

Effective access to justice. Independent environmental expertise.

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EXPERT EVIDENCE BEFORE THE ECHR

1. SUBSTANTIVE COMPLAINTS

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Jugheli and Others v. Georgia, 2017

Principle of free assessment of evidence.

Environmental impact assessment report has strong evidentiary value, *Taşkın and Others v. Turkey*, 2004; *Hardy and Maile v. United Kingdom*, 2012 even where the dangerous activity is still in the planning stage. *Thibaut v. France* (dec.), 2022

ECtHR (President of the Chamber) may invite or grant to “any person concerned who is not the applicant” the right to submit a **third party intervention** on the general issues raised by the case, if it is in the interests of the proper administration of justice (*Article 36 § 2 ECHR and Rule 44 § 3 (a) of the Rules of Court*).

Third party may have an indirect legal interest in the case, a broader interest in its outcome, or no tangible interest at all.

EVIDENCE BEFORE THE ECHR

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ECHR does not lay down rules on evidence as such. Principle of **free assessment of evidence**. *Mantovanelli v. France*, 1997, § 34

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2. PROCEDURAL COMPLAINTS (EVIDENCE IN NATIONAL COURTS)

Right to a fair hearing (*Article 6 ECHR*)

Principles of **equality of arms** and of **adversarial proceedings** must be observed. *Regner v. the Czech Republic* [GC], 2017, § 146

Each party must be afforded a reasonable opportunity to present his case – including his evidence – under conditions that do not place him at a “substantial disadvantage” vis-à-vis the other party *Kress v. France* [GC], 2001, § 72

Admissibility of evidence and the way it should be assessed are primarily **matters for regulation by national law and the national courts**. *García Ruiz v. Spain* [GC], 1999, § 28

The same applies to the probative value of evidence and the burden of proof. *Tiemann v. France and Germany* (dec.), 2000

It is also for the national courts to assess the relevance of proposed evidence *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, § 198

EXPERT EVIDENCE IN NATIONAL COURTS

Article 6 does not bar national courts from relying on expert opinions drawn up by specialised bodies when this is required by the nature of the issues under consideration. [Letinčić v. Croatia, 2016](#) and [Devinar v. Slovenia, 2018](#)

An opinion of an expert, as it falls outside judges' probable area of expertise, is likely to have a dominant influence on the assessment of the facts and to be considered an **essential piece of evidence**. [Feldbrugge v. the Netherlands, 1986](#)

Where an expert has been appointed by a court, the parties must in all instances be able to attend the interviews held by him/her or to be shown the documents he/she has taken into account. [Mantovanelli v. France, 1997](#); [Letinčić v. Croatia, 2016](#); and [Devinar v. Slovenia, 2018](#)

Parties have a right to have knowledge of and comment in an appropriate form and within an appropriate time on all evidence adduced (its existence, content and authenticity) or observations filed with a view to influencing the court's decision [Kress v. France \[GC\], 2001](#); [Krčmář and Others v. the Czech Republic, 2000](#); and [Colloredo Mannsfeld v. the Czech Republic, 2016](#)



NEUTRALITY OF EXPERTS

Çöçelli and Others v. Türkiye, 2022

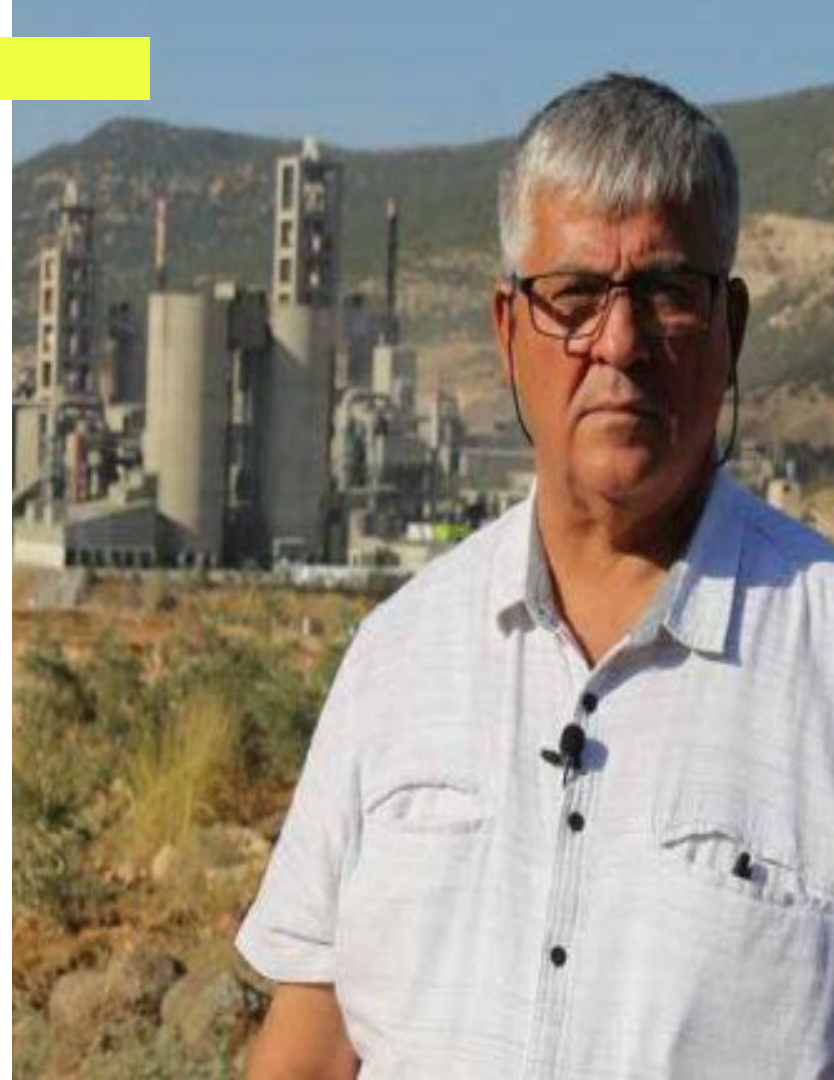
Construction of cement factories. Complaints: insufficient time to challenge the composition of an expert panel + EIA lacked neutrality. No violation of Article 6

Where technical information of which a domestic court has no specialist knowledge has dominant influence on the outcome of the dispute, experts should inspire confidence in the parties by not giving any appearance of bias.

There must be sufficient procedural safeguards ensuring experts' neutrality (e.g. procedure to disqualify biased experts; free evaluation of evidence; freedom to order another expert report of the court's own motion; expert opinion not binding on the court).

Doubts as to experts' neutrality must be objectively justified (functional or hierarchical or other links between the judge and other participants in the proceedings are an important but not decisive element).

Experts cannot be held to the same standards expected of judges when it comes to drafting opinions with the utmost reserve and circumspection (inappropriate language used to disqualify the applicants' concerns).



QUALITY OF EXPERT INFORMATION

BureStop 55 and Others v. France, 2021

Effective review by the courts of the content and quality of information on the management of radioactive waste communicated by a public agency in line with its legal obligation to provide information. No violation of Article 10.

Not to deprive the right of access to information of its substance information provided by the competent authorities must be **reliable: sincere, accurate and sufficient**.

Interested parties must have a **remedy** allowing the content and quality of the information provided to be effectively controlled, within the framework of an adversarial procedure. Access to such review is particularly important when it comes to information relating to a project representing a major environmental risk.

It helps if the organ providing information has carried out in-depth studies and corroborates the information by its institutional partners.

It helps if the court reviewing the quality of information gives consideration to divergences of technical assessment if such exist.

* Art. 10 may include individual right of access to info held by the State and an obligation for the State to provide it, where the disclosure of the info has been imposed by domestic law or a binding court order, and when access to info is central to the individual's exercise of his/ her "the freedom to receive and impart information", and that refusing this access constitutes an interference with the exercise of this right.



Cangı and Others v. Türkiye, no. 48173/18 - pending

Adm. proceedings challenging the Ministry of Environment's decision approving an EIA report concerning the exploitation and the operation of the Kışladağ-Uşak open-pit gold mine by a private developer. Complaints under Article 6: Applicants not given an opportunity to put their own questions to the experts (ii) non-communication of the expert opinions to them for comments and (iii) inadequate reasoning of the domestic courts with respect to their objections to the conclusions of the experts.

Eólica de S. Julião, Lda v. Portugal, no. 33545/14 - pending

Civil proceedings regarding nuisance from a wind farm ending w/order to remove several wind turbines without basis in a technical assessment. Complaint under Article 1/P1: Disproportionate control of property.

Wagner-Lippoldt and Others v. Germany, no. 19667/18 - pending

Approval of construction of Berlin Brandenburg Airport with EIA examining an outdated layout of flight routes. Complaints under Article 6 and 8: authorities misled the public; the investigations and studies regarding the noise pollution were not appropriate.

EXPLORE:

<https://www.coe.int/en/web/portal/human-rights-for-the-planet>

https://www.echr.coe.int/Documents/Guide_Environment_ENG.pdf

https://www.echr.coe.int/documents/fs_environment_eng.pdf

<https://www.coe.int/en/web/portal/-/new-factsheet-on-the-execution-of-echr-judgments-concerning-environment>

<https://www.coe.int/en/web/human-rights-rule-of-law/human-rights-environment>

<https://www.coe.int/en/web/portal/human-rights-environment>

<https://www.coe.int/en/web/portal/-/the-right-to-a-healthy-environment-the-impact-of-the-european-convention-on-human-rights>

