Viktoriya Gurash

Postdoctoral researcher at the University of Zurich

Commentary on Strasbourg Principle no. 13: exceptional legal standing of eNGOs

Environmental degradation has a clear collective dimension with serious implications for a range of human rights (Alan Boyle; Natalia Kobylarz). International law, in particular in the form of the Aarhus Convention, enshrines the idea of protecting the environment as a public good, and a significant role in that respect is granted to 'members of the public', including non-governmental organisations (NGOs) (1998 Aarhus Convention). At the same time, the general rule applied by international human rights courts and bodies is that it is not permissible to bring *actio popularis* complaints, which are of a general nature without identifiable victims (see, in this regard, the commentary on Principle 11).

The ability to bring environmental litigation within different regimes depends on (i) the nature of substantive rights featured in the respective human rights treaties; and (ii) standing requirements. For example, the African human rights system is particularly permissive in both regards. The right of all peoples to a generally satisfactory environment is recognised by the African Charter on Human and Peoples' Rights African Charter on Human and Peoples' Rights (ACHPR), which provides scope for claims to be brought by groups rather than individuals (Article 24). Moreover, with regard to standing rules before the African Court of Human and Peoples' Rights, while evidence of a violation of the Charter should be brought, it is not necessary for applicants to show that they are directly affected by the alleged breach (Article 56, ACHPR; Evadne Grant). Furthermore, in the Inter-American human rights system, group environmental claims are accepted in cases involving indigenous rights (Grant; Maria Antonia Tigre).

By contrast, the protection against environmental degradation within the European Convention on Human Rights (ECHR) is quite limited because environmentally-relevant claims are mostly framed in terms of individual rights of natural persons (specifically, under Articles 2, 3 and 8 of the ECHR). In

addition, the European Court of Human Rights (ECtHR) interprets victim status under Article 34 ECHR as requiring that a person must be directly affected by the impugned measure (see, in this regard, the commentary on Principle 12; Lambert and Others v. France, § 89). As a consequence, where the rights of natural persons are at stake, the ECtHR generally does not recognise NGOs' standing under those provisions (Yusufeli İlçesini Güzelleştirme Yaşatma Kültür Varlıklarını Koruma Derneği v. Turkey, §§ 42-45; Maatschap Smits and Others v. the Netherlands; Greenpeace E.V. and Others v. Germany).

Principle 13 establishes a minimum standard, namely that under certain circumstances an NGO can be permitted to act in the name of persons who are directly affected by a measure violating their environmentally-relevant human rights. Specifically, Principle 13 defines the circumstances when such an NGO's claim is justified, namely when direct victims are unable to adequately complain for themselves or they lack time in that regard. The rationale underlying this rule concerns effective access to justice, which is consistent with the principle of international law prohibiting the denial of justice (see, in this regard, the commentary on Principles 26-28; Golder v. the United Kingdom, § 35).

The ECtHR's case law demonstrates its restrictive approach by exceptionally allowing NGOs standing in the name of direct victims who are described as vulnerable. Specifically, Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania sets criteria to that end, linking NGO standing to (i) the extreme vulnerability of a direct victim; (ii) the nature and significance of the right of a direct victim under consideration; (iii) failure of national authorities to ensure the procedural rights of a direct victim; (iv) a connection between the direct victim and an NGO (§§ 104-114). The *Câmpeanu* criteria are of alternative nature, as the Court's own reasoning in the case shows (Helen Keller and Aurore Garin). At the same time, some of the post-*Câmpeanu* case law has proceeded with a cumulative reading of its criteria (Comité Helsinki bulgare v. Bulgaria), creating uncertainty about the nature of the test (Keller and Viktoriya Gurash). The ECtHR has not yet had a chance to decide the question of the applicability of the *Câmpeanu* criteria to environmental cases. To ensure effective access to justice, the ECtHR could apply the *Câmpeanu* test if a person is unable to bring a claim before the ECtHR because of vulnerability, lack of expertise or time, overly onerous legal expenses, etc.

Viktoriya Gurash, September 2023