fulfill supervisory duties, to establish and specify the mechanisms of remedies that can be applied in case of violations, to conduct an effective investigation in case of violation and to impose appropriate sanctions.<sup>128</sup> The horizontal effects of constitutional rights in Turkey enables individuals to invoke environmental rights for violations that occur as a result of corporate activities.<sup>129</sup> The normative basis of the horizontal effect doctrine can be found in Article 11 of the Constitution which provides that the provisions of the Constitution are fundamental legal rules binding upon legislative, executive and judicial organs, and administrative authorities and other institutions and individuals. Considering the fact that environmental damages or threats arise mainly as a result of corporate activities, the horizontal effects will significantly contribute to the protection of environment.<sup>130</sup> On the other hand, the liability is placed directly upon public authorities by the horizontal effects' doctrine, whereas major activities are conducted by the corporations.<sup>131</sup> The TCC is lack of necessary tools to clarify international standards for corporations to ensure their compliance with environmental rights, as it address public authorities. Besides, it is challenging to invoke the accountability of corporations' home or host State before the TCC, as the TCC does not have jurisdiction in that regard. Even assuming for a moment that had the TCC jurisdiction, other states would probably refuse to accept liability on the grounds of the non-interference principle in another state's affairs.

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<sup>124</sup> Tatar/Romania, para.114

<sup>125</sup> ECtHR, *Oluic/Croatia*, Application No: 22330/05, 05.02.2009, para. 66

<sup>126</sup> DUYMAZ, p. 123-124.

<sup>127</sup> SUNAY, Reyhan, "İnsan Haklarının Yatay Etkisi Ve Devletin Sorumluluğu," **Selçuk Üniversitesi Hukuk Fakültesi Dergisi**, Vol.23, Issue 1, 2015, pp. 11-12.; DUYMAZ, p. 123-124.

<sup>128</sup> *Ibid.*, p.31.

<sup>129</sup> EREN, p. 178.

<sup>130</sup> DUYMAZ, p. 123-124.

<sup>131</sup> MUCHLINKSI, Peter, "Implementing the New UN Corporate Human Rights Framework: Implications for Corporate Law, Governance, and Regulation", **Business and Ethics Quarterly**, Vol. 22, Issue 1, 2012, p. 150.

The right to live in a healthy and balanced environment not only protects individuals against the arbitrary interferences of public authorities, but also includes positive obligations for public authorities to protect the values deriving from the right.<sup>132</sup> The scope of this obligation extends not only to the activities of the State's but also to that of private sector's.<sup>133</sup> The State's primary obligation in that regard is to enact laws or regulations to protect the environment and to prevent environmental damage.<sup>134</sup> For instance, after evaluating that noise pollution is within the scope of environmental pollution that intervenes the physical and mental integrity of individual, the ECtHR decided that there is a breach of Article 8 as the state did not adopt legal or administrative regulations regarding the noise level coming from night club near the applicant's house.<sup>135</sup> Not determining an effective policy to prevent or minimize harmful emissions from a steel factory nearby living area, where many are intensely accommodating, is also seen as a breach of positive obligations.<sup>136</sup> Besides, the merely adoption of relevant legislation on environmental matters is not sufficient, as it should also be implemented effectively by public authorities.<sup>137</sup> Public authorities' failure in obeying the prohibitions or making the necessary controls due to negligence, will result in non-compliance with the positive obligations embedded in ECHR.<sup>138</sup> Likewise, in the aforementioned example of steel factory, not performing the relocation of the applicants outside the dangerous zone or not compensating the citizens looking for lodging elsewhere is evaluated as a breach of obligations.<sup>139</sup>

The limits of positive obligations could be illustrated with one of the ECtHR's judgment finding no breach of Article 8 in the case of not eliminating the disturbance of the applicants from the noise pollution due to residing near a highway.<sup>140</sup> According to the ECtHR, it is not possible to accept that the public authorities have direct obligation to avoid busy streets for a highway designed to pass across a city, or to accommodate every citizen in an environment with certain standards. Likewise, taking into account that the state has to deal with complex

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<sup>132</sup> Hatton/United Kingdom, para. 100, 119, 123.; Guerra vd./Italia, para. 58)

<sup>133</sup> Tatar/Romania, para. 87.; ECtHR, Moreno Gomez/Spain, Application No:4143/02, 16.11.2004, para. 61.

<sup>134</sup> Council of Europe, Guide on Article 8 of the European Convention on Human Rights, 2020, p. 38.

<sup>135</sup> Moreno Gomez/Spain, para. 62-63.; Similarly, the fact that the lack of a regulation about the noise caused by the heavy traffic on the street where the applicant lives is also considered as a violation of Article 8. See ECtHR, Dees/Hungary, Application No:2345/06, 09.11.2010, para. 23.

<sup>136</sup> ECtHR, Ledyayeva and others/Russia, Application No: 53157/99, 53247/99, 53695/00 and 56850/00, 26.03.2007.; ECtHR, Fadeyeva/Russia, Application No: 55723/00, 09.06.2005.

<sup>137</sup> Morena Gomez/Spain.; Guerra and others/Italia.; Taşkın and others/Turkey.; Ledyayeva and others/Russia para. 110.

<sup>138</sup> Morena Gomez/Spain, para. 61-62.

<sup>139</sup> Ledyayeva and others/Russia.

<sup>140</sup> Grimkovskaya/Ukraine, Application no. 38182/03, 21.10.2011.

infrastructure problems, obligations that will be additionally attributed should not burden the state disproportionately.<sup>141</sup>

In Mehmet Kurt case, the TCC emphasized that it does not have a role in examining the appropriateness of public authorities' decisions on the investments for the purposes of progress and economic development.<sup>142</sup> It also stated that if the environmental impact of the investments for public interest interfere with individuals' right to protect and develop their physical and mental integrity, the TCC is to evaluate whether a fair balance is established between competing interests and whether environmental procedural guarantees are provided.<sup>143</sup> While defining the limits of administration's positive obligations at environmental issues, the TCC is of the view that procedural guarantees that can be sorted as access to information, participation in decision-making and access to court should be utilised for finding a fair balance.<sup>144</sup> Within this context, the procedural guarantees that are utilized to define the limit of positive obligations, form the procedural aspect of positive obligations and it requires an examination on guarantees for the public to participate in environmental matters.<sup>145</sup> Procedural rights are as follows: (i) right to access to environmental information, (ii) right to participate in environmental decision-making and (iii) right to access to courts.<sup>146</sup>

Right to access to environmental information, is the obligation to inform individuals whose self-interests are in jeopardy due to natural disasters or hazardous activities of the state or private parties.<sup>147</sup> The purpose of the access to information is to relieve the concerns of the individuals by giving them a chance to evaluate the environmental danger that they faced or will face.<sup>148</sup> In a case in which the UK was conducting nuclear tests as a hazardous activity, the ECtHR decided that the soldiers deployed in there had the right to be informed on the radiation levels that they encountered.<sup>149</sup> Article 8 of the ECHR requires the establishment of an effective and accessible procedure for the individuals that are exposed to dangerous activities of public authorities. The procedure is not supposed to present a process that would be defined as long and complicated. Having taken into account that the soldiers had not applied necessary mechanisms to learn the level of radiation at their posts during nuclear tests regarding the application in question, the ECtHR simply finds the mere existence of an

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<sup>141</sup> Ibid., p. 65-66, 68, 73.; **Manual on Human Rights and the Environment**, p. 54.

<sup>142</sup> Mehmet Kurt, para. 72-75.

<sup>143</sup> Ibid.

<sup>144</sup> Turkish Constitutional Court, Ahmet İsmail Onat, Application No:2013/6714, Date of Decision:21.04.2016, para. 79.

<sup>145</sup> Taşkın ant others/Turkey, para., 115.; Guerra/Italy.

<sup>146</sup> ARSLAN ÖNCÜ, p.52.

<sup>147</sup> Guerra/Italy, para. 60.; Öneriyıldız/Turkey para. 90.; Budayeva vd. para. 131.; Tatar/Romania, para. 101,113.

<sup>148</sup> **Manual on Human Rights and the Environment**, p. 83.; ECtHR, McGinley and Egan/United Kingdom, Application No:21825/93, 23414/94, Date of Decision:09.06.1998.

<sup>149</sup> Ibid.

procedure founded by the state as adequate, thus concluded that there is no breach of Article 8 of ECHR.<sup>150</sup> In another case, the ECtHR emphasizes that had the right to access to information on the dangers of a chemical factory been granted, the applicants living near the factory could have avoided the dangers of it.<sup>151</sup>

Relevant with the right to access to environmental information, another obligation requires sharing the information produced by conducting necessary research, studies and environmental impact assessment with the public.<sup>152</sup> The state has the obligation to search and evaluate a danger in case of an existence of a risk that is directed to the applicants' health and well-being.<sup>153</sup> It can be achieved by providing the public with access to environmental impact assessment reports.<sup>154</sup> The TCC emphasizes that both the administrative authorities and private parties executing hazardous activities have a positive obligation to make information they have available.<sup>155</sup> For instance, regarding an information request at all stages of the transfer of electric cables to underground, the TCC concluded that the administration provided the applicant with the necessary information, and thus there is no breach of positive obligations.<sup>156</sup>

In terms of the right to participate in environmental decision-making, individuals should be given the opportunity to express their opinion, object to or approve decisions on the environment that they live in.<sup>157</sup> The public participation should specifically be provided on the process of deciding the approval of industrial facilities and infrastructure projects.<sup>158</sup> According to the ECtHR, prerequisites for environmental decision making process are twofold: (i) expert opinions should be collected before the decision, (ii) individuals granted access to environmental information should participate the decision making process. When the individuals have adequately participated a decision-making process leading to an alleged environmental destruction, then the ECtHR consider that there is a fair balance between conflicting interests.<sup>159</sup> The TCC also seeks the two prerequisites to be met to ensure the right to environmental participation.<sup>160</sup> In an application regarding the project of transferring the electric cables underground, the TCC confirms that the public authorities ensured the participation of the locals to the decision-making and release of the environmental impact assessment report, and

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<sup>150</sup> Ibid.

<sup>151</sup> Guerra/Italy, para. 60.

<sup>152</sup> ECtHR, Giacomelli/Italy, Application No: 59909/00 2.11.2006, para.83.; Tatar/Romania, para.113.; Lemke/France, para. 41.

<sup>153</sup> Tatar/Romania, para.114-115.

<sup>154</sup> Tatar/Romania, para. 98.

<sup>155</sup> Ahmet İsmail Onat, para. 80.

<sup>156</sup> Ahmet İsmail Onat, para. 106.

<sup>157</sup> ELTİMUR YÜZER, p.102.; ARSLAN ÖNCÜ, p. 53.; Giacomelli/Italy, para. 363-364.; BRAIG/PANOV, p. 275

<sup>158</sup> Tatar/Romania, para.124.

<sup>159</sup> BRAIG/PANOV, p. 276.

<sup>160</sup> Ahmet İsmail Onat, para. 97.

thus the two prerequisites were adequately met for the right to environmental participation.<sup>161</sup>

Individuals that are affected by environmental issues in cases of administrations' actions and negligence should be granted the right to access to courts. Where the interests are not taken into consideration at environmental decision-making processes, the right to access courts should be granted to the individuals that are affected by environmental issues in cases of administrations' actions and negligence.<sup>162</sup> The establishment of the judicial mechanisms per se is not found adequate by the TCC.<sup>163</sup> Besides, it is essential that individuals should have the opportunity to present all their objections and proofs and have them been investigated. All their accusations should be responded to by presenting justification, and eventually a fair balance should be founded with the help of taking into account all interests.<sup>164</sup> In addition, the judicial application mechanisms should be provided not only for the reasons of unsuitable decision-making processes but also to resolve applicants' complaints in cases of not sharing the individual scientific studies requested by the public administrations.<sup>165</sup> As a procedural right guaranteed under Article 8 of ECHR, the right to appeal judicial mechanisms has more comprehensive protection than the right to access court, which is a sub element of right to fair trial under Article 6 of the ECHR. The ECtHR prefers to enforce the right to access to courts under Article 6 with the condition that applicant's another conventional right is also breached.<sup>166</sup> The right to appeal judicial mechanisms, which is one of environmental procedural rights under Article 8 of ECHR has more widespread protection, because of being more determinative in regards of applicant's other rights according to the decision at the end of the proceedings and also not seeking the possibility of a serious danger.<sup>167</sup> It is observed that the ECtHR prefers to enforce Article 8, instead of Article 6 and 13 in its examination of procedural rights in environmental cases.<sup>168</sup>

As already stated before, in Mehmet Kurt, the applicant claimed that his requests and objections about environmental impact assessment report of a hydroelectric power plant project are not properly evaluated. The TCC reached the conclusion that the right to appeal judicial mechanisms, which is a procedural right under

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<sup>161</sup> Ibid.

<sup>162</sup> Taşkın/Turkey, para. 206. Tatar/Romania para. 124.; BRAIG/PANOV, p. 277.; ARSLAN ÖNCÜ, p. 53-54.

<sup>163</sup> Mehmet Kurt, para. 81-83.

<sup>164</sup> Mehmet Kurt, para. 81-83.

<sup>165</sup> Grimkovskaya/Ukraine para. 69.; Tatar/Romania, para. 113, 116-117 and 119.; **Manual on Human Rights and the Environment**, p.101.

<sup>166</sup> BRAIG/PANOV, p. 277.

<sup>167</sup> **Manual on Human Rights and the Environment**, p.102.; BRAIG/PANOV, p. 277.. Öçkan and others/Turkey, 28.03.2006, para. 39.

<sup>168</sup> 44. Tatar/Romania, para. 88 and 119.

<sup>168</sup> YANCI ÖZALP, Nihan, "Çevresel Haklara İnsan Hakları Avrupa Mahkemesi Yaklaşımı" **Anayasa Hukuku Dergisi**, Vol.2, Issue.3, 2013, p. 88.

protection of Article 17 of the Constitution, was breached.<sup>169</sup> The TCC did not prefer to examine the case under Article 36 of the Constitution which provides the right to access to courts. On the contrary, in another application regarding hydroelectric power plant project again, the TCC evaluated that the right to access court under Article 36 was breached.<sup>170</sup> The TCC concludes that the essence of the right to access court was breached because proceedings did not convene in time as public was not aware of the environmental impact assessment report as it was not announced through proper tools. The TCC directly evaluated the case under the right to access court without investigating the impact to applicants' rights within common protection area such as right to life, right to physical and mental integrity or right to property, or whether there is a connection among them.<sup>171</sup> By doing so, The Constitutional Court has drifted away significantly from the approach of the ECtHR.

In light of the analysis above, the ECtHR's positive obligations doctrine is observed to be applied quite similar by the TCC in its relevant case law. As Mehmet Kurt case shows, the positive obligations doctrine is utilized effectively in individual applications for a greater protection of the environmental rights and to ensure liability for environmental harms.

## **II. CONCLUSION**

Relying on human rights in environmental litigation via filing an individual application before the TCC has a relatively short history. Having a couple of years experience in that regard though, the TCC is equipped with effective tools transferred from the ECtHR's jurisprudence to address environmental rights. The TCC utilizes positive obligations doctrine and the horizontal effects of rights to ensure greater protection for the environment. On the other hand, the TCC displays an anthropocentric approach in definition of environment and provides victims with protection only for damages that are proven to harm human beings. It requires to prove the link between environmental damage and natural disasters or hazardous activities. Placing a unheavy burden on the victims on the one hand, it excludes other living organisms and their natural habitat from the scope of the protection of the right on the other.

This study examined the legal status of the right to live in a healthy and balanced environment and categorized it as a third-generation rights. As it is already stated a few times, only civil and political rights under the common protection of the ECHR and the Constitution can be a subject of an individual application. The TCC rejects individual applications on the grounds that the claims derived from violations of the second and third generation rights.<sup>172</sup> The TCC avoids discussion

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<sup>169</sup> Mehmet Kurt, para. 83.

<sup>170</sup> Turkish Constitutional Court, Mehmet Bolat and others, Application No: 2013/5974, Date of Decision: 10.03.2016, Official Gazette:05.05.2016, Number:29703.

<sup>171</sup> Mehmet Bolat and others, para. 27.

<sup>172</sup> Ibid.



on determining Article 56 as a third generation right but it allows to invoke it under the shelter of other constitutional rights. According to the TCC, environmental rights have an impact on mutual legal interests guaranteed in Article 17, Article 20 and Article 21 that are the right to protect and improve his corporeal and spiritual existence, the right to privacy and the inviolability of domicile respectively.<sup>173</sup> The TCC notes that environmental rights are categorized as social and economic rights but it evaluates Mehmet Kurt case on the grounds of the right to protect and improve his corporeal and spiritual existence under Article 17 of the Constitution. Placing environmental rights among social and economic rights results in limiting any possible demands of individuals to compel public authorities to comply with obligations deriving from environmental rights. Public authorities could bring the limits of financial resources and the economic development plans to avoid compliance with environmental rights. The TCC stated that protection of the environment will prevail in case of competing interests as it did not exclude industrialization or economic development activities such as the installation of hydroelectric power plants or the exploitation of natural resources completely. Relying on positive obligations of public authorities, procedural rights such as right to access to court, right to an effective remedy, right to access information in environmental matters are used effectively to weigh competing interests. Nevertheless, all the assurances results from anthropocentric approach that places human being at the center. However, recent problems such as climate change, forest fires, drought and sea pollution show that a quality environment is only possible with the protection and development of the environment holistically.

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## REFERENCES

ANTON, Donald K., SHELTON Dinah L., **Environmental Protection and Human Rights**, New York, CUP, 2011.

ATAPATTU, Sumudu, SCHAPPER Andrea, **Human Rights and the Environment: Key Issues**, Routledge, New York, 2019.

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<sup>173</sup> Ibid.

BAKAN, Joel, **The Corporation: the Pathological Pursuit of Profit and Power**, 2. Edition, Cornstable 2005.

BIRNIE, Patricia/ BOYLE, Alan/ REDGWELL, Catherine, **International Law and the Environment**, 3. Basım, OUP, Oxford, 2009.

ERDOĞAN, Mustafa, **İnsan Hakları Teorisi ve Hukuku**, 7. bs., Hukuk, Ankara, 2019.

EREN, Abdurrahman, "Bireysel Başvuru Mekanizmasının Temel Hak Ve Özgürlükler Rejimine Etkisi" , **Yeniyüzyıl Üniversitesi Hukuk Fakültesi Dergisi**, Vol.1, Issue 1, 2013, pp. 173-194.

ERSON ASAR, Bilge, "Uluslararası Hukuk Bağlamında Devler-Dışı Aktörlerin Çevresel Sorumluluğu: Uluslararası Örgütler, Hükümetdışı Örgütler ve Ticari Kuruluşlar," **Uluslararası Çevre Hukuku Ve Politikaları Düünden Bugüne ve Geleceğe**, Ed. Zerrin Savaşan, Hakan Ünay, Yetkin, Ankara, 2021, pp. 639-682.

GEMALMAZ, Mehmet Semih, "Bir İnsan Hakkı Olarak Çevre Hakkı ve Türk Düzenlemesi" **İstanbul Üniversitesi Hukuk Fakültesi Mecmuası**, Vol. 52, Issue. 1-4, 1987, pp. 233-278.

GÜNEŞ, Ahmet M. "Çevre Hakkının Bireysel Başvuruya Konu Edilebilirliği Üzerine" **Türkiye Adalet Akademisi Dergisi**, Vol. 5, Issue 16, 2014, pp. 79-103.

GÜNEŞ, AHMET M., **Çevre Hukuku**, 3. Edition, Adalet, Ankara, 2020.

GÜVEYİ, Ümit, "1982 Anayasası Kapsamında Çevre Hakkının Karşılaştırmalı Kısa Bir Tahlili", **MÜHF-HAD**, Vol. 24, Issue 2, 2018, pp. 633-659.

HALATÇI ULUSOY, Ülkü, "Türk Çevre Hukuku Politikaları Açısından Ticaret Ve Çevre İlişkisi," **Türk Çevre Hukuku ve Politikaları: Düünden Bugüne Ve Geleceği**, Ed. Zerrin Savaşan, Hakan Ünay, Seçkin, Ankara, 2021, pp. 271-296.

KABOĞLU, İbrahim, **Çevre Hakkı**, İletişim, İstanbul, 1992.

KANADOĞLU, Korkut, **Anayasa Mahkemesi'ne Bireysel Başvuru**, On İki Levha, İstanbul, 2015.

LAMBERT, Elisabeth, The Environment And Human Rights: Introductory Report to the High-Level Conference: Environmental Protection and Human Right," (Çevrimiçi) <https://rm.coe.int/report-e-lambert-en/16809c827f> Access Date: 09.09.2021.

MORGERA, Elisa, **Corporate Accountability in International Environmental Law**, Oxford, OUP, 2009.

ÖZDEK, E. Yasemin, İnsan Hakkı Olarak Çevre Hakkı, Todaie Yayınları, Ankara, 1993.

SAVAŞAN, Zerrin, "Çevre Hakları: İnsan Hakları İle Korumadan Asli Korumaya," **Çevre Hukuku ve Politikaları: Kavramlar, Teoriler ve**

**Tartışmalar**, Ed. Zerrin Savaşan, Çağlar Söker, Fırat Hakan Yılmaz, Seçkin, Ankara, 2021, Pp. 49-82

SEMİZ, Yasemin, "Anayasa Mahkemesi'nin Çevre Hakkı Perspektifi", **Hacettepe HFD**, Vol. 4, Issue 22, 2018, Pp. 9-46.

SHELTON, Dinah L., "Human Rights, Environmental Rights, and the Right to Environment", **Stanford Journal of International Law**, 1991, Vol. 28, Pp. 103-138

SUNAY, Reyhan, "İnsan Haklarının Yatay Etkisi ve Devletin Sorumluluğu," **Selçuk Üniversitesi Hukuk Fakültesi Dergisi**, Vol.23, Issue 1, 2015, pp. 9-52.

UYGUN, Oktay, **Devlet Teorisi**, 7. Basım, On İki Levha, İstanbul, 2020.

VALOR, Carmen, "Corporate Social Responsibility and Corporate Citizenship: Towards Corporate Accountability" **Business and Society Review**, Vol.110, 2005, pp. 191-212.

YANCI ÖZALP, Nihan, "Çevresel Haklara İnsan Hakları Avrupa Mahkemesi Yaklaşımı" **Anayasa Hukuku Dergisi**, Vol.2, Issue.3, 2013, pp. 53-93.

YILMAZ TURGUT, Nükhet, **Çevre Politikası ve Hukuku**, 2. Edition, İmaj, Ankara, 2012.

YOKUŞ SEVÜK, Handan, **Çevre Hukuku-Doğal Çevrenin Korunması**, 2. Edition, Adalet, Ankara, 2017.

YÜZER ELTİMUR, Dilara, "AİHM Ve Anayasa Mahkemesi İçtihatları Işığında Çevrenin Korunmasında Devletin Pozitif Yükümlülükleri," **Terazi Hukuk Dergisi**, Vol.13, I.45, 2018, pp.94-113.