

# THE INSEPARABLE LINK BETWEEN THE CULTURAL AND NATURAL ENVIRONMENT: THE GREEK EXPERIENCE

KAPELOUZOS, IOANNES B.

Lawyer, Former Associate Councilor, Member of the Board of Directors, Chamber of Environment and Sustainability. Alkiviadou Street 116, 18532 Piraeus, Greece

## SUMMARY

The Hellenic Council of State, the Supreme Administrative Court in Greece, is leading the effort to protect Greece's "Cultural Environment. Traditional thinking on Sustainable Development focuses on economic and natural considerations, while ignoring the importance of culture (i.e. values, religion, ideologies, notions of justice, etc.). The author discusses the Hellenic Council of State's case law on environmental protection and finds that it emphasizes the dominant role of culture and its interconnection with nature and identifies a "Cultural Environment" that the state has a duty to protect. This protection is grounded in the Hellenic Constitution of 1975 as well as numerous other national and international instruments. In practice, the Council has lead efforts to effectively enforce this protection, often at odds with the political branches, thereby reinforcing Greek cultural values such as justice, moderation and respect for nature.

## 1 INTRODUCTION

Scholars and practitioners of environment and sustainability focus mainly on a man-to-nature relationship, i.e. on the impact of human intervention on ecosystems, thus neglecting important interactions among man-made systems themselves.

The vast majority of publications on the subject attest to this attitude. Even the definition of sustainable development provided by Agenda 21 and its related documents put an emphasis on what has been called "Natural Capital," which is being used as a technical term for ecosystems.

Such a tendency narrows the scope of sustainability and results in an under-conceptualization of the situation. Human-made systems predominate over the other components of the global system, namely the biological and the natural. Given the importance of values in determining the behavior of man-made systems, sustainable development has to do more with the value, educational and justice sub-

systems of society than with the economic and natural environment ones.

The three parameters of the notion of sustainability (natural, cultural, social) advanced by the Hellenic Council of State provide respective criteria for a more comprehensive, therefore more effective, management of issues of environmental protection. The concept also stresses the strong interdependence of these parameters especially between the natural and the cultural.

In this paper a brief account of the Hellenic Council of State's jurisprudence on the protection of cultural environment is given, first in regard to its legal grounds and reasoning and second in regard to applications. Reference is also made to a number of selected cases that demonstrate the Court's contribution to the protection of the Country's cultural inheritance.

## 2 THE NOTION OF CULTURAL ENVIRONMENT AND ITS PROTECTION

Nothing is more indicative of the value system of a social complex than the notion of culture. Being commonly defined as the set of values and norms proper to a social system, culture includes world views, religious, ethical, philosophical and aesthetic beliefs, basic concepts, political ideologies, law systems, technical practices, economic attitudes, etc. Culture is embedded in the minds of people. It is also embodied in various human artifacts and customs such as monuments, buildings, works of art, technology and social events. These constitute the so-called cultural environment.

According to a definition stemming from the rulings of the Greek Council of State, "Cultural Environment" includes the monuments and all other products of human activity that comprise the historical, aesthetic, technological and intellectual legacy of the country. Evidently, protection of cultural inheritance provides historical continuity and stability of the man-made environment, thus safeguarding a country's cultural identity from constant change.

In the Court's opinion, legal protection of Cultural Environment means mainly two things:

- That the State has a duty to perpetuate the existence of cultural elements.
- That the law may impose restrictions in order to avoid any damage, alteration or demolition of those elements.

Let us elaborate on the legal grounds and reasoning lying behind such an opinion.

### **3 CONSTITUTION PROVIDES GROUNDS FOR THE PROTECTION OF CULTURAL ENVIRONMENT — LEGAL REASONING**

By acknowledging the inseparable link between the natural and cultural environments, the Constitutional of 1975 in Article 24 avowedly pronounced the need for the protection of each of them. This

Article demands that the State should take either preventive and or repressive measures for their protection. It also provides also for spatial planning throughout the country. This provision was given a liberal construction by the Council of State, thus receiving a meaning responding to all criteria of sustainability and its underlying philosophy. As a result, Article 24 of the Hellenic Constitution became the most effective tool available to the Judges for environmental compliance and enforcement.

To be sure both Domestic (e.g. the Charter of Athens, 1931: the Law on ancient monuments, 1932) and International Law (e.g. the European Cultural Convention of Paris, 1954: NS the Granada Convention on the protection of architectural heritage of Europe, 1992, ratified by Greece) provide for the protection of certain elements of cultural heritage. But these documents do not allow for as comprehensive and interlocking a notion of sustainability as the Hellenic Constitution. Moreover, the Constitution – ranking at the highest level in the hierarchy of legal norms – allows for the invalidation of any other law or act not conforming to its provisions.

Legal reasoning of the Court included the following:

- Article 24 of the Constitution protects Environment in its broad sense, i.e. both the Natural and the Man-made Environment.
- Constitutional protection is complete in the sense that it embraces all the elements of Environment and the full extent of them.
- Environment serves the public interests not only of the present but also of future generations; it therefore prevails over other legal entities.
- Constitutional requirements for environmental protection cannot be fulfilled unless it is integrated in all public policies.
- Protection of Environment is inconceiv-

able without spatial planning and vice-versa.

- Constitutional provisions bind all three branches of Government.

In addition, the Court reached a number of specific rules pertaining particularly to the protection of Cultural Environment. These rules are:

- Protection of Cultural Environment should be a major target of spatial and city planning.
- Monuments should be protected from pollution.
- Not only monuments but also their surrounding environment should be given proper consideration.
- There is a duty of the state to restore damaged elements of cultural environment.
- The legal status of protection should be effective, i.e. it should embody all proper kinds of control.
- Along these lines the Hellenic Council of State provided protection to all conceivable elements of Cultural Environment both with respect to those of "High Culture" (creations of a global significance) and with respect to those of "Folk Culture" (products of the people).  
Judicial control had been carried out across the full range of the Court's Constitutional capacities.

#### **4 MANAGING PROTECTION OF CULTURAL ENVIRONMENT BY THE COURTCASES**

After hierarchically ordering the objectives of the Master Plan of Athens, the Court judged that the most basic objective of all was to preserve the city's cultural identity. In the same context, the Court rejected a law providing for such uses of land and building conditions that were incompatible with the cultural and historical

significance of places, such as along the Sacred Road (the road connecting Athens with the sanctuary of Eleusis) and the ancient Public Cemetery (the graveyard of eminent Athenians).

In order to protect monuments from pollution and any other kind of offence, the Court opposed the installation of an air exhaust system (ventilation grid) of the underground railway next to the Athens Cathedral. It also denied a Tango Festival, which was to take place in the courtyard of Kesariani Monastery on the grounds of the erotic symbolism of this dance.

The range of protection was broadened extensively (e.g. summertime cinemas) as well as spatially. Instances of this latter category include a) a legal requirement for a construction-free zone around the archaeological site of Delphi, b) preventing the installation of a waste dump that was in view of the sacred precinct of Zeus on Mount Hellanium, and c) prohibiting the presence of quarries near the archaeological site of Ramnus.

With respect to Folk Culture, the Court considered traditional settlements a significant part of the Country's cultural inheritance, stating that their protection includes not only buildings but also streets and squares. In the case of the township of the holy island of Patmos, building was restricted on plots where previous buildings had stood.

A number of opinions and rulings of the Hellenic Council of State manifestly refer to the unity of the cultural and natural environment, while others point out the dual (natural and cultural) character of some protected elements of the environment themselves. For instance, in the Hymmetus regulatory decree, the Court mentioned "the inseparable link of the austere and delicate skyline of the mountain with the cultural capital of the area of Athens." The Court also referred to the "venerable Mount Pelion, a mount of imper-

ative significance for Hellenism,” in order to protect its traditional settlements from construction of private swimming pools. In the case of Marathon, the Court stressed the unity of the archaeological site and the natural environment, including the shoreline, which was considered to be “a substantive feature of the location owing to the part it played in the conditions of the historic battle”.

Perhaps the most holistic expression of the linkage between the cultural and natural environment can be found in the case of small islands, especially that of the Cyclades. The Court pointed out that these islands constitute fragile ecosystems, while at the same time they are respected centers of a national civilization that date back for millennia having unique features that need to be protected; therefore, any urban development on these islands should be mild and a result of comprehensive planning that incorporates criteria referring to all the aforementioned characteristics.

## **5 COMPLIANCE AND ENFORCEMENT**

As striking as these cases may be, the respective assaults on environment by either the legislature or administration are

deplorable. Of the three branches of government in Greece, only the judiciary, particularly the Fifth Section of the Council of State, demonstrated compliance to and enforcement of the needs of sustainability and environmental protection. In this, the Court had to battle against a prevailing attitude towards an idea of growth dominated by the spirit of market economy and its supportive values of accumulation of wealth, the acquisition of power and the creation of a society of masses seeking excessive consumption of commodities; a battle that led to an overt conflict between the Council of State and the political system which resulted in a revision of the Constitution in an effort to diminish environmental protection.

## **6 EPILOGUE**

Sustainable Development rests on a set of values such as justice, moderation and respect of nature that are deeply embodied in the Greek cultural tradition. In this respect the Hellenic Council of State’s jurisprudence, apart from its impact on the objects and structures of the country’s cultural heritage, constitutes itself an active affirmation of the very essence of sustainability.