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Natural Beauty Protection as an Aesthetic Value under International Environmental Law

ABSTRACT:

There is a huge realm of environmental law, with more than five hundred multilateral agreements regulating environmental sub-regimes. The complexity of this field of law is compounded by diverse environmental values requiring strong legal protection from human impairment. One of such values is the aesthetic value (natural beauty) of the environment. As it is claimed in the present article, value has quite a strong influence on the well-being of human beings, and thus their penchant for natural beauty is intrinsic. Therefore, it is of great importance to ascertain what legal approach, if any, exists at the international level to legally protect natural beauty as an aesthetic value.

Keywords: International environmental law, environmental law, aesthetic, aesthetic value, natural beauty, environmental rights, International Court of Justice, ECtHR.

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I. Introduction

Even before environmental protection became one of the key priorities for the international society, the natural beauty, “immaterial value” of the environment, had represented the major inspiration for many celebrated artists for being environmentalists.¹ Therefore, it is widely recognised that importance of natural beauty undeniably refers to art, literature and philosophy.²

There is also a question of whether the importance of natural beauty goes beyond the aforementioned areas and what extra impacts it has on human life, while people’s well-being is a central idea of the international environmental law. Notably, in the simplest way, natural beauty could be delineated “as a non-material benefit obtained from [...] aesthetically pleasing environments.”³ According to the Statute of the International Union for the Conservation of Nature and Natural Resources “natural beauty is one of the sources of inspiration of spiritual life and the necessary framework for the needs of recreation, intensified now by man’s increasingly mechanised existence.”⁴ Therefore, it is obvious that natural beauty has beneficial influence on human beings and it provides us with “joy, solace, inspiration; it is life-enhancing.”⁵ In other words, it improves their life quality.⁶ Thus, beautiful surroundings do not only promote human being’s well-being but show significant impact on the life quality.⁷ It is attested that the view of natural beauty in the vicinity of living or working area can be as beneficial for human being’s mental health as good quality of physical environment.⁸ Furthermore,

¹ Basilio J. S. M., *Fostering Environmental Protection through the Right to Religious Freedom*, in: *Sustainable Management of Natural Resources: Legal Instruments and Approaches*, edited by H. T. Anker and B. E. Olsen, Intersentia, 2018, 244.

² Richardson B. J., *The Art of Environmental Law Governing with Aesthetic*, 1st edition, Bloomsbury Publishing, 2019, 14; Carlson A., *Environmental Aesthetics*, in: *The Stanford Encyclopedia of Philosophy*, edited by E. N. Zalta and U. Nodelman, Stanford, 2023, <<https://shorturl.at/hwyIX>> [01.12.2023].

³ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Memorial of Costa Rica on Compensation, Vol. I, ICJ, 3 April 2017, 104.

⁴ Gillespie A., *International Environmental Law, Policy, and Ethics*, 2nd edition, Oxford University Press, 2014, 70.

⁵ Cooper N., Bradly E., Steen H., Bryce R., *Aesthetic and Spiritual Values of Ecosystems: Recognising the Ontological and Axiological Plurality of Cultural Ecosystem ‘Services’, Ecosystem Services*, Vol. 21, Part B, 2016, 220.

⁶ Carlson A., *Environmental Aesthetics*, in: *The Stanford Encyclopedia of Philosophy*, edited by E. N. Zalta and U. Nodelman, Stanford, 2023, <<https://shorturl.at/hwyIX>> [01.12.2023].

⁷ Council of Europe Landscape Convention (Florence Convention) No. 176 of 20 October 2000, Preamble.

⁸ Filipova T., Kopsieker L., Gerritsen E., Bodin E., Brzezinski B., Rubio-Ramirez O., *Mental Health and*

in the first environment-related letter to the UN Secretary-General the pernicious influence on man's mental health caused by changing natural environment was named as one of the main reasons for higher attention to the problems of the human environment.⁹

Taking all the aforementioned into account, the essence of this article is to determine whether the protection of natural beauty, as an aesthetic value, falls within the scope of international law. Thus, first we should determine that natural beauty, as an aesthetic value of the environment, is recognised as one of the legally protected ones in accordance with international environmental law. The following chapters analyse the case law of the International Court of Justice and European Court of Human Rights to elucidate their approaches, if any, concerning the protection of natural beauty as part of their jurisdiction.

II. Defining Natural Beauty as an Aesthetic Value of the Environment

To identify the values protected by International Environmental Law, we should have at least general understanding of the term “environment.” A lack of global legal framework that would have defined the key terms and principles of International Environmental Law and fragmentation of this field of law are conducive factors to some dearth of legal certainties.¹⁰ One of the salient features of this problem is that even after fifty years of global recognition of the environmental protection importance the universal definition of “the environment” does not exist.¹¹ However, it has always been

the Environment: How European Policies Can Better Reflect Environmental Degradation's Impact on People's Mental Health and Well-being, the Institute for European Environmental Policy (IEEP) and the Barcelona Institute for Global Health (IS-Global), 2020, 53; Richardson B. J., *The Art of Environmental Law Governing with Aesthetic*, 1st edition, Bloomsbury Publishing, 2019, 3.

⁹ ECOSOC forty-fifth session provisional agenda addendum, “The question of convening an international conference on the problems of human environment – Letter dated 20 May 1968 from the permanent representative of Sweden addressed to the Secretary – General of the United Nations”, 22 May 1968, UN doc E/4466/Add, 2.

¹⁰ Gaps in International Environmental Law and Environment-Related Instruments: Towards a Global Pact for the Environment, Report of the Secretary-General, 2018, UN Doc A/73/419, 1-4.

¹¹ Jacobsson M. G., Preliminary Report on the Protection of the Environment in Relation to Armed Conflicts, submitted to the International Law Commission Sixty-sixth session, 2014, UN Doc A/CN.4/674, para. 80; Sands P., Peel J., *Principles of International Environmental Law*, 4th edition, Cambridge University Press, 2018, 4.

certain that the environment includes “the natural as well as its man-made components.”¹² For the purposes of this article, we will focus on the natural environment.

Aesthetic value is one of the intrinsic values of the environment.¹³ According to the UN International Law Commission, (ILC) the natural environment, in its terms, includes “non-service values” and the aesthetic value belongs to it.¹⁴ The ILC does not explain the meaning of the “non-service value”, which is not commonly used by authoritative institutions and scholars. For instance, the UNEP uses the terms “use value” and “non-use value.”¹⁵

In general, use value of the environment could be differentiated as “a direct use value and an indirect use value.”¹⁶ The former includes environmental resources which have direct contribution to the market economy (for instance, timber), while the latter provides services essential for maintaining healthy environment (for instance, carbon absorption by forests).¹⁷ The direct use value of the environment has its sub-categories such as “non-consumptive use” values which includes “enjoyment of scenic beauty.”¹⁸ Therefore, it is required to deem that ILC implied “non-consumptive use value” while mentioning a “non-service value.”

It has already been noted that universal definition of legal terms is not a strong-point of international environmental law and the aesthetic value of the environment does not represent any exception to the rule. Though we can still find certain authoritative sources to understand the key idea behind the term. Namely, according to the ILC, an aesthetic value of the environment means “the enjoyment of nature because

¹² Problems of the Human Environment, Report of the Secretary-General, 1969, UN Doc E/4667, para. 17.

¹³ Brady E., Prior J., *Environmental Aesthetics: A synthetic Review*, People and Nature, Vol. 2, Issue 2, 2020, 2; Convention on Biological Diversity of 05 June 1992, No. 1760 UNTS 79 CBD.

¹⁴ Jacobsson M. G., Preliminary Report on the Protection of the Environment in Relation to Armed Conflicts, submitted to the International Law Commission Sixty-sixth session, 2014, UN Doc A/CN.4/674, para 80; Draft Principles on the Allocation of Loss in the Case of Transboundary Harm Arising out of Hazardous Activities, the International Law Commission, 2006, UN Doc A/61/10, 69.

¹⁵ Brander L., *Guidance Manual on Value Transfer Methods for Ecosystem Services*, UNEP, 2004, 31-48; *Ecosystems and Human Well-being: A Framework for Assessment*, Millennium Ecosystem Assessment, World Resources Institute, edited by J. Sarukhán and A. Whyte, Island Press, 2003, 127.

¹⁶ Keske C.M., *How to Value Environmental and Non-Market Goods: A Guide for Legal Professionals*, Denver Journal of International Law & Policy, Vol. 39, No. 3, 2011, 425-426.

¹⁷ Ibid.

¹⁸ *Ecosystems and Human Well-being: A Framework for Assessment*, Millennium Ecosystem Assessment, World Resources Institute, edited by J. Sarukhán and A. Whyte, Island Press, 2003, 210; Keske C. M., *How to Value Environmental and Non-Market Goods: A Guide for Legal Professionals*, Denver Journal of International Law & Policy, Vol. 39, No. 3, 2011, 426.

of its natural beauty and its recreational attributes and opportunities associated with it.”¹⁹ Notably, ILC includes recreational value within an aesthetic value, while there are other sources enumerating recreational and aesthetic as separate environmental values. For example, one of the first reports of the UN Secretary-general regarding the problems of human environment dated 1969 and Convention on Biological Diversity adopted in 1992 mention them separately.²⁰ It is a prevalent attitude, however, that the main idea behind an aesthetic value of the environment is a natural beauty.²¹ The latter in itself includes recreational value as it has been emphasized in the Statute of International Union for Conservation of Nature adopted in 1948 and by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1962.²² Furthermore, even in the abovementioned report by the UN Secretary-General notes that “areas of natural beauty [...] have a social function of providing recreation facilities.”²³ Therefore, it should be more logical that the term “aesthetic value” is used to denote natural beauty (which includes recreational value) and these two terms could be interchangeable.

On the whole, aesthetic value of the environment has been legally protected for more than a century.²⁴ In particular, one of the key goals of the natural conservation acts (at national and international levels) has always been the legal protection of natural beauty of certain areas.²⁵ There are number of international environmental tools (both binding and non-binding) that recognise importance of legal protection of an aesthetic value of the environment.²⁶ For instance, Our Common Future: the report of the World Commission on Environment and Development and Future We Want:

¹⁹ Draft Principles on the Allocation of Loss in the Case of Transboundary Harm Arising out of Hazardous Activities, the International Law Commission, 2006, UN Doc A/61/10, 69.

²⁰ Convention on Biological Diversity of 05 June 1992, No.1760 UNTS 79 CBD; Problems of the Human Environment, Report of the Secretary-General, 1969, UN Doc E/4667, 40.

²¹ Kiester A. R., Aesthetics of Biological Diversity, *Human Ecology Review*, Vol. 3, No. 2, 1996/1997, 152; Richardson B. J., *The Art of Environmental Law Governing with Aesthetic*, 1st edition, Bloomsbury Publishing, 2019, 3.

²² Richardson B. J., *The Art of Environmental Law Governing with Aesthetic*, 1st edition, Bloomsbury Publishing, 2019, 3.

²³ Problems of the Human Environment, Report of the Secretary-General, 1969, UN Doc E/4667, 17.

²⁴ Gillespie A., *International Environmental Law, Policy, and Ethics*, 2nd edition, Oxford University Press, 2014, 68.

²⁵ Jenkins V., In Defence of Natural Beauty: Aesthetic Obligation and the Law on the Designation of Protected Landscapes in England and Wales, *Environmental Law Review*, Vol. 22, No. 1, 2020, 7.

²⁶ Gillespie A., *International Environmental Law, Policy, and Ethics*, 2nd edition, Oxford University Press, 2014, 72.

outcome document of the Earth Summit²⁷ and World Charter for Nature recognise aesthetic value and natural beauty of environment as a requisite for environmental conservation.²⁸ As for the legally binding instruments, clearly acknowledging aesthetic as legally protected value, the most salient ones are Convention on Biological Diversity adopted in 1992 and the Convention for the Protection of the World Cultural and Natural Heritage adopted in 1972.²⁹

III. Natural Beauty Protection and the Case Law of the International Court of Justice

In general, international judicial system have a long-standing practice³⁰ of considering environmental legal disputes, but yet relatively small amount of such cases leave many environmental legal issues either out of its realm or ambiguous.³¹

In 1993, International Court of Justice (ICJ) decided to create a chamber dedicated specifically to the environmental legal issues. However, for the member states had never shown any interest in bringing their cases to the Chamber it ceased existence in thirteen years.³² Despite this fiasco, the ICJ's role in development of the International Environmental Law should be recognised.³³ Therefore, modest but still important ICJ's case law should be delved into to ascertain its legal approach (if any) to legal protection of the natural beauty as an environmental aesthetic value in the context of transboundary environmental damage.

In its advisory opinion on *Legality of the Threat or Use of Nuclear Weapon* while naming what could be inflicted by explosion of nuclear weapon³⁴ the ICJ does not explicitly mention an aesthetic value of the environment and generally indicates nu-

²⁷ Both are non-binding UN documents: 'Our Common Future', Report of the World Commission on Environment and Development, United Nations, 1987, UN Doc A/42/427 and Resolution No. 66/288 of General Assembly of United Nations of 27 July 2012.

²⁸ Gillespie A., *International Environmental Law, Policy, and Ethics*, 2nd edition, Oxford University Press, 2014, 72-73.

²⁹ Ibid.

³⁰ The Trail Smelter Case (1941) is widely recognised as the first international environmental-related case.

³¹ Bodansky D., Customary (and Not so Customary) International Environmental Law, *Indiana Journal of Global Legal Studies*, Vol. 3, No. 1, 1995, 117.

³² ICJ, Chambers and Committees Chambers, <<https://shorturl.at/lQX37>> [01.12.2023].

³³ Vinuales J. E., The Contribution of the International Court of Justice to the Development of International Environmental Law: A Contemporary Assessment, *Fordham International Law Journal*, Vol. 32, No. 1, 2008, 233-234.

³⁴ The court names "health, agriculture, natural resources and demography".

clear weapon's potential "to destroy all civilization and the entire ecosystem of the planet."³⁵ It is understandable for the very nature of the nuclear weapon leaves almost no room for pondering over loosing the aesthetic value of the environment while in case of using such weapon, as judge Weeremantry says, "what is at stake can well be the very survival of humanity."³⁶ In their dissenting opinions, few judges mention the environmental issues and those who mention focuses on the consumptive use values of the environment.³⁷

In its dissenting opinion, judge Weeremantry, being one of the the most progressive judges in terms of environmental legal issues,³⁸ speaks of importance of protection of cultural treasure during wartime. In general, natural environment could be of "cultural importance" and represent "cultural heritage," which generally includes natural beauty,³⁹ but the judge refers to the provisions of two treaties⁴⁰ neither of which defines the natural beauty as protected subject. Futhermore, his statement says that in "cultural treasure" he means man-made objects "showing the progress of civilization through the ages" rather than natural environment.⁴¹

One of the most important features of this case is that ICJ provided iconic definition of the term "environment" which "is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn,"⁴² according to the court. As it has already been mentioned above, the natural beauty is of certain importance for maintaining the good quality of life. Therefore, we can assume that by mentioning this phrase, ICJ implicitly recognised the aesthetic

³⁵ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Reports, 1996, 35.

³⁶ Dissenting Opinion of Judge Weeramantry, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Reports, 1996, 140.

³⁷ Dissenting Opinion of Judge Koroma, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Reports, 1996, 570-578.

³⁸ Vinuales J. E., The Contribution of the International Court of Justice to the Development of International Environmental Law: A Contemporary Assessment, *Fordham International Law Journal*, Vol. 32, No. 1, 2008, 247.

³⁹ Draft Principles on Protection of the Environment in Relation to Armed Conflicts, the International Law Commission, 2022, UN Doc A/77/10, 107; Jacobsson M. G., Preliminary Report on the Protection of the Environment in Relation to Armed Conflicts, submitted to the International Law Commission Sixty-sixth session, 2014, UN Doc A/CN.4/674, 81.

⁴⁰ The Judge refers to Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 and Additional Protocol (II) to the Geneva Conventions of 1977.

⁴¹ Dissenting Opinion of Judge Weeramantry, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Reports, 1996, 455.

⁴² Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1. C.J. Reports 1996, 29; Manual on Human Rights and the Environment, 3rd edition, Council of Europe, 2022, 16.

value as the legally protected one by international environmental law. Though, such interpretation of the ICJ's statement could not be claimed to be well-established without any other specification.

In *Kasikili/Sedudu Island Case*, the importance of natural beauty was generally emphasized by judge Weeramantry, who said that the integrity importance and natural areas' protection with outstanding possibility to enjoy watching "a rich variety of wildlife" could be so significant that it could have a crucial influence even on the international boundary delimitation rules.⁴³

As part of the *Case Concerning Pulp Mills on the River Uruguay* Argentina argued that a mill construction in Uruguay had caused not only air pollution and noise, but also was an "undesirable addition to the natural landscape" and had a deleterious impact on views from one of its resorts.⁴⁴ Furthermore, Argentina claimed that the aesthetic quality of the resort could have been lost due to "unattractively coloured water" as a result of pollution by the mill.⁴⁵ Thus, this "visual nuisance" would have harmed its tourism industry.⁴⁶ But the court missed the opportunity to consider the "visual pollution" issue stating it lacked the jurisdiction over it due to certain circumstances.⁴⁷

As part of the *Gabcikovo-Nagymaros Project Case* neither the court nor the parties paid any special attention to the aesthetic value of the damaged environment and strongly focused on its consumptive use values. Although, in his dissenting opinion of *Gabcikovo-Nagymaros Project Case* Judge Weeramantry provides us with the interesting remarks, which sometimes create special combination of law and philosophy. To attest Europeans' "deep-seated tradition of love for the environment," he mentions works of Thoreau, Rousseau, Tolstoy, Chekhov, Goethe as "[representing] a deep-seated love of nature that was instinct in the ancient traditions of Europe."⁴⁸ It is notable that Judge implied love for natural beauty if we recall the passionate repre-

⁴³ Dissenting Opinion of Vice-President Weeramantry, *Kasikili/Sedudu Island (Botswana/Namibia)*, Judgement, ICJ Reports, 1999, 84.

⁴⁴ *Case Concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Memorial of Argentina, 2007, 144, 193.

⁴⁵ *Ibid.*, 165, 160.

⁴⁶ *Ibid.*, 193.

⁴⁷ *Case Concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay) (Merits)*, 2007, ICJ Reports, 49.

⁴⁸ Separate Opinion of Judge Weeramantry, *Gabcikovo-Nagymaros Project (Hungary v. Slovakia)*, Judgement, ICJ Reports, 1997, 105.

sentations of natural beauties by the writers mentioned above. For instance, Thoreau preferred even “ugly places of nature” and considered them “superior to the most cultivated places of humanity.”⁴⁹ However, impressive words uttered by even such an authoritative ICJ judge cannot suffice to ascertain the legal protection of the natural beauty by the ICJ case law.

In the latest case related to the environmental issues, ICJ experienced its first opportunity to examine compensation for damage to the environment. In particular, Costa Rica (the applicant) claimed “22 categories of [ecological] goods and services that could have been impaired or lost” as a result of violation of International Law by Nicaragua.⁵⁰ The list of the goods and services presented by Costa Rica included both non-use and use values, including natural beauty as an aesthetic value of the environment.⁵¹ But Costa Rica claimed compensation only for the damage to the consumptive use values of the environment.⁵² This is logical, as according to the international law, the compensation is required for only monetary damage.⁵³ In this case Nicaragua argued that it was not possible to “observe market prices for the aesthetic values”⁵⁴ and Costa Rica agreed by affirming that aesthetic value had no monetary valuation.⁵⁵

IV. Protection of Natural Beauty and Case Law of European Court of Human Rights

There is a huge realm of environmental law with more than five hundred multilateral environmental agreements protecting environment and its diverse values.⁵⁶ However, European Convention on Human Rights (ECHR) is not one of them, as

⁴⁹ Gillespie A., *International Environmental Law, Policy, and Ethics*, 2nd edition, Oxford University Press, 2014, 70.

⁵⁰ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, ICJ Reports, 2018, 55; Harrison J., *Significant International Environmental Law Cases: 2017–18*, *Journal of Environmental Law*, Vol. 30, No. 3, 2018, 528.

⁵¹ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Memorial of Costa Rica on Compensation, Vol. I, ICJ, 3 April 2017, 103.

⁵² *Ibid.*

⁵³ *Draft Articles on Responsibility of State for Internationally Wrongful Acts, with Commentaries*, the International Law Commission, 2001, UN Doc A/56/10, 99.

⁵⁴ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Counter Memorial of the Republic of Nicaragua on Compensation, ICJ, 02 June 2017, 116.

⁵⁵ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Memorial of Costa Rica on Compensation, Vol. I, ICJ, 3 April 2017, 131.

⁵⁶ See: ECOLEX, *The Gateway to Environmental Law*, <<https://shorturl.at/djKT0>> [01.12.2023].

the European Court of Human Rights (ECtHR) clarified several times in its case law that the ECHR does not provide the protection of the environment as general.⁵⁷ Though it clarified in its case law that if the environmental deterioration “directly affect an [individual’s] home, family or private life and the adverse effects of the environmental hazard [...] attain a certain minimum level of severity,” then an issue under article 8 of the ECHR could be raised.⁵⁸ ECHR also explained that “the assessment of that minimum [level of severity] is relative and depends on all the circumstances of the case, such as the intensity and duration of the nuisance, and its physical or mental effects.”⁵⁹

Futhermore, like certain rights, including the right to property guaranteed under the Convnention, there is not an absolute one that could be restricted and one of the legitimate aims for that is the environmental conservation,⁶⁰ “which in today’s society is an increasingly important consideration, having become a cause the defence of which leads to a constant and sustained interest of the public and consequently the public authorities.”⁶¹ Therefore, in a number of cases, the Court established that “environmental conservation policies, where the community’s general interest is pre-eminent, confer on [a] state a margin of appreciation that is greater than when exclusively civil rights are at stake.”⁶² As it was explained above (Chapter II) one of the main reasons for natural conservation is protection of natural beauty. Therefore, according to the ECHR case law the Parties to the Convention can restrict an individual right in the name of environmental conservation, including the natural beauty protection. In addition, in the *Muriel Herric v. UK* Case the protection of “outstanding natural beauty” was explicitly recognised as a “general interest.”⁶³ But what happens when a state itself violates environmental conservation rules and as a result, aesthetic value of the environment is lost at the same time?

⁵⁷ Manual on Human Rights and the Environment, 3rd edition, Council of Europe, 2022, 29.

⁵⁸ *Leon and Agnieszka v. Poland* [ECtHR], Judgement, App. No. 12605/03, 21 July 2009, para.100; Kobylarz N., *The European Court of Human Rights: An Underrated Forum for Environmental Litigation, Sustainable Management of Natural Resources: Legal Instruments and Approaches*, edited by H. T. Anker and B. E. Olsen, Intersentia, 2018, 112; Manual on Human Rights and the Environment, 3rd edition, Council of Europe, 2022, 29.

⁵⁹ *Ibid.*

⁶⁰ Darpö J., *Can Nature Get It Right? A Study on Rights of Nature in the European Context*, European Parliament, 2021, 27.

⁶¹ *Deppalle v. France* [ECtHR], Judgement, App. No. 34044/02, 29 March 2010, para. 81.

⁶² *Ibid.*, para. 84.

⁶³ *Muriel Herrick v. United Kingdom* [ECtHR], Judgement, App. No. 11185/84, 11 March 1985, para. 279.

In this respect we need to discuss two ECHR cases: *Unver v. Turkey* and *Kyrtatos v. Greece*.⁶⁴ In the first case of *Unver v. Turkey*, the applicant contended at national court that violation of natural conservation rules by local authorities “...[deprived] him of his right to the peaceful enjoyment of the panoramic view from his house.”⁶⁵ But the applicant himself repudiated that he did not contend “the violation of his right to a panoramic view” but just violation of his right to “... peaceful enjoyment of his property...”⁶⁶

ECHR founded the application inadmissible. It observed that “Article 1 of Protocol No. 1 does not, in principle, guarantee a right to the peaceful enjoyment of possessions in a pleasant environment.”⁶⁷ The term “pleasant environment” could be interpreted in such a broad manner that we should suppose the Court definitely implied natural beauty. Although, it should be noted that in this case the Court speaks from the perspective of the Article 1 of the Protocol No. 1 and not the entire Convention. Thus, one could think that this decision does not exclude the opportunities for protecting an aesthetic value of the environment provided that losing of it influences the other rights within the scope of the Convention. However, in the case of *Kyrtatos v. Greece* the ECtHR stated that the applicants did not present the cogent arguments to prove that losing the “scenic beauty” near the applicant’s house had a direct impact on their rights under the article 8 of the Convention. Therefore, losing the “scenic beauty” near the applicant’s house, if any, would amount to the “general deterioration of the environment” and the court reiterated that “...neither Article 8 nor any of the other Articles of the Convention are specifically designed to provide general protection of the environment as such.”⁶⁸

In addition, the Court noted that if the case had been related to the forest destruction in the vicinity of the applicant’s house, there could have been higher possibility of

⁶⁴ Kobylarz N., *The European Court of Human Rights: An Underrated Forum for Environmental Litigation, Sustainable Management of Natural Resources: Legal Instruments and Approaches*, edited by H. T. Anker and B. E. Olsen, Intersentia, 2018, 106; *Manual on Human Rights and the Environment*, 3rd edition, Council of Europe, 2022, 87.

⁶⁵ *Unver v. Turkey* [ECtHR], Judgement, App. No. 36209/97, 26 September 2000, A.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Kyrtatos v. Greece* [ECtHR], Judgement, App. No. 41666/98, 22 May 2003, para. 52; *Manual on Human Rights and the Environment*, 3rd edition, Council of Europe, 2022, 34; Roagna I., *Protecting the Right to Respect for Private and Family Life under the European Convention on Human Rights*, Council of Europe Human Rights Handbooks, Strasbourg, 2012, 78.

establishing the direct impact on applicant's well-being.⁶⁹ It should be concluded that by mentioning the forest destruction, the court implies the air quality deterioration. It means that the problem of the applicant's arguments was not a dearth of high degree of convincement but the Court merely does not recognise the influence of the aesthetic value of the environment on the quality of human life.

In his dissenting opinion, Judge Zagrebelsky noted that he sees "no major difference between the forest destruction and destruction of the extraordinary swampy environment the applicants were able to enjoy near their house." The latter indeed had an influence on the applicants' life quality. He also reminds the court of the status of the Convention of a living instrument and recommends the Court to "recognise the growing importance of environmental deterioration on people's lives."⁷⁰ The fact that the first decision was adopted unanimously and the second one has just one dissenting opinion, manifests that the court is very adamant about recognising losing access to the natural beauty being "decisive for the"⁷¹ life quality.

V. Conclusion

In this article it was clarified that the natural beauty as an aesthetic value is considered non-consumptive use value and is recognised as a legally protected value of the environment. The case law of ICJ and ECtHR was analysed to examine whether the value is practically protected.

The ICJ case law does not establish any certain approach for protecting the natural beauty. In particular, the analysis given in the Chapter 3 reveals that the court has never considered issues regarding the protection of the environmental aesthetic value. It had an opportunity, however, which was missed for the Court declared the issue to be out of its jurisdiction due to specific circumstances. But the ICJ case law is still worthwhile in this respect. Despite the fact that the issue has never been a subject of its judgments on the merits, the court has never refused that the natural beauty represents a legally protected value. Furthermore, there are meaningful memorials of the dispute parties manifesting a legal understanding of the value. Therefore, we can conclude that the precedential judgment of ICJ on the natural beauty

⁶⁹ *Kyrtatos v. Greece* [ECtHR], Judgement, App. No. 41666/98, 22 May 2003, para. 53.

⁷⁰ Partly Dissenting Opinion of Judge Zagrebelsky, in: *Kyrtatos v. Greece* [ECtHR], Judgement, App. No. 41666/98, 22 May 2003.

⁷¹ *Unver v. Turkey* [ECtHR], Judgement, App. No. 36209/97, 26 September 2000.

protection is yet to come. Therefore, the main challenge the court may face is a lack of unified methodology for assessing the environmental damage, including a damage to the aesthetic value.⁷²

As for the case law of ECHR, it was stated above that the Parties to the Convention are entitled to restrict an individual right in the name of the environmental conservation, including the protection of natural beauty. But the Court does not establish interference in the right ensured under the article 8 of ECHR when the natural beauty is destroyed in the vicinity of the applicants' living area. The court's approach is quite unambiguous, but reasonableness of this approach could be questioned.

As it was mentioned, despite "there is no explicit right in the Convention to the clean and quiet environment"⁷³ the Court has well established case law that significant deterioration of the environment influencing an individual's "living area" and thus provides a direct and serious effect on the quality of his/her life that can be qualified as a violation of the article 8 of the Convention.⁷⁴ Such interference may stem from intangible sources like noise, emissions, smells or other...⁷⁵ For instance, in the case titled *Brândușe v. Romania* it was established that odour near a living area may have a deleterious impact on the quality of human life.⁷⁶ It is out of both the author's intention and competence to compare the significance of the sense of smell and the sense of vision with each other. Though, bearing in mind that both represent essential parts of a human being's health, arises a question: can the disruption of a sense of smell be regarded as an interference at a certain level of severity in certain circumstances and why the same approach should not be used to the disruption of a sense of vision by destroying the natural beauty? It is obvious, that in case of the latter it will be required for the Court to determine strict criteria for establishing interference. For instance, at least the beauty of the natural place should not be disputed. As people have different perceptions of beauty,⁷⁷ it is necessary the place to be officially protected.

⁷² Certain Activities Carried Out by Nicaragua in the Border Area (*Costa Rica v. Nicaragua*), Compensation, Judgment, ICJ Reports, 2018, 44.

⁷³ *Leon and Agnieszka Kania v. Poland* [ECtHR], Judgement, App. No. 12605/03, 21 July 2009, para. 98; Manual on Human Rights and the Environment, 2nd edition, Council of Europe, 2012, 47.

⁷⁴ Manual on Human Rights and the Environment, 3rd edition Council of Europe, 2022, 34.

⁷⁵ *Ibid.*, 34.

⁷⁶ *Ibid.*, 36.

⁷⁷ Richardson B. J., *The Art of Environmental Law Governing with Aesthetic*, 1st edition, Bloomsbury Publishing, 2019, 112.

It has been twenty years since Judge Zagrebelsky recommended the court to keep up with contemporary environmental challenges. Therefore, new application like *Kyrtatos v. Greece* could have a great importance to ascertain whether the recommendation is taken into consideration. An existing precedent of a substantial evolution of the Court Case Law (as it happened in case of Bancovich Decision)⁷⁸ increases the chance of reviewing Court's established approach in this regard as well.

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⁷⁸ Partly Dissenting Opinion of Judge Chanturia, *Georgia v. Russia (II)* [ECtHR], Judgement, App. No. 38263/08, 29 January 2021, para. 7; Mallory C., *A second coming of extraterritorial jurisdiction at the European Court of Human Rights?*, *Questions of International Law*, Vol. 82, 2021, 32.

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