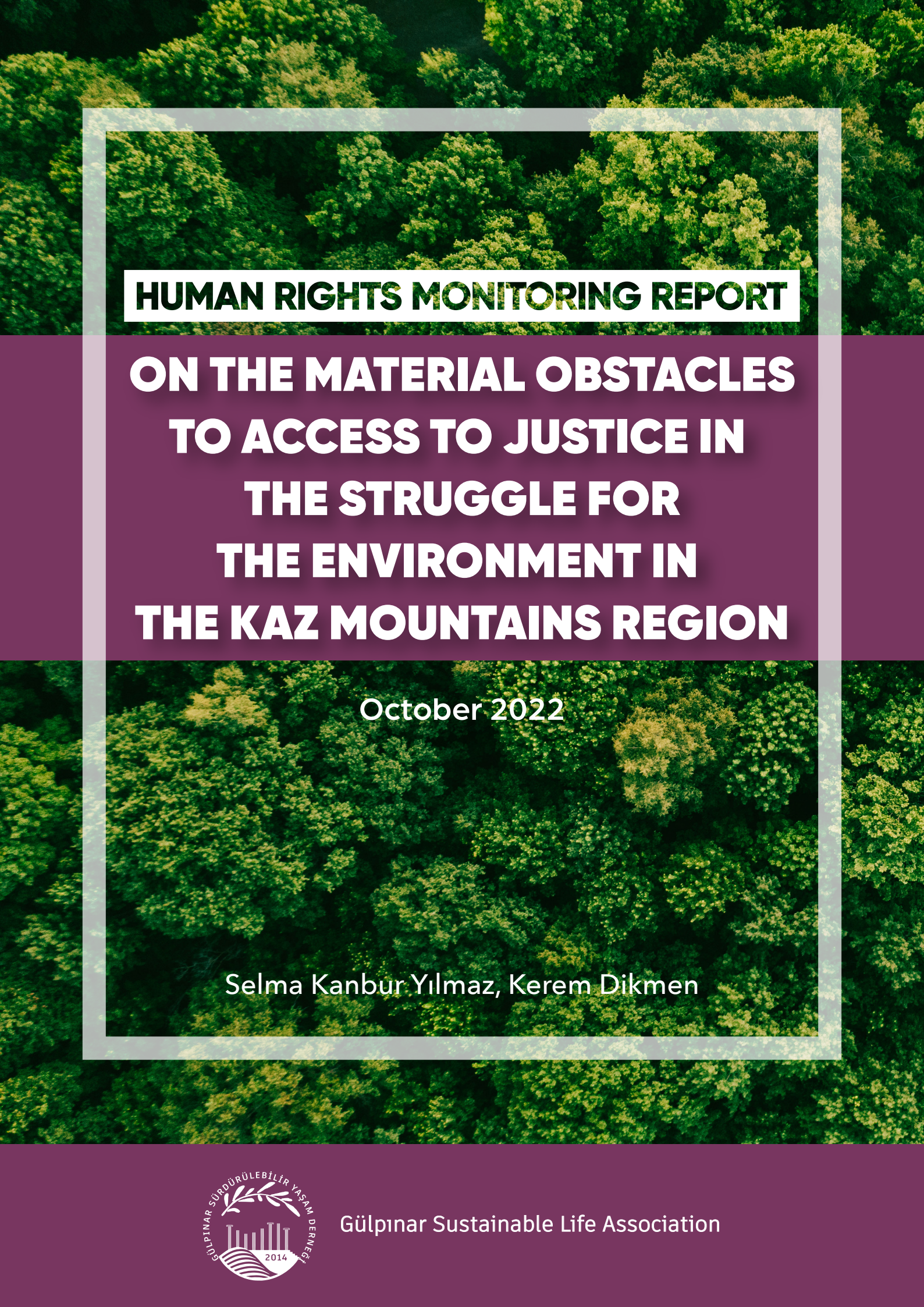

HUMAN RIGHTS MONITORING REPORT

ON THE MATERIAL OBSTACLES TO ACCESS TO JUSTICE IN THE STRUGGLE FOR THE ENVIRONMENT IN THE KAZ MOUNTAINS REGION

October 2022

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Gülpınar Sustainable Life Association

Contents

A. Introduction

The **Gülpınar Sustainable Life Association** (GSYD) is a small local association, most of the members of which are women, founded in the village of Gülpınar in the Ayvacık district of the province of Çanakkale in 2014 to protect the environment.

The village of Gülpınar is located by the River Tuzla and the Tuzla Plain, and has the status of **Tuzla Plain Large Plain Conservation Area**[1] . The River Tuzla is a vital water source that meets the needs of the twelve villages on the Tuzla Plain for agricultural irrigation. Moreover, **Tuzla** has been designated a **Thermal Tourism Centre** by a decision of the Council of Ministers[2]. There are significant historical works in the region, including the Sanctuary of Apollo Smintheion, the Roman Bridge and the Murat Hüdavendigar Mosque. The region is located on the **Biga Babakale branch of the North Anatolian Fault**[3] and is at great risk of earthquakes. For all these reasons, no power station of any kind should be constructed on the Tuzla Plain, and it should be used for agricultural production.

However, the Tuzla Plain is rich in underground thermal waters, which makes the region attractive for geothermal power plants (GPPs). There are currently **four GPPs in operation around the Tuzla Plain.** The GSYD opened court cases against the Governorate of Çanakkale regarding two of these GPP firms, demanding that the cumulative impacts of the four power plants on water resources, agricultural production, tourism, archaeological treasures and earthquake risk should be examined and the “No Environmental Impact Evaluation Required” decision be annulled. The Association won both cases and the judgements have been approved by the Council of State.

Immediately after the annulment, one of the GPP firms lodged a fresh application claiming that it had changed its technology. This project was awarded a “No Environmental Impact Evaluation Required” decision by the

1 https://www.resmigazete.gov.tr/eskiler/2017/01/20170121M1-1.pdf
2 https://www.resmigazete.gov.tr/eskiler/2006/12/20061216-6.htm
3 https://dergipark.org.tr/tr/download/article-file/56782

Governorate of Çanakkale. The Association opened a court case against this decision too but lost the case and has been faced with court costs and court-appointed expert fees which it is unable to pay.

The GSYD then determined to conduct research on the material obstacles to access to justice based on the case of associations struggling for the environment in the Kaz Mountains (Mount Ida) region that have undergone similar experiences. To this end, it applied to the Etkiniz EU Programme, and this is how the current human rights monitoring activity began.

Associations active in the Kaz Mountains region, which extends over a part of the provinces of Çanakkale and Balıkesir, **are struggling to meet the costs of the court cases which they open in order to prevent environmental violations, including lawyer's fees, the costs of court-appointed experts and on-the-spot investigations, and official fees.**

Since the costs of judicial procedures are far in excess of their budgets, many associations are obliged either to abandon their rightful cases or to divert all their energies and resources to the payment of expenses instead of using them for their own development, and are confronted with the threat of confiscations as a result of enforcement procedures for unpayable judicial expenses.

The **purpose of this report** is to conduct and report upon a human rights monitoring (HRM) activity regarding the material obstacles to access to justice in the Kaz Mountains region based on similar associations active in the region.

We commenced work by obtaining from the website of the General Directorate of Civil Society Relations[4] a list of associations in the "Environment, Nature and Animal Protection Associations" category active in the provinces of Çanakkale and Balıkesir. According to the list, **29 "Environment, Nature and Animal Protection Associations" are operating in Çanakkale and 31 in Balıkesir.**

We limited our study to cases concerning violations of the right to environment which the associations have opened since 2015. We contacted the associations and asked them whether or not they had opened any court cases related to violations of the right to environment between 2015 and the present. Four associations in Çanakkale and three in Balıkesir responded

4 https://www.siviltoplum.gov.tr/illere-ve-faaliyet-alanlarina-gore-dernekler

positively. We then sent emails to these associations requesting them to send us the court verdicts, including justifications, in the cases concerning violations of the right to environment which they had opened, or in which they had participated, since 2015, and continued our work on the basis of these verdicts.

This report begins with a chapter entitled Key Findings in which we briefly list the environmental problems in the Kaz Mountains region. This is followed by a chapter on Civil Society in and around the Kaz Mountains. Here, we describe the associations and informal organisations that are engaged in activities related to environmental problems. In the subsequent chapter on the Participation of Civil Society in Environmental Court Cases, we discuss the decisions to open cases, the results of the cases, the expenses encountered for the proceedings, and the obstacles to the right to access to justice that have arisen. In the section on the Examination from a Human Rights Perspective of the Holding of Civil Society Responsible for Judicial Expenses in the Light of the Evidence, the reader will find the legal analysis of the issue and the recommendations.

This study consists of an examination of court cases which have been opened by associations since 2015 and which have come to a conclusion. Consequently, **cases** which have been opened by the associations **within this time frame but which have not yet come to a conclusion are not included in the study.**

Professional organisations, [agricultural/cooperative] unions and municipalities also open court cases related to environmental issues in the administrative courts of Çanakkale and Balıkesir. However, these are outside the scope of the present study, and evidence about them is not included in the report. After all, since these organisations are public institutions or professional institutions of public character, they possess their own financial resources.

We hope that through this report we will be able to convey to a wide audience the voices and problems of associations seeking to live in a better environment and a better world which, despite their very limited budgets consisting mostly of members' fees and donations, undertake the task of supervising the administration by opening very important environmental court cases that bring the licences it grants before the judiciary, and so generate public benefit.

B. Key Findings

The Kaz Mountains (Mount Ida) region is under ecological attack from thermal power plants, metal mining (gold, copper, uranium), stone and sand quarries, wind power plants, geothermal power plants, and increased building construction, from the damage being caused to agricultural areas, wetlands, and historical and natural assets, and from new coastal zoning plans and higher-density settlement planning.

Although there are many organisations in the Kaz Mountains region which oppose ecological problems and violations of the right to environment, support the right to live in a healthy environment and seek to create public opinion by bringing these issues onto the agenda, opening a court case requires a corporate identity, and court cases can therefore only be opened by professional chambers, unions, municipalities and associations.

In our conversations with associations, officials of some village associations stated that they had difficulty in obtaining the services of a lawyer and that they were unable to engage lawyers due to the weakness of their finances.

During our monitoring activity, we discovered that associations that had opened court cases were mostly represented by the same few lawyers, that these lawyers provided their services on a voluntary basis, and that some of them were members of the associations in question. This habit of acting voluntarily out of necessity indicates that the problem is leading to the loss of other rights, when one considers the right of the lawyer to a fee.

Our study of the court verdicts which we received revealed that associations which lost the court cases they opened found themselves confronted with judicial expenses quite out of proportion with the sizes of their own budgets.

Associations struggle to pay the court expenses, court-appointed expert fees and on-the-spot investigation costs of which they are notified. Their financial resources are insufficient, and they face the threat of confiscations as a result of enforcement procedures. Those associations which are able to pay the judicial expenses are obliged to abandon other activities or events because they have already used up most of their resources.

Due to the high judicial costs, many associations refrain from opening court cases or try to persuade professional chambers or municipalities which have sufficient budgets to meet the judicial expenses to open cases jointly. **This situation makes the right to access to justice, which is a human right, more difficult to attain, or blocks it altogether.**

Şahinderesi Canyon– Kazdağları, Edremit

C. Civil Society in and around the Kaz Mountains

C.1. Associations

According to the information which we obtained from the website of the General Directorate of Civil Society Relations[5], **there are 865 active associations in Çanakkale and 1,541 in Balıkesir.** Of these, **29 associations in Çanakkale and 31 in Balıkesir are included in the "Environment, Nature and Animal Protection Associations" category.**

When we contacted these organisations and asked them whether or not they had opened court cases in connection with violations of the right to environment since 2015, we found that the great majority had not opened any cases. The number of associations that responded positively was four in Çanakkale and three in Balıkesir.

Many of the association officials whom we contacted said that they appeared to be active on paper but what not actually carrying out any activities. These associations said that they were unable to conduct activities because their capacity was insufficient, they had too few members and they did not have enough financial resources. These associations have few members and small budgets, and their financial resources consist of membership fees and donations. The membership fee for some of the associations was one lira.

The opening up of 79% of the area of the Kaz Mountains to tenders and prospecting and operating licences has led to very intensive violations of the right to environment. Since 2010, in particular, the environmental problems of the region have mounted. **All of the court cases we studied were opened by associations established after 2012.** During our discussions with the association officials, they said that they had needed a corporate identity in order to open a court case, and that they had been obliged to found an association for this reason.

5 https://www.siviltoplum.gov.tr/illere-ve-faaliyet-alanlarina-gore-dernekler

C.2. Informal Organisations

After the street movement that began in Istanbul's **Gezi Park** in May 2013 and then extended across the whole of Türkiye, **"Defence and Solidarity" organisations**[6] were formed at neighbourhood level. The main aim of these organisations, which spread across the whole country, was to protect their own living spaces from the rapaciousness of public administrations and companies. The defenders came together in their own neighbourhoods, held regular forums, organised acts of civil disobedience over the environmental issues in the places where they lived, organised duty rosters to defend areas that were being opened up to exploitation, supported acts of defence being organised in other neighbourhoods and debated what needed to be done for a more liveable world.

Similar "Defence and Solidarity" organisations were set up in the neighbourhoods and villages in the Kaz Mountains region too. Initially established by activists coming together, they later felt the need to operate under an umbrella and began to form "platforms".

A large number of environmental platforms have also been established between Çanakkale and Balıkesir since 2010. Some of these are local (e.g.: the Biga Ecology and Life Platform, or the Ayvalık Nature Platform), others are based in one province (e.g.: the Çanakkale Environment Platform), and others encompass the Kaz Mountains region as a whole (e.g.: the Kaz Mountains and Mount Madra Environment Platform[7]).

Most recently, the **Kaz Mountains Ecology Platform (KEP),** consisting of various organisations in Çanakkale and Balıkesir, announced its establishment at a "Press Conference[8] on the Declaration of the Establishment of the Kaz Mountains Ecology Platform" on February 9th, 2021. In a statement to the press, it said: *"From the Kirazlı gold mine to the Çırpılar coal-fired power plant, from the geothermal power plants of Tuzla village to the mining activities around Mount Madra and the mine waste spreading to the Madra Reservoir basin, from the Halilağa Copper Mine to the Koza Gold Mine on the verge of the Atıkhisar Reservoir, from the thermal power plants ringing the Biga Peninsula to wind power plants extending across the whole region, and from metal mining to quarrying, the Kaz Mountains and their region are*

6 Yeniden İnşa Et: Caferağa ve Yeldeğirmeni Dayanışmaları Yatay Örgütlenme Deneyimi, NotaBene Yayınları, 2020.
7 https://www.canakkaleicinde.com/bolgesel-cevre-platformu-olusturuldu/
8 https://www.yesildirenis.com/2021/02/09/kazdaglari-ekoloji-platformu-kuruldu/

under occupation by policies of pillage and rent. Throughout the country, the ecological struggle against these practices is on the rise. It has long been waged successfully in our own region too. At a time when the ecological threat is growing even more, the time has come to expand and unite this struggle in the Kaz Mountains."

The press statement said that the KEP had been established by 67 constituents. The list of these constituents given at the end of the statement included 26 that were categorised as **Environmental Organisations.** An examination of these shows that they comprised one **union,** one **forum,** one **initiative,** one **group,** one **council,** four **associations,** eight **platforms** and nine **solidarity organisations.** Thus of these 26 environmental organisations, there were only four associations with a corporate identity – i.e., with the credentials to open court cases.

GPP drilling zones – Çakıllıtepe, Gülpınar, 2017

The list of constituents also names four **professional organisations,** ten Çanakkale branches of **trade unions,** ten **other associations and institutions,** two **cooperatives,** the provincial offices of six **political parties,** one **union,** two **arts organisations,** five **women's and LGBTI+ organisations,** one **walking group** and six **individual** participants.

According to the data obtained from the monitoring activity, **these organisations and activists are mainly made up of women.** An examination of the evidence about the court cases also shows that this is true of the associations: women formed the majority both of the members and of the management boards.

Ever since the **Bergama gold mine struggle**[9] began in the 1990s, women have been at the forefront of numerous environmental resistance movements. The greater sensitivity of women to environmental problems and the greater intensity of their participation in environmental struggles requires such a comprehensive analysis that it could be the topic of a separate study. However, research shows that **women, particularly poor women, are the most affected by the climate crisis.**

According to a report[10] by the feminist environmental organisation the **Women's Environmental Network,** women have a 14% greater risk of being injured or dying as a result of natural disasters, while of the 26 million women who have migrated as a result of natural disasters caused by climate change, 20 million are women. Climate change is also known to have serious negative impacts on agricultural production and food security[11]. While climate change makes victims of more and more women, it also exacerbates gender inequality.

An article entitled "Gender equality: the cornerstone of environmental and climate justice"[12] published on the website of the United Nations Development Programme states that gender inequality and the unequal access of women to the soil, natural resources and other natural assets limits their abilities to cope with climatic and environmental crises and disasters and to benefit fully from their environmental rights.

Another community which will be worse affected by climate change than the other segments of society are the LGBTI+. The 101-recommendations Guid[13] of the May 17th Climate Association states that LGBTI+ individuals will be more greatly affected by the results of the climate crisis for reasons such as discrimination, isolation, limited social networks, informal employment, low income-earning opportunities and limited access to safe spaces, resources and means of adaptation. The same publication adds that "LGBTI+ in general and trans individuals in particular face financial difficulties as a result of discrimination and intolerance and have difficulty in finding secure and inclusive jobs. Unemployment leaves the LGBTİ at greater risk of poverty and homelessness and makes them more vulnerable to the effects of climate change."

9 https://bianet.org/bianet/siyaset/160766-bergama-altin-madeni-direnisi-topragin-bekcileri#:~:text=22%20Nisan%201997'de%20sabaha,baltalarla%20maden%20etraf%C4%B1nda%20n%C3%B6bet%20tuttu.
10 https://www.wen.org.uk/wp-content/uploads/Why-women-and-climate-change-briefing-2.pdf
11 https://hdr.undp.org/system/files/documents//2016humandevelopmentreportpdf.pdf
12 https://www.undp.org/blog/gender-equality-cornerstone-environmental-and-climate-justice
13 https://www.17mayis.org/images/publish/pdf/iklim-101-tavsiyeler-kilavuzu-23-12-2021.pdf

Ecofeminism makes a link between the domination of nature and the oppression of women, and states that this link stems from the patriarchal-capitalist structure of power. The way to reduce the effects of the climate crisis is to struggle for a gender-sensitive right to environment.

C.3. Organisations' Access to Justice

Having waged a struggle for the environment for many years, the Kaz Mountains region also has an important place in the culture of organisation. The spread of environmental damage across the whole area has brought organisation all the way to the villages. Activists have gathered together, given themselves names like solidarity organisations, defence organisations and forums, and fought both on local issues and on the other environmental issues across the entire region. However, when it comes to putting environmental issues before the judiciary, very few associations take this duty upon themselves.

A review of the court verdicts that form the topic of our research showed us that associations prefer to open court cases jointly with professional organisations, unions or municipalities, which generally have stronger financial resources both for meeting the costs of opening a case and for paying the judicial expenses and court-appointed expert costs that will arise if the case should be lost. Yet these organisations are not civil society organisations and essentially form a part of the administration (the state). Simply being obliged to make such choices is therefore a concrete indication of the obstacles to access to justice from the point of view of the associations.

Many environmental disasters have been halted and annulled as a result of the struggles waged made by the associations in the region and their efforts in bringing the matters to court. For example, "No EIA Required" decisions awarded for power plant project applications – without doing any research or calculating the cumulative effects – just because they fall within the legal limit for installed capacity have been annulled, and **the examination and monitoring procedure which the administration ought to follow has been set in motion thanks to the efforts of the associations, resulting in a public benefit for all citizens.**

Professor Dr. Meral Sungurtekin Özkan, Head of the Department of Civil Procedure and Enforcement and Bankruptcy Law at the Faculty of Law of Yaşar University, has the following to say about complaints and access to justice: *"Access to justice is not only about having the opportunity to apply to judicial organs; it also refers to the identification and removal of the obstacles which prevent this, as well as to judicial procedures and rules that open the way for* ***the applicant seeking justice to access this right easily in the shortest possible time and at the lowest possible cost,*** *and to the adoption of the necessary arrangements in this respect."*[14]

Distancing associations from judicial processes under the pressure of judicial expenses leads to a reduction in the public benefit and to irreparable damage to the environment, and this in turn represents a violation of the **right to live in a healthy environment**[15]**.**

14 https://hukuk.deu.edu.tr/wp-content/uploads/2015/09/MERAL-SUNGURTEK%c4%b0N.pdf
15 https://www5.tbmm.gov.tr//develop/owa/tc_anayasasi.maddeler?p3=56

D. Participation of Civil Society in Environmental Court Cases

According to the Kaz Mountains Region Mining Report[16] published by the TEMA Foundation in April 2020, "...An area of 1,697,062 hectares of the Biga Peninsula and the Northern Aegean has been defined as the Kaz Mountains Region. Based on data from the General Directorate of Mining and Petroleum Affairs (MAPEG), licences have been issued covering 1,294,335 hectares (79%) of this area. The region has been divided into 1,634 licences at the tender, prospecting and operating phases. It is clear that such intense mining activity will greatly damage the entire ecological, cultural and economic structure of the region." **The Kaz Mountains, 79% parcelled out with mining licences, have been made extremely vulnerable to environmental damage if not destruction.**

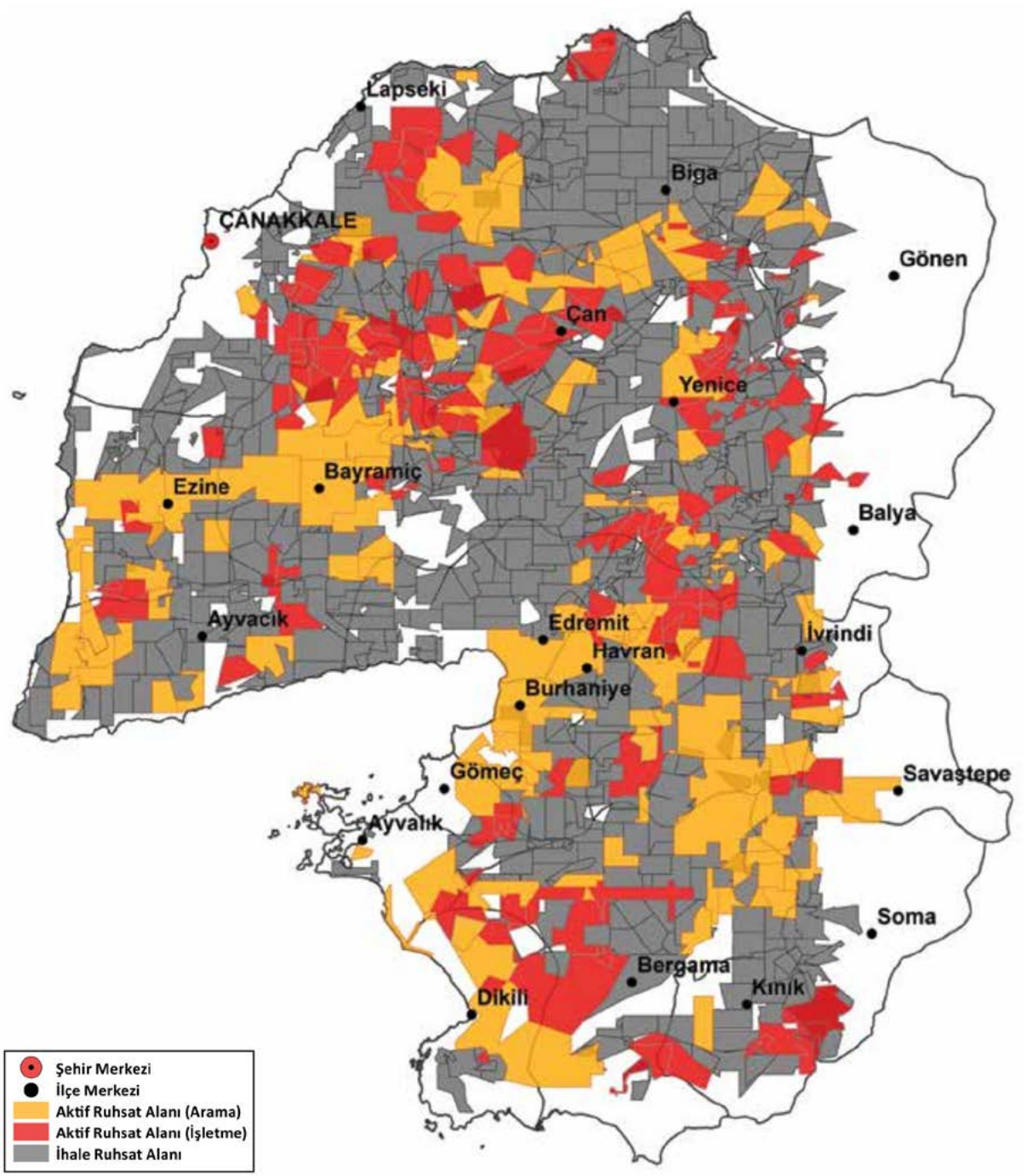
There is no doubt that these mining activities will spoil the ecology of the Kaz Mountains region and negatively affect its economic structure as well. Agriculture and animal husbandry, which are the basic sources of livelihoods in the region, are being displaced by mineral prospection and mining, and such arable and grazing land that remains is being polluted by the mining activities, along with the drinking and irrigation water. New instances of environmental damage are occurring every day, and campaigners for rights and life, including the associations, are having difficulty keeping up.

In this chapter, we discuss both the judicial expenses that are faced when a court case is lost and the outcomes of those cases that are won.

16 https://cdn-tema.mncdn.com/Uploads/Cms/kaz-daglari-raporu_3.pdf

D.1. Cases Lost

An examination of the full verdicts, including justifications, from the 29 environmental court cases opened since 2015 shows that 11 cases have been lost, and that the judicial expenses which the associations have been ordered to pay total TRY121,624. Some of these cases and the brief interviews we conducted with the rights holders are as follows:



Licensed Mining Zones in Kazdağları, TEMA, 2020

Maslaktepe Wind Power Plant Capacity Increase Project

As stated in the full verdict, including the justification, dated June 24th, 2021, the case opened by the Kaz Mountains Natural and Cultural Assets Conservation Association for the annulment of the **"Positive Environmental Impact Evaluation (EIA)" decision issued by the Ministry of Environment and Urbanisation** for the Maslaktepe Wind Power Plant Capacity Increase Project planned to be carried out by Eni Energy Construction Contracting Trade and Industry A.Ş. in the location of the villages of Yeniceköy and Kaykılar in the Bayramiç district of the province of Çanakkale **was rejected** and it was decided that **TRY25,014.95 in judicial expenses and court-appointed expert and on-the-spot examination costs should rest with the litigator,** the Kaz Mountains Natural and Cultural Assets Conservation Society (Case No.: 2020/1317 Decision No. 2021/1127).

The associations visited the Governor of Çanakkale on July 29th, 2020 and delivered a petition to the governorate in which they conveyed the environmental problems in the region and their proposed solutions. **The petition**[17] **stated that:** ***"We are concerned about the increase in the number of wind power plant projects for which licences have been issued in our region, the choice of the wrong sites for these projects and their capacities.*** *Projects of this kind, which at one time we defended as sources of renewable energy, have gone into operation at İntepe in Çanakkale, near the Ayvacık and Ezine district centres and in Bayramıç and the Çan area. There are also WPPs still under construction. Meanwhile, new projects are being awarded "No EIA Required" decisions. These are projects like the Saroz WPP, Üçpınar WPP, Gazi 9 WPP, Yeniköy WPP (Mutlu), Kocalar WPP, Maslaktepe WPP, Yeniköy WPP (Ayes), Göztepe WPP, Çanakkale WPP; Gülpınar WPP; Gelibolu WPP and the Ares WPP projects.* ***When their numbers and capacities are too high, they are situated close to settlement areas, or they are constructed within the forest ecosystem or on meadows and agricultural areas, WPP plants lead to innumerable forms of harm and negative effects.*** *Due to the damage caused by WPPs, the people of Karaburun are complaining bitterly. We are worried by the Increasing numbers of WPP projects in our region too, being constructed in the wrong places and with excessive capacities. We request:*

17 https://www.habereguven.com/canakkale-cevre-orgutleri-valiyle-gorustu-alamo-su-tahliye-edin

- *That an inventory be drawn up of **all the WPP projects in our region** for which licences have been issued or which have gone into operation, and that they **be examined from the point of view of site selection etc., and their cumulative impacts evaluated.***
- *That an inventory be drawn up of all the projects being planned, and that they should be evaluated together with regard to the choice of sites and the potential impacts on ecosystems."*

Süheyla Doğan – President of the Kaz Mountains Natural and Cultural Assets Conservation Association

How have the judicial expenses that you have faced due to the cases you have lost affected your motivation?

The cases we lose affect us negatively because they impose a serious financial burden on us. We lost one wind power plant (WPP) case and the court-appointed expert fees, the case fees and the lawyer's fees for the other party, all together, amounted to over TRY30,000, I think. So our association was faced with a substantial burden. Of course we collected it and paid it somehow but it seriously restrained us from opening court cases in future. Especially WPP cases. We haven't yet lost a case in metal mining and we have had the "No EIA Required" decisions overturned to a great extent. There has been no problem in ecotourism cases either; we have won them all. With regard to WPP cases, we lost the first case but won on appeal to the Council of State so we won in the end. If we had lost that one too – if the Council of State hadn't annulled the decision of the local administration and the verdict of the local court – then we'd have had at least another TRY30,000 in costs from that one too. For this reason, these court costs are really a deterrent for us.

What are your thoughts on opening similar environmental court cases in future as an association?

Given the risk of losing, we've come to talk among ourselves about whether or not we should open any new WPP cases. And this constitutes a serious obstacle to our struggle for rights. Actually, cases of this kind should be considered public cases and the legal expenses of civil society organisations should be met from the public purse. When we first apply, our application for legal aid is accepted one way or another – the Balıkesir and Çanakkale administrative courts have got used to that. We open the case with an application for legal aid but when we lose in the end we have to pay all the expenses. We have contacted the political parties about this – the CHP and the other parties with groups in Parliament – and asked them to draft a bill so that EIA court cases like this opened by civil society organisations should be counted as public cases and the costs of court-appointed experts be met out of public resources. A number of parties proposed a bill but so far to no avail. There's a need for a major campaign on this. It would very beneficial for all the ecological organisations throughout Türkiye to wage some kind of a campaign to save themselves from this material burden in legal cases.

The Helvacı Coal Mine Project Case

As stated in the full verdict, including the justification, dated June 16th, 2022, the case opened by the Çan Environmental Association and an individual citizen for **the annulment of the "Positive Environmental Impact Evaluation (EIA)" decision** No. S68848 issued by the Ministry of Environment and Urbanisation for the Helvacı Coal Mine Project planned to be carried out by İÇDAŞ Çelik Enerji Tersane ve Ulaşım San. A.Ş. at Altıkulaç in the village of Helvacı in the Çan district of the province of Çanakkale was **rejected** and it was decided that **TRY37,500.25 in judicial expenses and court-appointed expert and on-the-spot examination costs should rest with the litigator,** the Çan Environmental Association (Case No.: 2021/1150 Decision No. 2022/732).

In a statement[18] made following the court case, Attorney Ümran Aydın, the president of the Çan Environmental Association, **stated that:** *"This project has been used as a place-holder for the thermal power plant project. The coal mine project is the Trojan horse that will enable İÇDAŞ to enter the gates of the village of Helvacı. We have seen in many projects how small-scale projects have been used to make it look as if the environmental damage is minimal, and make people think it can be prevented, and then to turn the whole of the Kaz Mountains into a mineral prospecting zone under a large number of licences.* ***This project too is a thermal power plant project in the guise of a coal mine.***

"Although our district is struggling to survive due to heavy air pollution, the ***report of the court-appointed expert*** *who came out against us in the annulment case i****s farcical. It is written as if there is no cumulative impact in the province. In other words, according to the report, there is neither a thermal power plant nor a Turkish Coal Board open coal mine in Çan.*** *Even the Asmalı Limestone Quarry right next to the project does not exist. And yet in reality the province is surrounded 360 degrees by thermal plants and mines".*

18 https://www.gazeteduvar.com.tr/canda-yeni-maden-tartismasi-bilirkisi-raporu-evlere-senlik-haber-1550586

Attorney Ümran Aydın – Çan Environmental Association President

How have the judicial expenses that you have faced due to the cases you have lost affected your motivation?

They've affected our motivation very badly. Particularly with the coal mine case, where the court-appointed expert costs are very high... If we lose this case and have to pay those expenses then I don't think we would open any more court cases from now on. What we really need more than anything else is EU funds. We hear that the EU provides very good support to environmental associations. However, we don't speak foreign languages and we are unable to submit projects for these funds. Actually, we could get our financial support from EU funds. It would be great if somebody who knew foreign languages and is able to write projects could support us. There are so many environmental and ecological organisations. If they could help us and we could come to an agreement with a consultancy firm and develop projects that could attract financial support and funds, and if we were able to know what we could do, I think we could overcome a lot of things, because our hands and feet are tied by financial shortcomings.

What are your thoughts on opening similar environmental court cases in future as an association?

As per the decision our association has taken, the officials and members of the association are obliged to pay the expenses for court cases that we lose. Unless the people of Çan join in and pay these expenses, we have decided not to open any more court cases by ourselves as an association. We want to open cases together with professional environmental organisations. We have decided to open cases with the Chamber of Agricultural Engineers or nature rights institutions, for example, or with professional environmental communities like TEMA. Otherwise we won't open any more cases. We haven't been able to open court cases in conjunction with the municipality. This is something which depends on the stance of the mayor. If there's an environmentalist mayor and they can set aside a budget, we could open cases together with them.

The Mobile Crumbling Plant Project Case

As stated in the full verdict, including the justification, dated February 7th, 2022, the **case opened** by the Ayvalık Nature Association, the Kaz Mountains Natural and Cultural Assets Conservation Association, the EgeÇep (Aegean Environmental and Culture Platform) Association and seven citizens, for the annulment of the "No Environmental Impact Evaluation Required" decision No. E-202147 issued on May 4th, 2021 for the "mobile crumbling plant project" planned to be carried out in the neighbourhoods of Değirmenbaşı and Küçükılıca in the İvrindi district of the province of Balıkesir, on the grounds that it is contrary to the law, **was rejected** and it was decided that **TRY12,492.60 in judicial expenses and court-appointed expert and on-the-spot examination costs should rest with the litigator** (Case No.: 2021/607 Decision No. 2022/152).

In a statement issued to the press[19] in the wake of the case, Attorney Filiz Sonsuz, the lawyer for the Ayvalık Nature Association and spokesperson for BURÇEP (Burhaniye Environment Platform), said that *"Although the name of the project refers only to İvrindi, the mineral field in question falls within the district boundaries of Burhaniye and is very close to Burhaniye's rural neighbourhoods. We have voiced our objections to this project right from the start on account of the irreparable harm which it will cause. Yet in addition, the Governor of Balıkesir issued a "No EIA Required" decision for the mobile gravel crumbling and sieving facility which it is said will be used for insulation materials.* ***As a result of the investigation carried out in the case we lodged for the annulment of this decision, unfortunately the team of court-appointed experts did not examine the file as a whole in conjunction with the main project, and in our view also made a rather incomplete assessment of the mobile crumbling and sieving facility."***

19 https://www.gazeteduvar.com.tr/burcep-derdimiz-sadece-altin-madenleri-degil-haber-1551902

Attorney Filiz Sonsuz – Lawyer for the Ayvalık Nature Association

How have the judicial expenses that you have faced due to the cases you have lost affected your motivation?

Well it's not very nice of course. We had to pay really substantial sums. The court fees didn't amount to so much but the costs of the court-appointed expert were very high. So far we have been able to pay thanks to the solidarity among environmental organisations. To be honest, as the lawyer in these cases, I felt bad about it – I mean, thinking about whether there was anything else I could have done that I didn't do or wasn't able to. Because nobody should have to take on that burden. We managed to deal with it along with our friends in a spirit of solidarity but of course it affects you.

What are your thoughts on opening similar environmental court cases in future as an association?

We aren't discouraged by things like this. Perhaps we think things over for a bit longer. Dealing with it in solidarity makes us feel better but we have no intention of giving up. We never know to begin with whether we will win the cases we open or not. But if we don't open a case, we're lost from the start. We even open some cases knowing that we are going to lose – against mining companies, for example, because they have a really powerful lobby, such as gold mining. We open these kinds of cases knowing that our chances are not very good. But why do we do it? To show that we haven't given up. Our sense of responsibility makes us do it. Even if we lose, to have something to say to our grandchildren in many years' time, when they ask what we did while all this was going on – at least to be able to say, "We tried to do this and this, dear. We could only achieve so much. This was as much as we could do", instead of saying we did nothing. This feeling, as well as the possibility of success, is what makes us open court cases and motivates us, regardless of how strong the institutions confronting us are. So of course we are going to carry on. Either we'll become participants in ongoing cases or we'll open cases ourselves; I mean, we aren't going to give up.

The Transmark Geothermal Power Plant Technology Alteration Project Case

As stated in the full verdict, including the justification, dated February 17th, 2022, the **case opened** by the Gülpınar Sustainable Life Association for the annulment of the "No Environmental Impact Evaluation Required" decision issued in accordance with Article 17 of the EIA Regulation in connection with the Transmark Geothermal Power Plant (GPP(Technology Alternation (19 MWe/19 MWm) Project planned to be carried out by Transmark Turkey Gülpınar Renewable Energy Generation Industry and Trade Corp. on a site in the Yukarıköy neighbourhood in the Ayvacık district of the province of Çanakkale (Block 128, Parcel 193, Licence No. İR: 17/44) **was rejected** and it was decided that **TRY28,664.76 in judicial expenses and court-appointed expert and on-the-spot examination costs should rest with the litigator,** the Gülpınar Sustainable Life Association (Case No.: 2021/619 Decision No. 2022/227).

In a statement[20] issued after the investigation by the court-appointed expert, the Gülpınar Sustainable Life Association stated that they were ***"defending the right to live in a healthy and balanced environment*** *mentioned in Article 56 of the Constitution", and that they had reiterated that they "do not want GPPs that threaten our olive groves, orchards, vegetable gardens and stockbreeding activities, our drinking and irrigation water, the air we breathe and the historical fabric."*

20 https://www.evrensel.net/haber/444285/gulpinardaki-jes-projesine-karsi-acilan-davada-bilirkisi-kesfi-yapildi

Zerrin Soysal – President of the Gülpınar Sustainable Life Association

How have the judicial expenses that you have faced due to the cases you have lost affected your motivation?

Well it affected us negatively of course. Our association was already in financial difficulties, so to lose a case when we were so completely in the right affected our motivation very badly. This was a case that we had previously won. The firm said that they had changed their technology and the Governorate issued them with another "No EIA Required" decision. This firm didn't abide by the injunction order after we won the first case either. They kept on building the plant. We made a formal complaint but the Ayvacık State Prosecutor turned us down, saying it fell within the authority of the Provincial Directorate of Environment and Urbanisation. In other words, they told us to go to the people we were in dispute with. When we lost the case which we had previously won we were demoralised. So we don't want to lose these cases. Let's not lose and have them ask us for money.

What are your thoughts on opening similar environmental court cases in future as an association?

The worst thing of all is that when we face environmental problems and difficulties like this in the future, we are going to think twice about opening a court case. We'll be thinking about how we can meet the costs of the case. And this will stop us from being brave about seeking our rights. Of course, when we are in the right, when our soil, our air, our water and our environment are in danger, we won't refrain from reacting; we'll do everything we can. But if our reaction... if these activities are going to have a financial cost, then we'll hesitate a bit about the steps we take. It will make things difficult for us, but will we give up? I don't think so.

D.2. Cases Won

Twelve of the court cases which have been opened and won by the associations in the Kaz Mountains (Mount Ida) region since 2015 were cases for the annulment of **"No EIA Required"** awards – namely:

- The proposed **Limestone Quarry Crumbling and Sieving Facility Project** in the Kocaseyit neighbourhood of Havran in Balıkesir;
- The proposed **Gold Mine Explosive Materials Extension Project** in the Büyükşapçı neighbourhood of Havran in Balıkesir;
- The proposed **Deep Sea Discharge Project** in the centre of Edremit, Balıkesir;
- The proposed **Deep Sea Discharge Project** in the Kemalpaşa neighbourhood of Gömeç, Balıkesir;
- The proposed **Deep Sea Discharge Project** at Güre in Edremit, Balıkesir;
- The proposed **Geothermal Power Plant-2 Project** in the Tuzla neighbourhood of Ayvacık, Çanakkale;
- The proposed **Geothermal Resource Prospecting Project** at Türközü in Ayvalık, Balıkesir;
- The proposed **Geothermal Resource Prospecting Drilling Activity Project** in the Gazikemalpaşa neighbourhood of Ayvalık, Balıkesir;
- The proposed **Transmark Geothermal Power Plant Project** at Tuzla-Gülpınar-Kocaköy in Ayvacık, Çanakkale;
- The proposed **Granite Quarry Project** in the Bağyüzü neighbourhood of Ayvalık, Balıkesir;
- The proposed **Geothermal Resource Prospecting Drilling Activity Project** in the village of Büyükhusun in Ayvacık, Çanakkale, and
- The proposed Limestone **Quarry Crumbling and Sieving Facility Project** in the Tarlabaşı neighbourhood of Havran, Balıkesir.

Two cases opened by associations for the annulment of **"Positive EIA"** awards were also won:

- The proposed **Çırpılar Thermal Plant Ash Storage Site and Coal Processing and Breaking and Sieving Project** in the village of Çırpılar in Yenice, Çanakkale, and
- The proposed **Koza Gold Silver Mine Project** at the villages of Serçiler and Terziler in the central district of Çanakkale.

Ekrem Akgül – President of the Ida Solidarity Association

How have the judicial expenses that you have faced due to the cases you have lost affected your motivation?

Ultimately, it shouldn't cost anything to seek one's rights. At least, there shouldn't be a financial cost. When we stand up for our rights, we are confronted with sums that exceed the budget of the association. Even though this may not affect our morale, I do see it as a deterrent factor. Nevertheless, we are trying to persist. We have no intention of abandoning the legal route. We regard the legal plane as one of the fields of our struggle, and we intend to go on pursuing it. Of course, it makes it very difficult. At today's rates, it is impossible for an association – let alone an association like ours with a monthly membership fee of one lira – to meet this challenge on the basis of membership fees and the like. We are trying to deal with it by creating broader pools and making them as broad as possible. We don't get demoralised; we see this as another part of the battle. We are aware that the creation of these complications and the building of this monetary wall constitute an obstacle to the CSOs. Even so, we continue to open court cases, starting with applications for legal aid.

What are your thoughts on opening similar environmental court cases in future as an association?

Once we've applied for legal aid, we don't face a great deal of expenses until the case comes to an end. There are only the court-appointed expert reports. Those reports can cost large sums and they want you to deposit them in advance. Up to now we've always done that using legal aid of course. And we're not on our own: we strengthen our fortifications too by increasing the number of participants or opening joint cases with CSOs. We have no intention of giving up. We are well aware it's used as a deterrent factor. Well, it's those who have turned it into a deterrent to applying for justice who should be ashamed about that. When you set out on a path of struggle, you are up against the decision-makers. We'll never abandon the legal ground in our fight against the decisions of the central administration which decides everything. The Ida Solidarity Association was established in 2015. Before that, since a

corporate identity is required in order to open a court case, we used to participate as individual citizens – hundreds of us – in cases brought by the Chamber of Agricultural Engineers. Now we have our association. One of the aims of establishing the Ida Solidarity Association was to attain a corporate identity and take action on the legal plane.

Judicial expenses are increasing constantly. In our last case concerning the Koza Gold Silver Mine Project, I think they were more than 40,000 liras, but since we won the case those costs were transferred to the opposing party. We don't think about it in terms of whether we will win or lose or whether we will be burdened with this debt or not. Since we see this as a field of struggle, we will never abandon the legal plane. One day, Türkiye too will hand out law and justice; we are trying to follow this path in this belief. Most of the activities of our association are concentrated in Çanakkale but we are in solidarity with all parts of Türkiye. We have been all the way to Hakkari. Hakkari's environmental profile has not yet come onto the public agenda at all because it's a region related to security and so it's always security that's talked about, but we have been there and held a meeting of civil society and seen for ourselves just how great its environmental problems are too. We've been to Van and Sinop. We've supported the anti-nuclear platform. We've been to Soma and attended the hearings as observers. And so it will continue, both on the campaign trail and on the legal plane. Whatever obstacles and walls they have tried to build against us, we have never abandoned this plane. Just as we resisted the Çan Thermal Power Plant that came up in 1998, so we will keep going and never weary from now on. So as not to load all the judicial expenses onto the CSOs, assistance can be obtained from municipalities and the union of municipalities. Çanakkale Municipality has participated in some of our cases, for example, because they have a financial capacity. So we will find this kind of support from somewhere or other and continue the struggle.

The case for the annulment of the “Positive EIA” decision issued for the proposed **Duygu Wind Power Plant Project** in the Edremit and Havran districts of Balıkesir and at Hacıhasanlar in the Yenice district of Çanakkale was lost in the court of first instance but this verdict was overturned by the Council of State upon appeal.

Another court case was opened to annul the refusal of the request made to the Balıkesir Metropolitan Municipality for an end to the infill of the **Akçay Wetland Area** and to the dumping of rubble in the area, and this refusal was annulled.

The case opened for the annulment of the **1:5000 scale Settlement Plan and the 1:1000 scale Settlement Implementation Plan aimed at “Ecotourism”** in the village of Köylü in the Bayramiç district of Çanakkale was also won.

The case opened for the annulment of a **tender announcement** made by the General Directorate of Mineral and Petroleum Affairs for **606 mineral fields** was rejected by the court of first instance on the grounds of the statute of limitations, but this decision was overturned by the Council of State upon appeal

E. Examination from a Human Rights Perspective of the Holding of Civil Society Responsible for Judicial Expenses in the Light of the Evidence

E.1. General Framework

In criminal cases in Türkiye, plaintiffs are not obliged to pay any of the judicial expenses. Judicial expenses such as fees for court-appointed experts, postal costs and lawyer's fees – if the participants have had themselves represented by their own lawyers – are collected only from the defendants, if they are convicted and the convictions are finalised.

In civil lawsuits between parties without any hierarchy among them with respect to the dispute in question, and which are at first glance on an equal footing, a system operates in which plaintiffs are obliged to pay the judicial expenses in advance at the opening of the case, during the process, and when the verdict arrived at is taken to a higher court, but are able to recoup these judicial expenses which they have shouldered to begin with from the opposing party upon the announcement of the verdict if they have been found to be in the right.

In administrative cases, the main difference from the two types of cases above is that the party against which the case is opened is always an administration. Administrations are either units within the organisation of the state or organisations of a public nature. Examples of organisations against which administrative cases may be opened include provincial governorates, municipalities, professional organisations of public character, universities

and ministries. The plaintiffs in administrative cases may be real persons or corporate entities in private law (associations, etc.). They can also be public institutions – in other words, an administration may be a plaintiff in an administrative case or may be taken to court by another administration. An example of this is the case opened by the Bar Associations and the Union of Bar Associations against the decree of the Presidency withdrawing from the Istanbul Convention.

Another aspect of administrative cases that distinguishes them from other cases is that they constitute the supervision of one state power, the administration, by another, the judiciary. To put it another way, whether an administrative case is won or lost, all outcomes meet the constitutional need for ensuring that the acts and operations of the administration are supervised by the judiciary. **From this point of view, the obligation to shoulder judicial expenses in administrative cases has to be considered in a different light from the rules that apply to civil cases, since the loss of the case by the administration also serves as a means of bringing the act or operation of the administration into conformity with the law.**

In administrative cases such as environmental cases, in particular, in which the acts and operations of the public authority are supervised from the point of view of the public benefit, the deterrent effect of judicial expenses may mean that not only individuals but also society as a whole are unable to access a basic guarantee. For while cases opened against an individualised administrative operation (the annulment of an appointment or an administrative fine, or the refusal of a permit, for example) do not create a public benefit, administrative cases concerned with access to the right to environment result in a public benefit, not an individual one. Even if the litigants are unable to prove the righteousness of their case, the subjection of an operation of the state related to the environment to judicial supervision is of benefit to society. Consequently, it would not create an injustice in terms of the balance of costs and benefits to expect the price of a judicial process that is useful for society to be met not by individuals but by society – that is, from the state budget.

Besides and in addition to procedural guarantees, administrative cases are related to a material right. This material right may consist of one or more of the rights secured through various rights instruments, such as the right to property, the right to association, the right to assembly, the right to demand respect for one's private life or the freedom of expression.

Cases concerned with the right to environment, which is the subject of this report, form the subject of the *"Right to Health Services and Protection of the Environment"* referred to in Article 56 of the Constitution of the Republic of Türkiye. The first clause of this article guarantees the right of everyone to live in a healthy and balanced environment. The second states that *"It is the duty of the State and citizens to improve the natural environment, to protect the environmental health and to prevent environmental pollution*." In this way, from the perspective of individuals, the Constitution characterises the protection of the environment not only as a right but also as a duty to be fulfilled. Without a doubt, the state, with its organised power and institutions, has very special resources for this duty of protection, and consequently has greater obligations as well. On the other hand, the duty of individuals described in this clause is not a personal duty but a public duty, and given the broad scope of the concept of the environment, it can only be fulfilled by setting the mechanism of the state in motion. In other words, it creates a contradiction for the state to oblige citizens to accept a series of material inconveniences when they fulfil the mission of protecting the environment which it has placed on them by setting the wheels of the judiciary in motion.

Neither the European Convention on Human Rights (ECHR) to which Türkiye is a party nor its additional protocols name the right to environment as a basic right, nor do they permit individual applications solely for violations of the right to environment. Nevertheless, the right to environment – or the right to life in a healthy environment – is closely related to the other fundamental rights cited in the Convention and the protocols. The right to life, the right to property and the right to respect for one's private life, in particular, are among the fundamental rights that may potentially be violated due to the failure of the state to fulfil its positive obligations regarding the environment. The European Court of Human Rights (ECtHR) declared in its verdict in the *Öneryıldız v. Türkiye* case that the rights to property and life[21] had been violated in connection with the right to environment. In the case of *Gorraiz Lizarraga et al v. Spain,* in which four individuals and an association claimed that a violation had occurred in a case concerning the construction of a dam that would leave a nature conservation zone and villages under water, the court examined the application from the point of view of the right to a fair trial.[22] Similarly, in the *L'Erabliere A.S.B.L. v. Belgium case,* in which the EctHR considered an individual application from an association established in Belgium concerning the judgement of their complaints against the granting of planning permission for the expansion of a waste collection site, the EctHR

21 https://hudoc.echr.coe.int/eng-press?i=003-572293-574829
22 https://hudoc.echr.coe.int/fre?i=002-4430

addressed the applicant's claims from the angle of the right to a fair trial and determined that a violation had taken place.[23] In its decision *in Guerra et al v. Italy,* the Court drew attention to the possibility that environmental pollution could affect people's wellbeing and prevent them from using their homes freely, and so have a negative impact on their private and family lives, and ruled that there had been a violation of Article 8 of the Convention.[24] In its *verdict on Mangouras v. Spain*[25]*,* it stated clearly that it could not ignore the growing concerns about attacks on the environment in the European region and on the international plane. (§ 86) These examples can be multiplied. All in all, the available information indicates that the Convention, which dates back to 1950, is being applied to applications regarding the right to environment in many ways through Commission and Court decisions issued in the light of the principles of interpretation.

Following the change in the Constitution on September 12th 2010, the Constitutional Court of the Republic of Türkiye also began to accept individual applications regarding alleged violations of the rights included in the ECHR and the Constitution of the Republic of Türkiye. In line with a provisional article in the law under which the Court was established, September 29th 2012 was taken as the starting date for the use of this authority. In accordance with the jurisprudence of the ECtHR, the Constitutional Court also adopted the approach of examining individual applications related to environmental matters in terms of their relation to fundamental rights (*Mehmet Kurt* [26][GK], App. No: 2013/2552, 25/2/2016, § 63). In this and many other rulings (*Fevzi Kayacan (2)*[27]*,* App. No: 2013/2513; *Ahmet İsmail Onat*[28]*,* App. No: 2013/6714; *Hüseyin Tunç Karlık and Zahide Şadan Karluk*[29]*,* App. No: 2013/6587), the Court has made references to the ***Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters,*** known as the Aarhus Convention, which is one of the international resources on the right to environment, and to the ***Rio Declaration on Environment and Development,*** also known as the Rio Declaration, which was adopted as a result of the United Nations Conference on Environment and Development in Rio de Janeiro. One of the most important reasons why the Aarhus Convention, to which Türkiye is not a party, has been mentioned in a decision of the *Constitutional Court on an individual application is the*

23 https://hudoc.echr.coe.int/eng-press?i=003-2643683-2889423
24 https://hudoc.echr.coe.int/eng?i=001-58135
25 https://hudoc.echr.coe.int/eng?i=001-100686
26 https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/2552
27 https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/2513
28 https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/6714
29 https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/6587

reference made to this convention in the Council of Europe Parliamentary Assembly Recommendation No. 1614 of June 27th 2003 on Environment and Human Rights. As an organ of the Council of Europe, the Parliamentary Assembly, just like the Committee of Ministers, publishes resolutions which influence the Court in its interpretation of the Convention; indeed, EctHR decisions frequently refer to the resolutions of these two organs of the Council.

For this reason, it is necessary to take a closer look at the Aarhus Convention by way of a reference text.

Deforestation for a gold mine - Kirazlı, Çanakkale

E.2. The Aarhus Convention[30] and Rio Declaration[31]

Just like the Istanbul Convention, the Aarhus Convention takes its name from the place where it was signed. It states that *"In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention."* As an international treaty, the convention is legally binding upon its signatories. Although Türkiye is not a signatory, it took part in the preparations for the convention. The EU is a party to the convention. The convention incorporates clear guarantees for access to environmental information. It also particularly stresses the role of civil society. Article 3 draws attention to the obligation of officials and authorities to assist the public in the judicial processes in environmental matters. In addition, Article 9 of the convention, after referring to the sufficiency of the interest of non-governmental organisations with respect to applications to the judiciary, states that ***"each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice."*** In this way, it underlines the positive obligation of the state regarding access to justice. The use of the term "consider" should of course be treated as an obligation to achieve the goal stated. Further, account should be taken of the fact that the issues which are described as creating financial barriers to access to justice are judicial expenses extended to include lawyers' fees. Legal aid systems that guarantee this right are in any case protected in the texts of other treaties. Consequently, it would not be wrong to conclude that the convention aims to provide an assurance that differs from and goes beyond the legal aid mechanism that ensures access to lawyers and courts for those with insufficient means. To interpret it otherwise would mean that states which have already shouldered obligations under other treaties have undertaken these same obligations again under another convention, which would be an interpretation contrary to the purpose.

30 For more extensive information including the references made to the convention in this report, see:https://ekolojikolektifi.org/wp-content/uploads/2018/08/c%CC%A7evresel-konularda-bilgiye-eris%CC%A7im.pdf

31 https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf

Article 10 of the Rio Declaration is a text to which the Aarhus Convention makes direct reference. This article of the Declaration also adopts the principle of citizens' participation in fair and effective access mechanisms.

E.3. The Approach of the Constitutional Court of the Republic of Türkiye to Judicial Expenses from the Angle of the Right to Access to Court

The Constitutional Court (CC) has discussed this issue in more than 60 of its rulings, as can be viewed in its data bank of decisions. The majority of the decisions relate to the high lawyers' fees which applicants who, for reasons stemming from procedural law, are unable to open a partial lawsuit have been obliged to pay in rejected cases. In all of these cases, the CC has identified a violation. The CC has maintained the approach which it first developed in individual application No. 2017/791[32] (particularly § 55, 56) in every subsequent application. However, this continuity is related entirely to the fact that "amendments"[33] were not possible at the time the applicant opened the administrative case.

In many other decisions[34], meanwhile, the CC has addressed the practice of obliging the loser of a case to meet the judicial expenses in the framework of the "loser pays" principle.[35] On this basis, "*The CC accepts that, in line with this principle, since arrangements of a kind that may lead to results that obstruct the right to access to court deter potential litigants from bringing exaggerated claims before the courts, they do not in themselves conflict with the right to a fair trial. However, the amount of the costs calculated in the context of the conditions of the case are an important factor in determining whether this right has been obstructed or not"* (*Stankov/Bulgaria, 68490/01, 12/7/2007, § 52).* The Court has maintained this approach for environmental cases too (Applications 1, 2 and 3 of EGEÇEP).

32 https://kararlarbilgibankasi.anayasa.gov.tr/BB/2012/791

33 "Amendment" refers to the option to raise the value of the case while it is in progress. Persons who do not wish to shoulder high lawyers' fees in the event of turning out to be in the wrong may open a partial case (e.g.: for TRY 100) and then, when they find out during the investigation conducted by the court-appointed expert that they will be able to obtain a larger claim, they may increase the value of the case to this amount. This facility did not exist in administrative justice until November 2nd 2011.

34 https://kararlarbilgibankasi.anayasa.gov.tr/BB/2016/6323

35 For the total 22 decisions: https://kararlarbilgibankasi.anayasa.gov.tr/Ara?KelimeAra%5B%5D=kaybeden+%C3%B6der

At the time of writing, the argument used by the CC President Zühtü Arslan in his dissenting vote in the ruling on the case *Ramazan Tosun, App. No: 2012/998 of November 11th 2013* is of considerable importance. **According to Arslan, high lawyers' fees – which are a kind of judicial expense –** ***"may make it difficult for individuals to seek their rights in the face of potentially arbitrary operations of the administration. They may have a deterrent effect, particularly on people with a weak ability to pay, and so leave them defenceless against the administration."***[36]

The ECtHR accepts that the "loser pays" principle serves the legitimate purposes of ensuring the smooth workings of justice and protecting the rights of others by preventing the opening of groundless cases and the costs of these trials. In the context of the Ashingdane criteria, the ECtHR determined that the intervention was disproportionate and the right to access to the courts had been violated[37] on the grounds of the financial situation of the applicant, the high level of the lawyer's fee, the fact that the case was not without a basis and the fact that the state, as the opponent in the case, was represented by a state lawyer with a salary, and the fact that this salary is paid out of the state budget, Strikingly, the name of these criteria can be encountered in many decisions of chambers of the Council of State.

In conclusion, the CC addresses the obligation to shoulder the payment of judicial expenses in terms of the dichotomy of winning or losing which the outcome of the case creates for the party concerned. It also regards this obligation, at the same time, as a precaution which ensures the rights of other persons to justice by preventing the opening of cases which are groundless from the start and which impair the functioning of the mechanism of justice. The following section of the report will examine the judicial expenses which environmental associations have been ordered to pay in the cases they have opened in the light of the above concepts of the dichotomy of winning and losing and the groundless case.

36 https://kararlarbilgibankasi.anayasa.gov.tr/BB/2012/998

37 ADİL YARGILANMA HAKKI Anayasa Mahkemesine Bireysel Başvuru El Kitapları Serisi - 4, Sibel İnceoğlu, p. 27 https://rm.coe.int/04-adil-yargilanma-hakki-ikincibaski/1680934d70

Hasan Boğuldu Canyon – Kazdağları, Edremit

E.4. Analysis of the Evidence Gathered in the Context of the Above Principles

As described in the previous chapters, during the research conducted to provide evidence for this report, contact was made with a large number of associations and information was gathered from them about the administrative court cases related to the environment which they had opened and lost. To give some idea of the information obtained, in cases pursued by different environmental associations, five different instances of judicial expenses have been examined, regardless of whether they were for or against, and finally information has been provided as to whether the case was upheld or rejected. If the case is upheld, the judicial expenses are not paid by the litigant, but if the case is rejected the judicial expenses, which include lawyer's fees as well as such as court fees, on-the-spot inspection transport costs and the fees of court-appointed experts, have to be paid by the association

.

Case No.	Name of Association	Judicial Expenses	Upheld or Rejected
21/1150	Çan Environment	TRY 36,190.00	Rejected
19/803	Ayvalık Nature	TRY 7,714.30	Upheld
21/607	Ayvalık Nature	TRY 15,809.90	Rejected
21/8402	Kazdağı Conservation	TRY 43,289.80	Rejected/Upheld
21/619	Gülpınar	TRY 27,909,90	Rejected

Associations whose applications are rejected are obliged to pay that part of the judicial expenses indicated in the relevant line of the table which relates to lawyers' fees to the state institutions against which the case was brought (This amount is a maximum of TRY 3,890.00 as of 2022; the figure was lower in previous years) and the remaining part to the Ministry of Treasury and Finance.

Article 334 of the Code of Civil Procedures distinguishes between associations which have the status of associations *for the public benefit* and other associations. The latter are prevented from applying to for the *legal aid* mechanism, which is a legal facility for those who lack financial capacity. Considering that associations working on environmental rights are usually involved in legal disputes with public institutions, and that the status of association for the public benefit can only be awarded for political ends, it is not realistic to expect them to be awarded the said status. Moreover, an association may not find it necessary to enter into such a relationship with the state in view of its own priorities. According to the publicly available data of the General Directorate of Civil Society Relations[38], there are 349 "public benefit" associations and none of them are associations which confront public institutions over environmental rights. A search using the keyword "environment" comes up with two associations with this status[39]. However, these are associations working on the environment rather than *environmental rights*.

Having established that associations active in the field of environmental rights do not have access to legal aid, the impact of their not being able to pay the judicial expenses ordered against them is highly critical. **According to Article 87/3 of the Turkish Civil Code[40], the inability of an association to pay its debt is reason for its termination. In other words, an association that cannot pay its judicial expenses is directly faced with closure, and this constitutes a direct intervention in the right to organise.**

The findings obtained during the research reveal that some of the cases opened by associations working in the field of environmental rights have been won. However, since the opposing parties (which include public offices like the Governorate of Çanakkale, the Ministry of Environment and Urbanisation, and the Balıkesir Metropolitan Municipality) made use of public budgetary resources, the fact that they lose cases has no cumulative impact on them. The expenses of the justice system, which in any case uses the fees it charges to operate, are simply met from another public resource. **Those expenses which are not paid as the judicial case proceeds are met out of a pool known as the *"In Flagrente Allocation",* which is again made up of fees levied by the lawcourts when cases are launched. Basically, then, the expenses made during the course of a case are an amount provided for in the general budget.**

38 https://www.siviltoplum.gov.tr/kamu-yararina-calisan-dernekler
39 TÜRÇEK (http://www.turcek.org.tr/), ÇEKUD (https://www.cekud.org.tr/tr/)
40 https://www.mevzuat.gov.tr/mevzuatmetin/1.5.4721.pdf

As noted above in the context of general principles, charging a reasonable amount of judicial expenditures may be regarded as a moderate restriction that needs to be imposed on a basic right in order to prevent the justice mechanism from becoming clogged up and to stop lawsuits being opened without any basis. At the same time, however, it is contradictory for the principle of *user pays* to be transformed into such a major cost for defenders of the environment in environmental court cases. The *user pays* principle requires the existence of a winner, but for associations working on environmental rights efforts it is in itself a gain – regardless of whether the case is won or lost – for an act of the administration to be submitted to legal supervision, for the implementation of the Constitution to be ensured and for the conformity (or non-conformity) of that act of the administration to be recorded through a judicial process. In other words, the simple fact that it has ensured judicial supervision signifies that the environmental association is not a losing party in the concrete sense. In all circumstances, after all, an act of the administration related to the environment will have been subjected to the mechanism of judicial supervision, and the state has not regulated any other means apart from court cases by which associations can effectively achieve the protection of the environment, which is at the same time considered a constitutional duty. Consequently, this disproportionate restriction by means of judicial expenses is also incompatible with the relevant article of the Constitution, since the subjection of an act of the administration concerning the environment to judicial supervision is a legal process without a loser. To treat a judicial supervision mechanism which has no loser as a loss for the environmental associations is contrary to the idea behind the emergence of the concept. Moreover, administrative court cases are the most appropriate instruments which the associations in the region of Çanakkale and Balıkesir possess in the legal struggle which they are waging for the Kaz Mountains. **Looked at from the perspective of the Constitution, the deterrent effect which arises from the award of high judicial expenses against the environmental associations constitutes a practical obstacle to the use of a right embedded in Article 125 of the Constitution.** Ultimately, the operations and actions of the administration (the acts of the State with respect to the environment) are not automatically subject to judicial supervision, and the mechanism of the judiciary only goes into motion if an application is made.

Meanwhile, the defending parties in environmental cases are in any case public institutions and the wages of the lawyers which they employ are paid from the budget formed out of citizens' taxes. To expect the actors outside the state to shoulder lawyers' fees in a case between a citizen as one party and the state as the other is an unfair expectation, given that the state is represented by a lawyer paid by the state.

From the perspective of the Ashingdane principles, the fact that the case should not be without basis constitutes a separate criterion. In environmental rights cases, the involvement of environmental associations is in itself an indication of the existence of suitable grounds. Moreover, the opposing views that are sometimes contained in the court-appointed expert reports obtained by the courts of first instance, the dissenting opinions of the members of the panels of judges of the courts that reject the cases and – for applications that are initially upheld but later rejected by the Council of State – the decisions of the courts of first instance to uphold the applications and the court-appointed expert reports which contribute to these conclusions all show that even where cases are lost they are based on solid evidence. Here it may be pointed out that the courts do not conduct any assessment of whether or not the environmental associations have a basis for opening the case, as distinct from their assessment of the merits of the case. This also shows that the criteria in question are not applied in actual practice.

In the conditions of Türkiye, where access to sources of funds is difficult, and accessing them is criminalised, it is clearly impossible for an association to pay the amounts stated above from its own internal resources. **The realities of the country also mean that companies, as a consequence of their interests, do not support associations that seek to access the right to environmental through judicial channels.** Given the impossibility of an association accessing courts in cases of this kind using only its revenue from membership fees, this shows objectively that the financial situations of environmental associations make it difficult for them to shoulder judicial expenses.

In view of the ongoing political and judicial activism to establish a European Consensus on the matter, another separate issue is the failure to take account of the terms of the Aarhus Convention simply because Türkiye is not a party. The obligation to ensure access to judicial supervision mechanisms referred to in the Convention and in the tenth principle of the Rio Declaration is being violated due to high judicial expenses. The Aarhus Convention, in particular, is on the way to becoming a part of the EU consensus, and contains clear provisions that require the removal of the obstacles facing the access of civil society working on environmental matters to court.

- The high judicial expenditures which associations working on the right to environment in and around the Kaz Mountains are obliged to pay has become an obstacle to access to court via cases,
- The high amounts ordered in such cases have a deterrent effect that prevents associations from applying to judicial mechanisms against other administrative decisions that result in violations of the right to environment.,
- That no assessment has been made based on the Ashingdane criteria about the responsibility for judicial expenses, and that in this sense this is the product of a process in which ECtHR decisions are insufficiently taken into account,
- That Türkiye is not in conformity with its international obligations.

Hasan Boğuldu Canyon – Kazdağları, Edremit

F. Conclusion

As seen above, a large number of administrative decisions with the potential to lead to environmental disasters have been halted or annulled as a result of the struggles of the associations in the region and their challenging of these violations in the courts. The winning of these cases means that the administration has adjusted the erroneous decisions which it has taken as a result of the cases opened by the associations. In other words, decisions of the public administration have been supervised in this way, and annulments have been obtained of decisions that could lead to environmental damage.

Whatever their results, the cases opened by the associations have put the environmental damage in question onto the public agenda, generated awareness and increased sensitivity to environmental problems..

Thanks to the cases opened, both the people living in the region and all the country's citizens have derived social benefit. The prevention by court decisions of projects that will lead to environmental damage protects nature and living spaces. In addition, the provinces of Çanakkale and Balıkesir are regions of intense agricultural production, Many trademark agricultural products grow here and are distributed across the whole country and even exported. Every court case opened serves to protect the agricultural land and water resources, and hence the right to live in a healthy environment.

Judicial expenses such as lawyers' fees, the costs of court-appointed experts and on-the-spot inspections and court fees exceed the financial capacities of the associations. Unable to afford the fee for a lawyer, the associations seeks ways of working with volunteer lawyers on the environment committees of the bar associations. However, the few volunteer lawyers oriented by the bar associations have difficulty keeping up with all the cases in the Kaz Mountains region, where environmental damage is so intensive. During our examination of the court decisions and their justifications, we noticed that several associations were represented by the same lawyers, and that fewer than ten lawyers acted as attorneys in these cases. Some lawyers sit on the management boards of the associations.

One of the expenses with which the associations are burdened as a result of lost cases is the lawyer's fees of the opposing party. Thus in cases opened against the administration, lawyers permanently employed by the administration receive a salary for their services, but associations which lose their cases pay the opposing lawyer's fees to the administration for this same service.

Due to the need for a joint assessment of findings from many scientific disciplines, the number of court-appointed experts in environmental cases is made up of at least seven people. The result is that the fees for court-appointed experts tend to be the largest item among all the costs of the proceedings. Moreover, since the inspections made by the experts have to be carried out in the place where the project which the case is about is being carried out, the transport costs of the court-appointed experts are also imposed on the losing party under the name of on-the-spot investigation costs.

Judicial expenses such as lawyers' fees, fees for court-appointed experts and on-the-spot inspections, and court fees, are raised by a certain ratio each year. The amounts of the associations' membership fees, however, can only be changed at general assemblies held every 2-3 years. Moreover, the majority of associations keep their membership fees unchanged year after year because of the difficulty their members have in paying them, while donations too are insufficient. An examination of the expenditure and income accounts of the associations reveals that their income consists largely of membership fees and donations and that there is a very striking mismatch between this income and the judicial expenses.

We also know from the associations the details of whose court cases we examined that the proponents of the right to environment in the Kaz Mountains region, as in almost every part of the country, consist mostly of women. The presidents of the boards of the Kaz Mountains Natural and Cultural Assets Conservation Association, the Gülpınar Sustainable Life Association, the Ayvalık Nature Association and the Çan Environment Association are all women. If an association is unable to pay judicial expenses such as court fees or court-appointed expert fees and on-the-spot inspection costs, then the debt is legally recoverable from the members of the board. As the Tenth Chamber of the Council of State has stated (Case No. 2004/790; Decision No. 2007/520), unless the board members have themselves decided who to authorise, all the principal members of the board are responsible for the debts of an association. Where the board members have authorised someone, the member of the board who has been authorised is responsible. In practice, the boards usually authorise the president and any debts which the association

has been unable to pay are passed on to the president. In this way, women association officials, who mostly lack access to employment and have low incomes, are held responsible for the associations' debts, with the result that the judicial expenses issue turns into a multiple violation of rights.

The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters signed in Aarhus, Denmark in 1998 contains provisions related to the removal or reduction of the obstacles to the right of associations to access to justice which constitute the subject matter of the present report.

In the publication of the Ecology Collective Association entitled ***Guide to Access to Information in Environmental Matters and the Aarhus Convention***[41]**,** the convention is described as follows:

"The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters *was opened for signature by the United Nations Economic Commission for Europe on June 25th, 1998 and entered into effect in 2001 after being signed by 26 states. With respect to 'Access to Information, Public Participation in Decision-making and Access to Justice', the convention sets out principles and rules concerning the sharing of environmental information by states and companies, how to increase the means for public participation in decision-making processes, and judicial channels. Known for short as the* ***Aarhus Convention,*** *the convention* ***aims to ensure the international supremacy of an active and participatory approach to environment law that aims for everyone to have access to environmental information and to take part in the taking and implementation of decisions."*** The same publication explains the criteria envisaged by the convention with respect to judicial expenses as follows: ***"According to the convention, states are obliged to provide judicial pathways which ensure adequate and effective remedies and which are fair, equitable, timely and not prohibitively expensive.*** *Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible."* For those who are unable to apply to the courts due to a lack of financial capacity, the recommendation of the convention is summarised like this: *"Each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall* ***consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice."***

41 https://ekolojikolektifi.org/wp-content/uploads/2018/08/c%CC%A7evresel-konularda-bilgiye-eris%CC%A7im.pdf

The judicial expenses that have to be borne as a result of cases lost reduce the motivation of the associations in the Kaz Mountains region and lead them to hesitate about whether or not to open a case if a similar problem arises in future. In order for the associations to be able to access justice easily in the event of any violation of the right to environment, and for the burden of judicial expenses not to act as a deterrent to the seeking of justice, appropriate assistance mechanisms need to be established, as the Aarhus Convention states, to remove or reduce financial and other barriers to associations applying to the courts.

The **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Türkiye is a party,** states, in Article 14[42], that states parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, to take all appropriate measures to implement the convention so as to improve the economic, social and cultural lives of rural women. In the Kaz Mountains, the companies that damage the environment are polluting the soil, the water resources and the air, paving the way for deforestation and a biological diversity crisis, and rendering agricultural land unproductive, All of these developments cause unemployment, poverty and migration, and it is groups whose opportunities to access their rights are restricted, headed by women, girls and LGBTİ+ individuals, who suffer most from these negative conditions. This situation indicates that **CEDAW, which entrusts the state with the duty and responsibility to take measures to prevent all kinds of discrimination against women, is also being violated.**

Mainly for reasons such as industrialisation and the related increase in urbanisation, **emissions of greenhouse gases are rising** throughout the world and especially in developed countries, **leading to a climate crisis in which global warming, which has become irreversible, is expected to increase more and more rapidly.** One of the most important results of the climate crisis is that it alters precipitation regimes. Two major problems caused by changes in rainfall patterns are floods and droughts.

In less developed countries where infrastructure is lacking or insufficient, and the built environment is far removed from sustainable urbanisation, intensive rainfall causes floods and leads to the loss of human and animal lives, severe damage to the plant cover and the erosion of agricultural soils by rainwater, leaving them infertile.

42 http://www.kaced.org/images/files/CEDAW%20metni.pdf

As a result of drought, meanwhile, agricultural production is declining and those who make their livings from agriculture are getting poorer and migrating to the cities in order to survive, with the result that agricultural production is becoming unsustainable. Droughts are occurring in Türkiye due to the reduced amounts of rainfall in the agriculture season. According to the 2021 Soil Moisture Report[43] of the European Union's Climate Change Service, **Anatolia received 5-10% less rainfall than the average for the past 30 years.** General Directorate of Meteorology data on water/agricultural year rainfall in Türkiye shows that **2021 went down in the records as the driest year of the last 20 years and the second driest year of the last 41 years.**[44] The Kaz Mountains region is rich in underground water resources and surface water. The intensive consumption and pollution of these water resources by the mining and energy projects in the region only highlights the importance of water resources at a time when Türkiye is undergoing rapid aridification, and underlines the need to preserve them.

The war between Russia and Ukraine that has been going on since February 2022 has, within a very short period of time, reduced the production and sale of cereals and led to rising food prices and difficulties in obtaining grain supplies in all parts of the world, particularly African countries. This is an important signal of the need to protect agricultural lands. In Türkiye today, the loss of agricultural production in the Kaz Mountains region due to energy and mining projects has taken on even greater importance, especially when one considers **the food production bottleneck that is likely to occur as a result of the fall in the proportion of the population living in small towns and villages to less than 7%[45], the decline in the agricultural population and the climate crisis brought on by global warming.** The Kaz Mountains Region Mining Report[46] of the TEMA Foundation indicates that *"In this rich geographical area distinguished by its agricultural production,* **41% of the agricultural lands are covered by current mining licences and 37% are out to tender.** *Only 22% of the agricultural lands are not affected by any licensing process. Of the areas currently subject to licences, 64% are under prospecting licences and 36% under operating licences."*

It is women and girls who will be most affected by the reduction in agricultural production due to the climate crisis. The sector in which unpaid family work is most widespread is agriculture, and a most women and girls work in agriculture as unpaid family workers without any social security. The report of the Special

43 https://climate.copernicus.eu/esotc/2021/soil-moisture

44 https://www.trthaber.com/haber/gundem/turkiye-41-yilin-en-kurak-2-tarim-sezonunu-yasadi-636128.html

45https://data.tuik.gov.tr/Bulten/Index?p=45500#:~:text=%C4%B0l%20ve%20il%C3%A7e%20merkezlerinde%20ya%C5%9Fayanlar%C4%B1n,6%2C8'e%20d%C3%BC%C5%9Ft%C3%BC.

46 https://cdn-tema.mncdn.com/Uploads/Cms/kaz-daglari-raporu_3.pdf

Committee on the Labour Market and Youth Employment drawn up as part of the preparations for the Eleventh Development Plan (2019-2023) under the coordination of the Ministry of Development of the Republic of Türkiye[47] notes that ***"According to ILO data for 2017, the ratio of unpaid family workers in the labour markets of developing countries is 36.6% among women and 17.2% among men."*** When forced to migrate to the cities on account of the climate crisis, these women become unemployed and lose the production power and nutritional support which they derived from agriculture. This is why the majority of those resisting the damage being done to the environment in the Kaz Mountains region, as in the whole of Türkiye, are women. Women sense very poignantly that they and their children will face worse times in future as a result of the damage being done to the environment by mining and energy projects and by the disorderly building activity being carried out in the name of ecotourism.

The ongoing destruction of the environment in the Kaz Mountains region stems from the greater attention which the administration pays to the short-term gains of owners of capital in preference to ecology and social benefit. **Over a period of many years, the laws for the conservation of the environment, the forests and agriculture have been altered in favour of energy and mining companies. By means of legal amendments, the criteria which the firms must meet to obtain "No EIA Required" decisions have been eased.** All this has exposed the Kaz Mountains region to a process of environmental pillage that is increasing by the day.

With their ecological and cultural diversity, agricultural potential, natural beauty and historical assets, the Kaz Mountains possess the potential to ensure that the people of the region live in a healthy environment for generations to come, just as has been the case for thousands of years. In order to conserve nature and living spaces, and to defend the right to live in a healthy environment, civil society organisations and activists have been putting mining and energy projects that damage the environment before the courts, along with the disorderly building construction works being carried out under the guise of ecotourism. The legal struggle is one of the most important instruments available to the defenders of life in the region. They are pursuing these efforts in solidarity, with very restricted financial resources and limited human power. Judicial expenses like lawyers' fees and court fees and other material obstacles to access to justice, such as the costs of court-appointed experts and on-the-spot inspections, are consuming the resources and the energies of the civil society organisations and violating the right to access to justice.

47 https://www.sbb.gov.tr/wp-content/uploads/2020/04/IsgucuPiyasasi_ve_GencIstihdamiOzelIhtisasKomisyonu-Raporu.pdf

A devastated forest for a gold mine – Kirazlı, Çanakkale

Recommendations

- The Presidency should launch the necessary processes for the Republic of Türkiye to become a party to the Aarhus Convention, the text in which environmental rights and human rights meet, and the Grand National Assembly of Türkiye (GNAT – Parliament) should approve the law ratifying the convention without loss of time.
- Access to the legal aid mechanism should be ensured for associations active in the field of the environment seeking to set judicial mechanisms in motion on matters related to their fields of activity. Arrangements should be made for these associations to make use of the opportunities available to associations with the status of associations for the public benefit. The court fees and court-appointed expert expenses in environmental cases should be met by the administration or determined in such a way that they do not exceed reasonable limits. To this end, the GNAT should make the necessary amendments to the Code of Civil Procedures, the Law on Administrative Justice Procedures and the Attorneys Act.
- Besides their legal assessments concerning whether or not the administrative act that is the subject of the case should be annulled, courts should make a separate assessment of whether there were grounds (a basis) for the application (even if it has been rejected), and consider whether or not there was a concrete need that required the administrative act to be subject to judicial supervision in the context of articles 56 and 125 of the Constitution. The GNAT should amend the Law on Administrative Justice Procedures to allow for this.
- Article 87/3 of the Turkish Civil Code, which can lead to the closure of associations unable to pay their debts, should not apply to debts which associations are ordered to pay as a result of court cases which they open within their areas of activity. The GNAT should make the required legislative changes to this end.

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