Chapter 1.
Environment and human rights

Analysis of the creative reading by the European bodies of the environmental dimension of the European Convention on Human Rights and Protocol No. 1

I. Early applications dismissed as incompatible *ratione materiae*

The Convention and the Additional Protocols do not cover any environmental rights or any interest in the preservation of the environment. This is not surprising taking into account the date of its signature, the early 1950s, clearly some time before international concern for the global protection of environment emerged in the United Nations Conference on Environment of 1972.[5] The first applications before the Commission were consequently rejected as being incompatible *ratione materiae* with the Convention: *Dr S. v. the Federal Republic of Germany*, Application No. 715/60, Decision of inadmissibility of 5 August 1969 (unpublished); *X and Y v. the Federal Republic of Germany*, Application No. 7407/76, Decision of inadmissibility of 13 May 1976, *Decisions and Reports* ("DR") No. 5, p. 161.

5. See the Declaration of Stockholm collating the final conclusions of the UN Conference: UN Doc., A/CONF.48/14/Rev. 1.

However, the Commission soon warned that bad environmental conditions could sometimes interfere with the effective enjoyment of the individual's rights and freedoms guaranteed in the Convention, so this body began to declare admissible individual applications complaining of environmental abuse. See, e.g.: *Arrondelle v. the United Kingdom* (noise), Application No. 7889/77, Decision of 15 July 1980, DR 19, p. 186; *G. and Y. v. Norway* (not specified by applicants), Application No. 9415/81, Decision of 3 October 1983, DR 35, p. 30; *Baggs v. the United Kingdom* (noise), Application No. 9310/81, Decision of 19 January 1985, DR 44, p. 13; *Powell and Rayner v. the United Kingdom* (noise), Application No. 9310/81, Decision of 16 July 1986, DR 47, p. 22; *Vearncombe and others v. the Federal Republic of Germany* (noise), Application No. 12816/87, Decision of 18 January 1989, DR 59, p. 186; *X v. France* (noise and other inconvenience), Application No. 13728, Decision of 17 May 1990; *Zander v. Sweden* (water pollution), Application No. 14282/88, Decision of 14 October 1992.

At the same time, and without any difficulty, the Commission also began to receive individual complaints regarding to restrictions in Convention rights which, according to paragraph 2 of Articles 8 to 11 of the European Convention and Article 1 of Protocol No. 1, pursued a legitimate aim, namely, that of safeguarding good environmental conditions as a general interest. See, e.g.: *Hakansson and Sturesson v. Sweden*, Application No. 11855/85, Decision of admissibility of 15 July 1987; *Fredin v. Sweden*, Application No. 12033/86, Decision of admissibility of 14 December 1987; *Pine Valley Development Ltd and others v. Ireland*, Application No. 12742/87, Decision of admissibility of 3 May 1989; *Allan Jacobsson v. Sweden*, Application No. 16970/90, Decision of admissibility of 15 October 1995.

Thus was created an indirect way of protecting this right (protection "par ricochet"). As Professor Déjeant-Pons has written, individuals began to see their right to environment protected in connection with the Convention in two different ways: on the one hand, the effective protection of their rights guaranteed to them in the Convention might require in some cases the safeguarding of an environment of quality.[6] On the other hand, the general interest in a democratic society would permit the restriction in

the exercise of some rights and freedoms, namely those in Articles 8, 9, 10 and 11 of the Convention.

As a representative example of the latter, in the case of *Muriel Herrick v. the United Kingdom* there was at stake a restriction in the use of a bunker owned by the applicant on the island of Jersey. The restrictive measure consisted of the refusal of an official permit to authorise her owning it as a summer residence. It was justified on the grounds of the general interest to safeguard a landscape of particular interest, a so called "green zone", reputed to be one of the most outstanding features on Jersey.[7]

For some commentators, the Commission's confirmation that land development regulations are necessary with a view to preserving areas of outstanding beauty for the enjoyment both of inhabitants of Jersey and of tourists would imply that the right to environmental protection should be seen as an individual right, although collectively protected by the European bodies. Accepting this reading one may assume from the case of *Muriel Herrick v. the United Kingdom* that an indirect protection of the environment, by imposing a limitation on rights defined in Article 8, under the conditions envisaged in paragraph 2 of this provision, will be easy. However, such "serendipity" for granting collective protection to a right to environment would be contradictory to the difficulties that the European bodies have found in granting indirect protection to environment in connection with some rights and freedoms guaranteed by the Convention.

6. Déjeant-Pons, M., "L'insertion du droit de l'homme à l'environnement dans les systèmes régionaux de protection des droits de l'homme", *Revue universelle des droits de l'homme*, 1991, Vol. 3, No. 1, p. 461.
7. "According to Article 8 of the Convention … for the protection of the rights of others, where those rights are clearly identified and directly at risk", European Commission's Decision on admissibility of 13 March 1985, DR 42, p. 280.