
URBAN ENVIRONMENT IN EUROPEAN INTERNATIONAL JURISPRUDENCE

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ABSTRACT

This paper aims to analyze the recognition of the right to the urban environment by European international jurisprudence. The European Court of Human Rights adopted the sophisticated method of dynamic evolutionary interpretation and created parameters for the construction of the right to environmental quality of life in its decisions involving urban problems, since the 1990s. The paper seeks to present the innovative extension of scope normative of the European international jurisprudence on the creation of the right to the urban environmental quality of life. For the development of the paper, about the methodology, will be presented the bibliography, the legislation and the specific international jurisprudence about the subject. The legal arguments developed in the environmental decisions of the European Court will be analyzed, identifying the main legal issues raised and how the cases about the urban environment are interpreted. In view of the wide and effective European urban environmental jurisprudence, it is understood that possible normative interactions between regional systems

for the protection of human rights by contributing to ECHR jurisprudence for the creation of a new typology of urban environmental jurisprudence in other international and national Courts.

KEYWORDS: Urban environmental protection; Quality of life; Human rights; Evolutionary interpretation.

*MEIO AMBIENTE URBANO NA JURISPRUDÊNCIA
INTERNACIONAL EUROPEIA*

RESUMO

Este artigo objetiva analisar o reconhecimento do direito ao meio ambiente urbano pela jurisprudência internacional Europeia. A Corte Europeia de Direitos Humanos adotou o sofisticado método da interpretação evolutiva dinâmica e criou parâmetros para a construção do direito à qualidade de vida ambiental em suas decisões envolvendo problemas urbanos, desde a década de 90. O artigo busca apresentar a inovadora ampliação do alcance normativo da jurisprudência internacional Europeia sobre a criação do direito à qualidade de vida ambiental urbana. Para o desenvolvimento do artigo, em relação à metodologia, será apresentada a bibliografia, a legislação e a jurisprudência internacional específica sobre o assunto. Serão analisados os argumentos jurídicos desenvolvidos nas decisões ambientais da Corte Europeia, identificando-se as principais questões jurídicas levantadas e como são interpretados os casos sobre meio ambiente urbano. Diante da ampla e efetiva jurisprudência ambiental urbana europeia, entende-se que são possíveis interações normativas entre os sistemas regionais de proteção aos direitos humanos visando contribuições da jurisprudência da CEDH para a criação de uma nova tipologia de jurisprudência ambiental urbana em outras Cortes internacionais e nacionais.

PALAVRAS-CHAVE: *Proteção ambiental urbana; Qualidade de vida; Direitos Humanos; Interpretação evolutiva.*

INTRODUCTION

The European Court of Human Rights (ECHR) innovated by creating the right to an urban environmental quality of life, recognizing it as a human right standard in successive cases¹. Even without an environmental provision in the European Convention on Human Rights, the Court has developed the method of dynamic and evolutionary interpretation of environmental protection, which incorporates the recognition of the urban environment as a human right in cases which the environmental issue affects fundamental rights expressed in the Convention, such as the right to health, private and family life, private property and other material and procedural rights.

Environmental protection relates to the prohibition of interference with the right to private and family life, as provided for in 8th Article of the European Convention. There is no autonomous right to the environment. One of the most innovative aspects is the creation of the right to an individual's quality of life in the face of environmental violations, which is recognized through the legal activism of the ECHR in an interpretation of Article 8 of the Convention on the Right to Privacy And family.

This article will present the innovations of the ECHR in relation to the protection of the urban environment, with the construction of a new right to environmental quality of life in its jurisprudence. In the methodological aspect, the choice of the right to the urban environmental quality of life did not occur randomly, but rather in a very conscious way about its innovative aspect, in the search for the construction of an article on a right that does not exist in the European Convention, but is developed by the European Court of Human Rights through an evolutionary interpretation of environmental decisions, which has contributed to the consolidation and effectiveness of environmental decisions in European countries.

The analysis of the ECHR cases will be made based on the issues that are presented as violated rights. The ECHR has a wide and diversified urban environmental jurisprudence that has been developed since the 1990s. Not all ECHR decisions on the urban environment were considered. The choice was based on the identification of the decisions that were used successively by the Court up to the cases in which there was

¹ The Court upheld this understanding in the *López Ostra v. Spain* understanding That polluting activities were causing harm to the environment, the health and quality of life of the victim and her family. It is necessary to observe the urban norms with the objective of guaranteeing an urban development with good quality of life for the people.

an effective recognition of the right to environmental quality of life , in the face of urban problems.

Initially, the form of creation and recognition of the right to the urban environment in European international jurisprudence will be presented and later in the second topic of the article the analysis of the successive urban environmental cases judged by the ECHR will be made, as: *Bistrovic v .Croatia* , *Budayeva v.Russian Federation* , *Fredin v .Sweden*, *Nima Kapsali v.Greece* , *Hamer v.Belgium* , *Depalle v .France* , *Arrondelle v.United Kingdom*, *Powell and Rayner v. United Kingdom*, *López Ostra v.Spain* , *War and others v.Italy*, *Moreno Gómez v.Spain*, *Fadeyeva v.Russia*, *Grimkovskaya v. Ukraine* , *Ledyayeva and others. Russia and O neryildiz v.Turkey* . The main legal aspects of the decisions of these cases which contributed to the creation of the right to urban environmental quality of life will be presented.

1 THE CONCEPT OF QUALITY OF URBAN ENVIRONMENTAL LIFE IN EUROPEAN INTERNATIONAL JURISPRUDENCE

The ECHR's case-law, based on a dynamic evolutionary interpretation, recognizes the right to environmental quality of life in cases of violation of the rights to private and family life, health, property and procedural rights in urban environmental problems such as access to justice, effective remedy, fair trial and judicial guarantees, condemning the states that are part of the European system for denial of environmental quality of life.

The regional systems for the protection of human rights are inspired by the values and principles of the Universal Declaration of 1948 and are a part of the universe of human rights protection at the international level. Faced with this complexity of international instruments, it is up to the individual who has suffered the violation of his right the choice of the most favorable apparatus, given that possibly identical rights are protected by two or more instruments of global or regional scope .In this perspective, the various human rights protection systems can interact for the benefit of protected individuals (DELMAS-MARTY, 2003).

The European Court clearly demonstrates its respect for ecological issues in various contexts, giving special attention to cases of activities that cause harm to the environment. This relevance raised by the European system highlights the concern with other values of society and

sums up a reflection that the ECHR has not ignored the fact that society, in general, has intensified its concern in the preservation of the environment and the right to good quality of life (VARELLA, 2013).

With the emergence of international actions involving urban environmental problems, the ECHR has developed a sophisticated method of evolutionary interpretation in which, by connecting the right to private and family life, health and prohibition of inhuman and degrading treatment, it created a right to quality of life. Environmental life, from urban problems, in a visible activity of judicial creation of the law. The environmental jurisprudence of the European system covers a diversity of urban environmental themes, ranging from severe pollution problems to cases involving high airport noise (MAROCHINI, 2014).

The ECHR considers local particularities and that the states are better able to resolve certain disputes involving urban environmental problems. Considering the dynamic nature of urban issues, environmental norms may suffer obstacles to their legitimization in the urban context. This is a criterion used by the ECHR to ensure greater acceptance and effectiveness of environmental decisions and the implementation of policies by convicted states (LEWIS, 2002, p. 03).

In the scope of environmental protection, the Court has evolved in a way it had to construct new concepts to cover and substantiate cases of violation of the environment, especially in the urban context. During this study of the international jurisprudence of the ECHR, it is possible to observe the dynamic evolutionary interpretation, in which the Court, through a connection with other rights, created a right to environmental quality of life. From the decision of an environmental case, the Court, over time, built more sophisticated environmental decisions in subsequent cases, citing previous decisions as references in the arguments. The creation of the right occurs in an evolutionary way.

One of the common points of the cases judged by the ECHR on environmental issues is that the damage affects the health and quality of the victims' life. These are problems with characteristics that originate from the harmful environmental activities themselves. Thus, in most cases, a general environmental clause regarding the protection of human rights in the European context is implicit in Art. 8, which deals with the right to private and family life with quality (KAYSER, 1991).

There is a connection between the right to private and family life, health and prohibition of inhuman and degrading treatment, which

are interpreted by the ECHR in an evolutionary and dynamic way for the creation of the specific right to environmental quality of life in its various contexts, covering the urban environment. There was the creation of the jurisprudence that inserted this right in the European context, recognizing it as an international norm of human right.

In the protection of this right, combining forces with the right to health and the quality of life, arises the concept of environmental quality of life. Certainly it is very complex to obtain a precise definition of this right, considering its subjectivity and the intense activity of interpreting the ECHR in its construction. In the decision of the case *López Ostra v. Spain*, it is possible to observe the Court's position on the normative scope of this right.

In this case, the European Court acknowledged the violation of 3rd Article of the Convention by considering the serious consequences of the interference in the urban environment with the intensity of smell, noise and the emission of harmful and polluting gases that were causing harm to the health of the applicant and his family, since a solid waste disposal plant was installed in the vicinity of his residence.

The Court decided that the environmental quality of life is a subjective characteristic of imprecise conceptualization. The recognition of a subjective right with diffuse characteristics has conferred the Court an interesting margin of discretion which may exempt the applicant from fully demonstrating the injury to her health. This is a great novelty: the environmental protection of health, well-being and quality of life. The right to health and well-being would be macro-concepts and a level of environmental quality of life is susceptible of legal protection against violations of fundamental rights (ECHR, 1994).

It is important to emphasize that the environmental jurisprudence of the European Court has created the subjective right to the environment, although with some difficulties of an interpretative nature. With the broad possibilities of connecting the right to the environment to other human rights, it is possible to verify the existence of substantive protection and protection involving procedural rights. The ECHR's innovation in relation to the environment is the creation of the right to an environmental quality of life, which is the result of an activity of interpretation of material rights such as health, private property, the right to private and family life, right to information and to due process, all of which are expressly provided for in the European Convention.

2. INNOVATION OF THE ECHR'S JURISPRUDENCE ON THE URBAN ENVIRONMENT

Concerning the impact of 8th Article of the European Convention on the right to the urban environment, it is noted that the importance of this right is due to the convergence of the doctrine of positive obligations with the dynamic interpretation of the concept of private and family life. This evolutionary interpretation covers other legal goods, including the right to health and quality of life. Therefore, minimum levels of these rights are susceptible to legal protection, even if individually, by interference of third parties, according to the jurisprudence of the ECHR (JARVIS, 1999).

An important progress of the Court's urban environmental jurisprudence occurred in the *Powell and Rayner v. United Kingdom*. This was the first case in which the ECHR ruled on the environment and quality of life on 21 February 1990. The case refers to the loud noises (noise pollution) produced by Heathrow airport in London that caused damages to the applicants. It is important to mention that the ECHR examined this case in the light of the 8th Article of the Convention. The ECHR has acknowledged that urban development can in certain situations present itself as a violation of the right to a good quality of life for people (BAQUER, 2005).

In its decision, the ECHR pointed out that:

There must be a positive obligation of the Government to protect the privacy of the plaintiffs. Therefore, even with the measures taken by the authorities to reduce the effects of noise, as well as the importance of Heathrow Airport and the complexity of regulatory decisions on the matter, the ECHR concluded that the State had not used all its means of action and that this case violated the 8th Article of the European Convention. The Court closed its decision by concluding the victims were being harmed by the high levels of noise disturbance at the airport (ECHR, 1990, §45).

In cases submitted to the ECHR involving the right to the urban environment, it is observed that the main legal issues of the cases are presented in three different ways. In the first place, the human rights protected by the Convention may be directly affected by environmental factors such as toxic smells of a factory or irregular waste disposal, causing a negative impact on the lives and health of individuals (PAVONI, 2015).

In a second context, factors such as the installation of projects that cause impacts on the environment may give rise to certain procedural rights for the individual, such as the right to information, participation in the processes and access to justice involving environmental cases. Finally, the protection of the environment presents itself as a legitimate objective that would justify the interference with certain human rights, such as the restriction of property rights (PAVONI, 2015) .

In the cases to be presented below, it is possible to identify that environmental problems, within the scope of the ECHR, affect the right to property, provided for in 1st Article of Protocol 1 to the European Convention, the right to life provided for in the 2nd Article, the right to private and family life provided for in 8th article, the right to a fair trial and access to justice, as provided for in 6th Article, all of the European Convention on Human Rights.

2.1 The right to private property as a right to the urban environment

In cases of violations of the right to a good quality of life and to a healthy environment, a topic raised as a legal issue in the cases is the right to private property, which is provided for in the 1st Article of Protocol 1 to the European Convention. It is the right to enjoy the property in a peaceful way, and it is possible to include an ecological burden to this right.

The right to private property does not broadly guarantee the right to enjoy the property in a healthy environment. The European Court has already ruled that a mere disturbance of the conditions for enjoying this right is not enough, and a reduction in the economic value of private property must be noted. It is a narrow interpretation of this right. By the analysis of the case-law, a logical consequence of the economic nature of the right of property formed by a set of patrimonial legal situations is actually observed (SHERLOCK, 2000).

Under the jurisprudence of the ECHR, the connection of property rights with matters related to the environment is scarce, unlike the inter-American human rights system. Regarding the right to property, the ECHR relates the environmental damage with the proof of a decrease in the economic value of the property. An interesting case about environment and property rights is the case of *Bistrovic v. Croatia*.

In this case, the applicants had a house and land in Gojanec, Croatia. The Croatia Roads public company had requested the expropriation

of part of the land for the construction of a road. The applicants objected to this proposal, urging that their property be expropriated in its entirety. The claimants argued that partial expropriation would render the property useless, since the house and agricultural land represented an inseparable unit. They claimed that as farmers they could not use their property without access to tractors and other vehicles used in agriculture and partial expropriation would prevent such access (ECHR, 2007).

Besides, according to the project, the road would pass approximately 25 meters from the property and would cause considerable noise pollution due to the high frequency of traffic. The applicants pointed out that the construction of noise barriers would impair the visual appearance of their home without effectively protecting them from noise and pollution (CEDH, 2007).

Another problem related to the devaluation of the property because of partial expropriation, the value of the remaining property would decrease considerably, since the construction of the road would deprive the applicants of the good condition of life they enjoyed, such as direct access to the road, a pleasant environment, a huge patio and a low exposure to noise.

The ECHR followed its line of interpretation on property rights in environmental matters, recognizing that the case referred to an effective economic loss and that the Public Power should take protective measures about it. The ECHR ruled that in the face of a case of expropriation by the State which will have a negative impact on the environment, there should be an assessment of the impact on the value of the goods in order to establish a fair compensation (ECHR, 2007).

The issue becomes more complex when the ECHR links the responsibility of the Public Authorities to an obligation of protection. It is possible to verify this relation in the comparison of cases such as *Onerlydiz v. Turkey* and *Budayeva v. Russia*. In the first case, which refers to a serious damage caused by an explosion of methane gas at the Umraniye waste disposal site, the ECHR acknowledged the infringement of the right to property, considering the fact that the serious negligence attributable to the State and for the loss of life due to the burial of the applicant's residence (DOTHAN, 2011).

The Court, in this case, decided that the injury was not due to State interference but to noncompliance with a positive obligation, since the authorities did not do everything possible to protect the interests of

the victims. It therefore stated that the positive obligation under the 'st Article of Protocol 1 to the Convention requires the authorities to take effective precautionary measures to prevent the destruction of the property of applicants (ECHR, 2004).

In the case of *Budayeva v. Russia*, which refers to a mudslide of rivers, also considered tragic, the ECHR recognized the violation of the right of property, even if the origin of the fact was not in a human activity. Reiterating the decision of the *Oneryildiz v. Turkey*, the ECHR considered that the effective exercise of property rights did not depend solely on an obligation of the State not to interfere, but also on the adoption of positive measures of protection (ECHR, 2008).

The ECHR has argued that in actions arising from human activities, the obligation to protect property is analogous to the protection of the right to life, but there must be a greater flexibility in cases of natural disasters. In this case, even if it was a natural disaster, the compensation was paid. It follows that the ECHR, on the understanding that there should be a flexibilization in the occurrence of natural disasters, has decided that the positive obligation of the State to protect private property can not be interpreted as obliging the State to fully indemnify the market value of Properties destroyed. It can be noted that the ECHR has held a fairness judgment on the issue of compensation.

For the ECHR, restrictions by public authorities on the right of the individual on their property must have a legitimate aim, which may be the protection of the environment. The measures taken in pursuit of a legitimate objective must comply with the law, which must be accessible and have expected effects. The measures taken should be proportionate to the intended objective, ie, a fair balance should be struck between individual and collective interests (DOTHAN, 2011).

In this regard, the ECHR has already recognized that the local justice of each country is in a better position than the Court to judge how to balance the different levels of interests in each case. The ECHR grants the State a national margin of appreciation with a view to ensure a greater freedom for the States to decide on cases involving policies of local planning and conservation of the environment. Thus, their interference in the protection of the right to property is limited to cases in which interference in individual rights is disproportionate (SPIELMAN, 2012).

In the *Fredin v. Sweden*, the ECHR considered that the restriction on the use of property was justified in favor of the collective right to the

environment. This case concerns the revocation of a license to operate a gravel pit located on an applicant's land, based on the Nature Conservation Act. The ECHR considered that the revocation of the license caused the applicant considerable loss, but that there was no infringement of the right to property. The decision presented a legal basis that guaranteed the collective interest in protecting the environment (CEDH, 1991).

The Court argued that it was aware of the possibility that the authorities had to revoke their license. The decision emphasized that the revocation of the applicant's license to use his property was not disproportionate to the legitimate aim of this revocation, namely protection of the environment, concluding that there was no violation of the right of property provided for in the 1st Article of Protocol 1 of the European Union Convention.

In the *Nima Kapsali v. Greece*, the ECHR considered that in matters involving urban planning and the environment, the assessment of the national authorities should prevail unless they are unreasonable. In this case, a building permit was revoked in an environmental area by the local administrative authorities. A series of in-depth analysis of all aspects of environmental problems was made by the government due to the construction activities, and they demonstrated that there was no indication that the license revocation decision was arbitrary or unlawful. The European Court considered that the revocation of the license to operate the area was not disproportionate to the objective of environmental protection and, as a result, concluded that the claim should be dismissed (ECHR, 2004).

The *Hamer v. Belgium* refers to the demolition of a holiday home built in 1967 by the applicant's parents, without the proper building permit. In 1994, the Public Power prepared two reports, one relating to the cutting of trees on the property as a form of violation of forest norms and the other on the construction of the house in an unlicensed forest area. The applicant alleged infringement of the right to property, however the ECHR ruled that the authorities had interfered with the right of the applicant in respect of his property, but that there was a legitimate justification, such as protection of the environment in the area in question (ECHR, 2007).

As for the proportionality of the contested measure, the Court considered that the environment is a good whose protection must be a matter of constant concern to the community. Economic imperatives and even some fundamental rights, such as property rights, should not take priority over environmental protection, especially if the state had observed

legislation on the subject. As a result, the Court has ruled that restrictions on the right of ownership may be permitted provided that a fair balance is considered between individual and collective interests (DOTHAN, 2011).

The same thing occurred in the trial of *Depalle v. France*. This case refers to an order for the applicants to demolish their houses, which had been built on the seafront in an area of public sea property where there were no formal property rights or temporary occupancy rights (ECHR, 2010).

The owners had only old court decisions authorizing them to occupy this area on the coast, but they did not confer them any property rights. The local authorities condemned the plaintiffs to restore the site to its original state, demolishing the buildings on public property without the right to any compensation. The decision was made in the context of the implementation of public policies to protect the environment.

The ECHR's role in the judgment of this case was to ensure that a fair balance was reached between the demands of the general interest of the community (environmental protection and free access to the coast) and the claimants who wanted to maintain their property rights. The ECHR recognized that the State had a wide discretion in its decisions regarding regional planning and environmental conservation policies, where the general interest of the community was a priority.

The ECHR considered that the applicants were always aware that the authorizations to occupy the property were precarious and revocable. Thus, the Court decided that there was no violation of the right of property provided for in the 1st Article of Protocol 1 of the European Convention.

By examining the case law of the ECHR on the right to property, it can be seen that, under the 1st Article of Protocol No. 1 of the Convention, individuals are entitled to the peaceful enjoyment of their property, including protection against illegal deprivation of their property. This device also recognizes that public authorities have the right to control the use of the property according to the interests of the community. It is possible to identify that the decisions of the ECHR have been consolidated in the argument that the environment is an increasingly important and a priority consideration.

It is observed that the collective interest in the protection of the urban environment can justify certain restrictions by the public authorities on the individual right to the peaceful use of property. These restrictions must be legal and proportionate to the intended legitimate objective.

Public authorities enjoy a wide margin of discretion in deciding whether to choose the most appropriate means and whether the consequences of implementation are justified by a collective interest. The measures practiced by the Public Power must be proportional, and there must be a fair balance between the interests involved (DOTHAN, 2011).

The protection of the right to private property may require public authorities to comply with environmental standards. The effective exercise of this right does not depend only on the duty of the public authorities not to interfere, but may force the State to take positive measures to protect this right. The ECHR, in the trials of the cases, found that this positive obligation may arise in relation to dangerous activities and, to a lesser extent, in situations of natural disasters.

2.2 The protection of private and family life as a right to the urban environment

The right to life is expressly regulated by the European Convention on Human Rights, in its 2nd Article. It is about a right that not only binds the government to refrain from causing death voluntarily, but also to adopt positive obligations to ensure necessary and effective measures to protect the lives of people in their territory. By establishing a connection between the right to life and the right to the environment, the Court recognizes that this state obligation covers the context of any public activity that risks the right to life, including those of an industrial nature and those that are dangerous in nature.

For Kant the value of life has as its fundamental element the dignity of the person, for rational beings are only called people because their nature distinguishes them as ends in themselves, that is, as something that can not be used only as a means. Every human being possesses dignity. It is a value that does not tolerate equivalences. The life and dignity of a person are non-negotiable (KANT, 2008).

In the connection between the right to the environment and the right to a good quality of life, the European Convention's most normative approach is the right to respect for private and family life, provided for in 8th Article of the Convention. The ECHR states in its environmental case-law that this provision provides for comprehensive protection against harmful emissions. It is an article that allows a broad interpretation, considering that it is used by the ECHR to support decisions on family

protection, euthanasia and cases of violation of the right to privacy.

For the Court, the 8th Article covers the environment from the confluence of the doctrine of positive obligations with a dynamic interpretation of the concept of private and family life. This evolutionary interpretation results in the subsumption under that provision of two legal goods not expressly included in the article: health and quality of life (YARZA, 2012).

The 8th Article of the European Convention, through the principle of evolutionary interpretation, allows this right to present itself as a true catalyst for environmental protection in European international jurisprudence. The relationship between environmental protection and Art. 8 of the Convention is not recent and some decisions of the defunct European Commission can be found in the early 1980s. However, the relationship between Art. 8 and environmental protection was incipient, and in the 1990s there was an evolution of the jurisprudence of the Court, which builds its decisions with a broad normative scope in cases on the urban environment.

The relationship between environmental damage and the protection of life began in the *Arrondelle v. United Kingdom*, in October 1980. In this case, the applicant's home became uninhabitable due to the noise pollution at Gatwick Airport in London. Faced with the absence of effective action by the public authorities, the extinct Commission recognized the violation of the right to privacy. In this case there was a friendly settlement and the case was not put to judgment by the European Court (ECHR, 1980).

The first case in which the ECHR ruled on environmental quality of life in February 1990 was in the decision of *Powell and Rayner v. United Kingdom*. This case also refers to problems involving noise pollution at Heathrow Airport. In it, there was a Civil Aviation Law of 1982 which excluded, in its Art. 76, the responsibility of aircraft business owners in the event of noise. Therefore, the applicants had no recourse in domestic law that would allow them to claim compensation for the damages caused. The importance of this case lies in the fact that the European Court has recognized the relationship between the legal good provided for in 8th Article of the European Convention and the right to the quality of life of applicants for urban environmental problems (ECHR, 1990).

The ECHR acknowledged that there was a positive obligation on the part of the public authorities to protect the privacy of applicants.

Even with the measures taken by the government to reduce the effects of noise, as well as the importance of Heathrow Airport and the complexity of regulatory decisions on the matter, the ECHR concluded that the State had not used all its means in order to solve the problem and that this case violated 8th Article of the European Convention.

An important case in which the evolutionary interpretation of the ECHR is observed was in the judgment of *López Ostra v. Spain*. The relationship between the right to private life and the urban environment is no longer hypothetical and the arguments of the decision were constructed in a manner grounded by the Court in a finding of an effective violation of 8th Article of the Convention. In the making of the decision in this case, the Court used the precept of the *Powell and Rayner v. United Kingdom*

The case refers to an environmental damage that occurred in the city of Lorca, where a solid waste treatment plant, which operated without a license from the Government, caused the pollutants to leak, affecting the health of the region's population. There was a failure of the Public Authorities in the case and thus the petitioner appealed to the European Court on the grounds that the emission of pollutants in the region was violating their right to a good quality of life and also their right not to be subjected to inhuman and degrading treatment (ECHR, 1994).

In this case, the ECHR considered that although the Public Power was not directly responsible for the damage caused, it allowed the construction of a factory in an improper area, as well as subsidizing the construction of the facilities. The European Court ruled that even if domestic laws and regulations had been complied with by the State, what must be determined is whether the State has taken all necessary measures to guarantee the right of the victim to his or her healthy family life.

The *Lopez Ostra* case was based on 8th Article of the European Convention, which provides the right to private and family life, as well as 3rd Article of the said Convention, which guarantees the right of the applicant not to be subjected to cruel and degrading treatment, considering that the intensity of smell, noise and the emission of polluting gases caused damage to the victim's health (ECHR, 1994).

The ECHR analyzed the relationship between the urban environment, quality of life and the Art. 8 of the Convention very clearly, highlighting the principles applicable to the positive obligations of the Public Power in environmental protection and guaranteeing the right to quality of life and health of the applicant. It concluded that the public

authorities did not act with due diligence and, thus, the right foreseen in the 8th Article had been violated.

The sentence of the Lopez Ostra case was used in the judgment of *Guerra v. Italy*. In this case, the applicants resided in the vicinity of a fertilizer factory. There was an explosion of the ammonia gas purification tower, contaminating the air with potassium carbonate and arsenic trioxide, bringing approximately one hundred and fifty people to hospitals with a serious health condition (CEDH, 1998).

The Complainants have alleged the lack of effective measures to reduce the levels of pollution and the existence of major-accident hazards arising from factory activities. In this case, the relevant legal issues concern the right to respect for private and family life and the right to freedom of information, since the risks of activities and possible procedures in the event of a major accident were not previously informed to the population.

In its decision in this case, the ECHR considered that there had been a violation of the 8th Article of the Convention and that the Italian state had not fulfilled its obligation to guarantee the right of victims to respect private and family life. The Court has ruled that serious environmental pollution can affect the well-being of individuals and prevent them from enjoying their homes in such a way as to affect their private and family life (ECHR, 1994).

Another case in which the ECHR confirmed the precedent Lopez Ostra was the one named *Moreno Gómez v. Spain*. The case involves environmental damage as well as noise pollution. The applicant lived in an apartment in a residential neighborhood of Valencia since 1970. The City Hall was allowing the opening of discos in the vicinity of the applicant's house, which made the place uninhabitable due to the noise. In the face of problems caused by noise, the City Council commissioned a report from an expert who verified that noise levels were at odds with environmental and urban legislation (ECHR, 2004). The City Council has banned the operation of new activities in the area.

Even with the prohibitions laid down, the Chamber issued an authorization to operate a new nightclub in the building where the applicant resided. The applicant filed again a complaint in the Municipal Council of Valencia, without obtaining answers. An application for judicial review was lodged with the Superior Court of Justice of Spain, which was dismissed in July 1998 (ECHR, 2004).

The petitioner brought an action before the Spanish Constitutional

Court, which ruled that the victim had not proved that there was an effective relationship between noise and harm in a way that violated rights under constitutional law. The applicant claimed that the Spanish authorities were liable for damages and that the noise resulting from noise pollution represented a breach of his right to a good quality of life, provided for in the 8th Article of the European Convention on Human Rights (ECHR 2004).

The ECHR noted that the applicant lived in an area with serious environmental problems involving noise pollution. The Court considered that there had been a violation of the rights protected by Article 8. Although the City Council had adopted measures to solve the problem, the granting of more licenses contributed to the continued disrespect of the rules that the body itself had established.

The ECHR considered that the applicant had suffered a serious breach of the right to a healthy quality of life, owing to the authorities' failure to take action to eliminate night disturbances and considered that the Spanish Government was unable to fulfill its obligation to guarantee the right to life, in breach of the 8th Article of the European Convention (ECHR, 2004).

In the environmental case law reviewed, the Court recognized that urban environmental pollution can affect people's health and quality of life. According to the Court, the right to respect for housing refers to the quiet use of the residence, within reasonable limits. Violations of this right are not limited to interference such as illegal entry into a person's home, but can also result from environmental problems such as high noise levels, pollutant emissions or other similar forms of violation of the urban environment.

Following the evolutionary interpretation, the Court, in the *Grimkovskaya v. Ukraine*, it was reaffirmed that in order to characterize Art. 8 of the Convention, the hazard must reach a high level of seriousness, resulting in a real impediment for the Claimant to enjoy his home and that there is a need for an assessment of all the circumstances of the case to check severity of the situation. In this case, a highway was built on a street that was initially designed as suitable for residential use (CEDH, 2011).

For the construction of the highway there was no adequate paving or coating system capable of withstanding high traffic volumes of heavy vehicles. The claimant claimed that his home had become uninhabitable and the people living in the area were suffering from the constant vibrations

caused by traffic, loud noises and pollution.

The Court found that there was insufficient evidence on all of the applicant's claims such as the impact of the problem on the health of the residents of the region and relied on evidence that the level of noise and atmospheric pollution was above legal limits. It concluded that high levels of noise and air pollution generated by the road violated the rights of the applicant, as provided for in the 8th Article of the Convention (ECHR, 2011).

In the cases *Ledyayeva v. Russia* and *Fadeyeva v. Russia*, the European Court found that the installation and operation of a steel mill, which emitted pollutants in an urban area, caused damage to the population of the cities, as people were in an area of high risk for health and were subject to Emissions of toxic pollutants from the plant (ECHR, 2006). The Court ruled that the government had not taken the necessary measures to protect the rights of the victims.

There was a violation of the right to a healthy quality of life, given the serious environmental pollution. The Public Power did not carry out the removal of the families to a safe place and a repair was not guaranteed for the people who left their houses in search of a place outside the risk area. In the judgment of these cases, the Court highlighted the State's lack of capacity to regulate the environmental activities carried out by private companies.

The evolutionary interpretation of European international jurisprudence covers other legal goods including the right to health and the quality of life. These rights are susceptible to protection in cases of environmental damage, according to the jurisprudence of the ECHR. The Court has developed an innovative extension of the normative scope of other human rights, through the interpretation of legal rights protected in cases of damages to the urban environment (PRING, 2016).

It is observed that the European Court interprets the right to the environment in a reflex way and the jurisprudence is developed placing the environmental issue connected with the protection of human rights. The Court is constantly deciding that urban environmental issues require a serious commitment on the part of the public and private sectors in the development of actions aimed at the interest of the community. A strict control must be made between the collective interest and the harm suffered by the individuals, from the point of view of their fundamental rights.

CONCLUSION

The European Court of Human Rights presents a considerable evolution of its jurisprudence on the urban environment, which relates the environmental cases with the right to the healthy quality of life of people. This right was created by the Court from the interpretation of the right to private and family life with the right to health, property rights and other substantive and procedural rights provided for in the European Convention. There is no specific provision for environmental protection in the legislation, but there is recognition of the right to environmental quality of life by the ECHR.

From the conjunction of 8th Article with the fundamental rights provided for in the European Convention, the ECHR recognizes the right to a healthy urban environment using the dynamic evolutionary interpretation method. It is concluded that this creation is the result of the interpretations of a sequence of environmental cases that have been submitted to the Court, whose decisions have been refined from each judgment, which justifies the characteristic “dynamic evolution”. In procedural terms, the ECHR protects the right of people to intervene in the decision-making process as a fundamental value for the right to the environment with quality.

The jurisprudence of the ECHR, even with the possibility of collective demands, has a more individualistic character, considering the effects of violations on an individual or a family, with a greater focus on issues raised about air and noise pollution, among other urban environmental problems. Procedural rights have been consistently used in the exercise of environmental law, such as access to information, participation, consultation and access to justice.

It was concluded that the Court had produced international parameters that can contribute to the advancement of the jurisprudence of other international and national courts, in the form of connecting the right to the environment with the good quality of urban life. Even with the peculiar characteristics of international law on the environment, which has fragile mechanisms of cogency, enforceability and coercivity, the States do not have the resistance to ratify treaties of this nature, that is, there is a good level of acceptance in being part of a international cooperation regulation on environmental issues.

It is in this context that it is understood that, through normative dialogues and an evolutionary and dynamic interpretation of the right to

the urban environment, it is possible to broaden the scope of jurisprudence of other regional systems, such as the Inter-American Court of Human Rights, which presents failures in the recognition of the right to the urban environment. It is also concluded that the innovative jurisprudence of the ECHR of the right to environmental quality of life can influence, in addition to inter-American jurisprudence, Brazilian jurisprudence itself. The important point here is that the dialogue between Courts in order to cover possible urban environmental issues.

Considering the broad and innovative ways of interpreting environmental cases, the ECHR decisions can change the current normative scope of human rights protection systems in cases of environmental violations in the urban context. It should be stressed that the objective would not be to solve the environmental problems of cities, but rather to contribute to the extension of the scope of jurisprudence on the right to urban environmental quality of life. An increased interaction between international and national courts is crucial for the future of the systems themselves. A dialogue between courts is a complex interaction, but also it does imply the importance of innovative ways in the production of jurisprudence on the urban environment.

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