1. Introduction

The European Convention on Human Rights (“the Convention”) does not expressly protect the environment nor does it address environmental issues in any way – it does not provide for any relevant rights in respect of the environment as such. At the time of the drafting of the Convention, the environment was not one of the values that were intended to be protected. The basic objective of the Convention was to set out a corpus of legal rules aiming at the protection of democracy and of the basic rights and liberties of the individual versus the state. The traditional notion of individual human rights was not concerned with the protection of ecosystems, the atmosphere, or with environmental problems. In an early decision the European Commission of Human Rights (“the Commission”) stated that “no right to nature preservation is as such included amongst the rights and freedoms guaranteed by the Convention” with the result that an organisation set up to protest against military use of marshland was unable to claim infringement of any protected right.\(^1\) The Commission repeatedly stated that the provision regarding protection of property (Article 1 of Protocol No. 1) cannot be interpreted as guaranteeing a particular quality of environment.\(^2\) More recently the European Court of Human Rights (“the Court”) stated that “neither Article 8 nor any of the other Articles of the Convention are


\(^{1}\) X and Y v. Germany, application no. 7407/76, Decisions and Reports (hereafter DR) 5, 161; Reid, p. 212.

\(^{2}\) Rayner v. the United Kingdom, application no. 9310/81, 47 DR 5; S v. France, DR 65, 250.
specifically designed to provide general protection of the environment as such; to that effect, other international instruments and domestic legislation are more pertinent in dealing with this particular aspect.\textsuperscript{3}

However, the Convention has always been considered to be an instrument capable of adapting itself to new developments and, for this reason, it is described in the case-law as a “living instrument.”\textsuperscript{4} The adaptation and extension of the Convention has been effected through the interpretation of its provisions by the Commission and the Court in the light of the changing conditions of life and the prevailing conceptions and values in democratic societies. As rightly observed by Karen Reid\textsuperscript{5} “it is a reflection of the growing recognition of the importance of environmental issues that matters of environmental protection, quality of the environment and assertions of the need for protection against, or information concerning, environmental threats are increasingly appearing in cases”.

It should also be recalled that according to the Court’s jurisprudence the High Contracting Parties to the Convention are not only obliged to abstain from interfering with the protected rights of individuals but they also have positive obligations to secure those rights.

The case-law has extended protection of the environment under the Convention by means of two different methods: (a) as part of individual rights, and (b) as a legitimate restriction on the exercise of such rights.

\section*{2. Individual Rights}

\subsection*{2.1 The Requirement of Being a “Victim”}

The rights that have been extended to encompass environmental values are mainly the right to life (Article 2), the right to respect for private life and home (Article 8), and the right to property (Article 1 of Protocol No. 1). However, in order to be able to invoke any of these rights in the context of the environment, the individuals have to prove that they are victims in a particular situation. The Convention does not allow an \textit{actio popularis}. To put in motion the machinery of judicial supervision, it is a prerequisite that the individual complainant be a direct or indirect vic-

\textsuperscript{3} \textit{Kyrtatos v. Greece}, judgment of 22 August 2003, application no. 41666/98, para. 52.

\textsuperscript{4} E.g. \textit{Tyrer v. the United Kingdom}, Series A no. 26, para. 31.

\textsuperscript{5} Reid, 212.