

HUMAN RIGHTS AND  
ENVIRONMENTAL PROTECTION  
FROM A CENTRAL AND EASTERN  
EUROPEAN PERSPECTIVE

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*Edited by*  
Anikó RAISZ  
Enikő KRAJNYÁK



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Although the series is primarily law-focused, it also embraces an interdisciplinary approach and therefore includes contributions from other academic fields.

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# Human Rights and Environmental Protection from a Central and Eastern European Perspective

Anikó RAISZ – Enikő KRAJNYÁK

*‘Human rights and the environment are intertwined; human rights cannot be enjoyed without a safe, clean and healthy environment; and sustainable environmental governance cannot exist without the establishment of and respect for human rights.’*

UNEP – UN Environment Programme

The above quotation is significant not only from an environmental standpoint, but also from the perspective of human rights. As stated by the OHCHR: ‘A safe, clean, healthy and sustainable environment is integral to the full enjoyment of a wide range of human rights, including the rights to life, health, food, water and sanitation’, thereby underscoring the essential link between environmental protection and the realisation of human rights.

This is the very reason for formulating the present volume, which clearly aims at showcasing various perspectives of this interrelationship between human rights and environmental protection. Thinking in the long-term, and not taking exclusively immediate results into account, they both seem to lie on similar grounds: the well-being of mankind.

The present volume advances the most pressing topics of this field, providing cross-regional perspectives on universal values of human rights, environmental protection, and sustainable development, thereby fostering a deeper understanding of their interdependence and practical implementation in the Central and Eastern European region.

First, there is a chapter by Dalibor Đukić on the moral, religious and ethical foundations of the topic. It is evident that Christianity is, in several ways, connected to these issues, but this chapter gives us a general overview of the most relevant points of connection. It is particularly interesting that within Christianity, several divergent approaches exist regarding this issue; furthermore, being in Central Europe, it is worthwhile to take a wider look at and furthermore include in our analysis religions and moral attitudes outside the scope of Christianity.

Anikó Raisz, Enikő Krajnyák (2026) ‘Human Rights and Environmental Protection from a Central and Eastern European Perspective’ in Raisz, A., Krajnyák, E. (eds.) *Human Rights and Environmental Protection from a Central and Eastern European Perspective*. Miskolc–Budapest: Central European Academic Publishing, pp. 15–16. [https://doi.org/10.71009/2026.arek.hraep\\_0](https://doi.org/10.71009/2026.arek.hraep_0)



We then turn our focus on the universal level of protection: the chapter of Gyula Bándi on the development of environmental protection within the UN human rights framework treats both aspects of the UN human rights framework: the treaties, as well as the treaty bodies, i.e. the hard law element, and the soft law element thereof, latter including, among others, the resolutions, the SDGs, the work of special rapporteurs, cases, etc. Furthermore, an inspiring part is where the best practices of member states offer diverse solutions to similar problems.

Subsequently, a separate chapter by Agata Kosieradzka-Federczyk is dedicated to the development of the climate change framework within the UN, with special attention to its human rights perspective, a chapter that clearly includes the latest development tendencies.

From a Central European perspective, many environmental treaties are of high relevance. One chapter (by Matúš Michalovič) introduces us in general to these treaties, including their practice where necessary, and another one (by Monika Król) focuses on two extremely important international environmental agreements, the Aarhus and the Espoo Conventions. These treaties – as so-called multilateral environment agreements –, particularly their list of signatories show that countries of the region take these issues very seriously and participate actively in the multilateral cooperation of states. Their geographical conditions made it obvious at a very early stage that the peaceful enjoyment of human rights and a healthy environment are prerequisites for a steady background and consequently, economic and social welfare.

Following an overview (by Anikó Raisz and Enikő Krajnyák) of the most relevant human rights issues to be touched upon in the following chapters, each of these rights are analysed in detail in separate chapters, within the framework of the Council of Europe, including the relevant practice as well. First, the right to life by Maia Bitadze, this being one of the most brutal human rights interferences, securing the first place. This is followed by the most frequent meeting point of human rights and the environment, the right to a private and family life, by Lana Ofak. The right to a fair trial and an effective remedy are also of utmost importance in the field of environmental jurisdiction; thus, a complete chapter by Bartosz Majchrzak is dedicated to these issues.

The European Social Charter received a separate chapter by Cristina Oneț in order to showcase the particularly important Central European cases. Another chapter is devoted to the European Union by Vojtěch Vomáčka: not only is the normative framework, but the relevant practice of the CJEU is also elaborated in great detail.

As these issues are of extreme relevance outside of the European continent, a dedicated chapter by Enikő Krajnyák deals with the Inter-American human rights system, including the San Salvador Protocol and, of course, the relevant case law. Similarly, the African human rights system is analysed by Cocou Marius Mensah.

The present volume thus provides both an overview and an opportunity to gain a more detailed insight into the interrelation of human rights and the environment, mainly from a Central and Eastern European perspective.

## **Part I**

# **Human Rights and The Environment: General Considerations**



# Human Rights and the Environment – Theoretical, Moral and Religious Foundations

Dalibor ĐUKIĆ – Rade KISIĆ

## ABSTRACT

This book chapter deals with the theoretical, moral, and religious foundations of environmental protection. One of the most significant developments in the legal protection of the environment is the growing demand for recognising the right to an environment of a certain quality as a universal human right. The chapter analyses theoretical approaches that establish a connection between environment and human rights. Furthermore, it examines the right to environment as an ethical demand that meets conditions to qualify as the basis of a human right. The chapter argues that the approach advocating for the recognition of a standalone substantive right to an environment of particular quality has gained prominence and is likely to lead to its recognition as a universal human right. This perspective does not preclude other theoretical approaches, which should be regarded as complementary. Nevertheless, this emerging right requires further theoretical development grounded in contemporary human rights theories.

## KEYWORDS

environment, protection, human rights, moral foundations, theories of rights, Christianity

## 1. Introduction

This book chapter examines the most prominent theoretical approaches to the recognition of the right to an environment of a particular quality as a universal human right. It has already been recognised that the right to environment is under-theorised and contested.<sup>1</sup> As Bándi has noted, environmental law generally requires a conceptual basis for several reasons, including its recent emergence and relatively short history; consequently, ‘this area of law can hardly be considered as being settled’.<sup>2</sup> Even though in last decades significant efforts have been observed on international, regional and national levels to interrelate environment and human rights, the rights-based

1 Chalabi, 2023, p. 1.

2 Bándi, 2020, p. 36.

Dalibor Đukić, Rade Kisić (2026) ‘Human Rights and the Environment – Theoretical, Moral and Religious Foundations’ in Raisz, A., Krajnyák, E. (eds.) *Human Rights and Environmental Protection from a Central and Eastern European Perspective*. Miskolc–Budapest: Central European Academic Publishing, pp. 19–44. [https://doi.org/10.71009/2026.arek.hraep\\_1](https://doi.org/10.71009/2026.arek.hraep_1)



approach to environment is not sufficiently elaborated on a theoretical level. As one of the proponents of the recognitions of this right admitted, there are ‘dilemmas concerning the nature and extent of the right, the shape of the right, the content of the right, the threshold required to trigger harm under the right and other definitional and content-based hurdles’.<sup>3</sup> This holds significance not only from a theoretical point of view but can also have practical implications. The definition of this right should be precise in its nature, content, and scope, including its relationship with other human rights and their enjoyment. Important questions arise whether there is a standalone and substantive right ‘to an environment of a particular quality’,<sup>4</sup> whether it should be considered as individual, collective, or ‘global right’,<sup>5</sup> who can be a right-holder, who is under corresponding obligations, and most importantly *how* this right can be enjoyed and protected.

Since the mid-20th century, and particularly from the 1960s and 1970s onward, the scientific community, the general public, and nation-states have increasingly come to recognise the consequences of industrialisation, the unrestricted exploitation of natural resources, and environmental pollution. Beginning in the 1960s, the development of environmental ethics as an academic discipline gained momentum, accompanied by growing scholarly interest in investigating the underlying causes of an increasingly evident ecological crisis. During this period, significant attention was drawn to Lynn White Jr.’s seminal article, ‘The Historical Roots of Our Ecological Crisis’ (1967), in which he argued that the theology of certain Christian traditions contributed to the legitimation of an exploitative attitude toward nature – particularly through interpretations of biblical teaching that affirm God’s granting of dominion to humanity over the natural world.<sup>6</sup>

These and similar critiques prompted Christian theologians in the following decades to articulate authentic theological responses to the ecological crisis, aiming to express a distinctly Christian perspective on the relationship between humanity, nature, and the environment. As will be shown in the following section, the contemporary ecological crisis is not merely a problem situated within the realms of science or technology, but is, from a Christian point of view, an event of profound spiritual and moral significance. We will also demonstrate that Christian theology does, in fact, offer clear responses to the ecological crisis, along with constructive pathways for addressing and overcoming its challenges.

This chapter provides in-depth insights into five different approaches to the relationship between the environment and human rights discussed in the next section (2). Section 3 explores the moral foundations for recognising the right to an environment of a particular quality. The last two sections examine the shared biblical foundations of the Christian understanding of ecology (4) and distinctive approaches, documents,

3 MacDonald, 2008, p. 214.

4 Lewis, 2018, p. 59.

5 Chalabi, 2023, p. 2.

6 Cf. Kwall, 2017, p. 13; Santmire, 1985, p. 1.

and initiatives within the Christian Churches (5). The chapter concludes with a summary of the main findings of the analysis (8).

## 2. Different Approaches to the Relationship Between the Environment and Human Rights

The link between environmental protection and human rights has been primarily established through a body of procedural rights, commonly recognised in legal scholarship as ‘environmental rights’.<sup>7</sup> These rights include ‘access to environmental information, participation in the decision-making process of environmental policies, availability of legal remedies to redress environmental damage, and due process rights in general’.<sup>8</sup> They also encompass the right to compensation for environmental damage.<sup>9</sup> Boyle concludes that procedural rights represent ‘the most important environmental addition to human rights law since the 1992 Rio Declaration on Environment and Development’.<sup>10</sup>

From a normative perspective, there is broader consensus on the procedural protection of the environment compared to the establishment of a substantive and/or standalone right to an environment of a certain quality. These can be identified in a number of treaties, including the Aarhus Convention,<sup>11</sup> the content of which is predominantly procedural.<sup>12</sup> Judicial litigation has been recognized as an important tool even for the protection of future generations.<sup>13</sup> Some scholars argue that although recent human rights case law has increasingly addressed environmental issues, this does not yet imply that environmental rights are fully integrated into international law; rather, it suggests that such rights ought to be recognised in some form,<sup>14</sup> and ‘indicates the importance of the topic in mainstream human rights law’.<sup>15</sup>

On the other hand, there are two main approaches to establishing a substantive connection between environmental protection and human rights, both of which fall under the category of ‘environmental human rights’. These are: the ‘greening’ of existing human rights, and the recognition of a standalone right to a healthy environment.<sup>16</sup> The first approach, the greening of human rights,<sup>17</sup> emphasises the environmental

7 Shelton, 1991, p. 103.

8 Rodriguez-Rivera, 2001, p. 15.

9 Lewis, 2018, pp. 4–5.

10 Boyle, 2012, p. 616.

11 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 2161 UNTS 447, entered into force 30 October 2001.

12 Boyle, 2012, p. 622. The neglect of the substantive right in the Aarhus Convention has been attributed to the ambiguity of its language. Barritt, 2024, p. 84.

13 Weiss, 2024, p. 69.

14 Merrills, 1996, p. 40.

15 Boyle, 2012, p. 614.

16 Chalabi, 2023, p. 3.

17 Boyle, 2012, p. 614; Boyle, 2006, p. 472; Van der Bank and Van der Bank, 2014, p. 59.

dimensions of already established rights, such as the right to life, the right to health, the right to private and family life, the right to property, and the right to an adequate standard of living. It is based on the assumption that better protection to both human rights and environment can be provided by expanding the environmental dimension of existing human rights, rather than ‘pursuing the adoption of a new, standalone right to a good environment’.<sup>18</sup>

This approach is not only a European, but rather a global phenomenon.<sup>19</sup> In this chapter the focus will be on Central and Eastern European countries and subsequently, the case law developed from disputes in these countries.<sup>20</sup> The environmental dimension of certain human rights has been recognised in a number of cases of the European Court of Human Rights and other international courts and fora. For example, in the *Gabcikovo-Nagymaros* case, which involved Hungary and Slovakia, the Vice-President of the International Court of Justice highlighted that:

‘The protection of the environment is likewise a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments’.<sup>21</sup>

In this context, claims of certain human rights violations can be based on environmental damage, as a healthy environment is viewed as a precondition for the enjoyment of certain fundamental rights.

Lewis has highlighted the distinction between the direct and indirect environmental dimensions of human rights,<sup>22</sup> a differentiation also recognised by the UN Human Rights Council.<sup>23</sup> This distinction underscores that, on the one hand, the enjoyment of certain rights is directly depended on the environment of particular quality and environmental degradation directly affects the ability of right holders to enjoy their rights. On the other hand, poor environmental conditions can indirectly impede right holders from being informed about their rights and obstruct public authorities from protecting and upholding the rights of their citizens. In this sense, a proper environment can be perceived as a precondition of the enjoyment of human rights for two main reasons: a) it is essential for the enjoyment of a certain rights (the typical example is the right to life, which depends directly on the availability of

18 Lewis, 2018, p. 15.

19 Boyle, 2012, p. 614.

20 For a Central European perspective on the constitutional protection of the environment see Szilágyi, 2022.

21 ‘Environmental damage can have negative implications, both direct and indirect, for the effective enjoyment of human rights’. International Court of Justice, 1997.

22 Lewis, 2018, p. 16.

23 United Nations Human Rights Council, 2011.

drinkable water and clean air and soil); b) an adequate environment fosters the general protection and enjoyment of human rights.<sup>24</sup> In conclusion, it is widely accepted that the quality of the environment can both directly and indirectly influence – or even determine – the enjoyment of certain protected rights, and this fact has been used as an argument in favour of the ongoing process of greening of human rights.

Even though the greening of human rights approach has led to the noteworthy emergence of ‘green’ jurisprudence under regional and international human rights law, it remains anthropocentric in its nature and does not provide sufficient protection to the environment as such. Regarding the European human rights system, Jendroška observed that ‘the respective case law makes it however crystal clear that the prerequisite for the possibility of environmental claims under the ECHR is the existence of personal harm, not a harm to the environment objectively understood’.<sup>25</sup> Furthermore, Chalabi has identified six grounds on which this approach can be criticised. First, it narrows the scope of the protection by recognising environmental damage only when it is linked to existing individual human rights. Second, it neglects or undervalues the collective dimension of environmental damage. Third, it renders difficult to prove that certain infringements are a ‘but-for’ cause of environmental damage.<sup>26</sup> Fourth, it is backward oriented overlooking the consequences of environmental harm on future generations. Fifth, this approach is limited to internal damages which are not regulated by international environmental law. Finally, this approach ‘has failed to provide a firm theoretical explanation to connect environment and already recognised human rights, and therefore, what has been proposed is more eclectic than integrated’.<sup>27</sup> To conclude, despite the positive impacts of the greening of human rights, this approach has proven insufficient to guarantee the effective protection of a healthy environment.

The second approach to establishing a substantive connection between environmental protection and human rights is the recognition of the standalone right to a healthy environment. The notion of a standalone and substantive right to a particular quality of environment has attracted scholarly attention during the last decades. Opinions among scholars vary widely, ranging from the view that existing law does not provide sufficient environmental protection and therefore a standalone right should fill this gap,<sup>28</sup> to the acceptance of the assertion that this right does not exist and there is no reason for it to be recognised.<sup>29</sup> This section of the chapter will briefly outline the current state of recognition of the human right to a healthy environment,

24 Lewis, 2018, p. 16.

25 Jendroška, 2023, p. 152.

26 But-for causation, is a test used to determine factual causation i.e. whether the defendant’s conduct is a *conditio sine qua non* of the plaintiff’s injury. In some environmental cases the use of this test may be improper since the determination of but-for causation is almost impossible. E.g. in global warming cases it is nearly impossible to prove that emissions of a certain entity are responsible for the injury. Harvard Law Review, 2015, p. 2265.

27 Chalabi, 2023, pp. 4–5.

28 Doelle, 2004, p. 216; Turner, 2004, p. 301.

29 Shelton, 2011, p. 279.

followed by a discussion of the main arguments for and against establishing a stand-alone human right to an environment of a particular quality.

No universal legally binding human rights instrument guarantees the right to the preservation of an environment of a particular quality. The International Bill of Human Rights makes no reference to the protection of the environment.<sup>30</sup> However, significant efforts at international, regional, and national levels have been made to introduce a substantive right to a healthy environment as a human right. Among the most recent developments are the resolution of the United Nations General Assembly (UNGA) on the human right to a clean, healthy, and sustainable environment, adopted on 28 July 2022.<sup>31</sup> The same resolution was adopted by the Human Rights Council on 8 October 2021.<sup>32</sup> Although these resolutions are not legally binding, they indicate a movement within the UN system towards recognising a standalone right to a clean, healthy, and sustainable environment.

On a regional level, the Council of Europe adopted a Recommendation on Human Rights and the Protection of the Environment, in which the Committee of Ministers recommended Member States to actively consider recognising the right to a clean, healthy, and sustainable environment at the national level.<sup>33</sup> Nevertheless, neither the European Convention on Human Rights (ECHR), nor the European Social Charter formally recognise a standalone right to a healthy or good environment.<sup>34</sup> This absence of a formal legal basis has led the ECtHR in some cases to reject applications seeking general environmental protection,<sup>35</sup> reiterating that ‘no right to nature preservation is as such included among the rights and freedoms guaranteed by the Convention’.<sup>36</sup> By contrast, African and Inter-American human rights systems explicitly recognise the right to an environment of particular quality. The 1981 African Charter on Human and Peoples’ Rights provides in Article 24 that ‘all peoples shall have the right to a general satisfactory environment favourable to their development’.<sup>37</sup> The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (Protocol of San Salvador) in Article 11 specifies that ‘everyone shall have the right to live in a healthy environment’.<sup>38</sup> The significant difference is that it

30 The only convention with universal application that to some extent protects the right to environment is the 1989 Convention on the Rights of the Child. See Atapattu, 2002, p. 98.

31 United Nations General Assembly, 2022.

32 United Nations Human Rights Council, 2021.

33 Council of Europe Committee of Ministers, 2022.

34 Regarding the terminology used to describe this right, different scholars and institutions have employed various adjectives for the noun ‘environment’, such as good, healthy, safe, clean, decent, unpolluted, suitable, and others. See for more: Lewis, 2018, p. 61; Rodriguez-Rivera, 2001, p. 10.

35 Kobylarz, 2021, p. 18.

36 See cases from Central and Eastern Europe: *ECtHR, Ogloblina v. Russia*, Application No. 28852/05, Decision of 26 November 2013, Para. 26, and *ECtHR, Dubetska and Others v. Ukraine*, Application No. 30499/03, Judgement of 10 February 2011, Para. 105.

37 African Commission on Human and Peoples’ Rights, n.d.

38 Organization of American States, 1988.

is only the Protocol that explicitly recognises an individual right to the environment, making it the first and only binding human rights instrument to do so.<sup>39</sup>

At the national level, the situation is more advanced: the right to a healthy environment is constitutionally protected in at least 110 countries, and over 80 percent of UN Member States (156 out of 193) legally recognise this right.<sup>40</sup> Turner has identified two types of constitutional environmental protections that parallel the distinction between the greening of human rights approach and the recognition of a standalone right to a healthy environment. The first type includes constitutions that explicitly provide specific rights aimed at environmental protection. The second type comprises constitutions with provisions that were not originally designed to protect the environment but have been interpreted and applied to that effect.<sup>41</sup>

To conclude, the right to an environment of particular quality appears to be progressing from the ground up, being most widely recognised at the national level, less so at the regional level, and not yet established as a universal human right.

A major shortcoming of the ‘greening’ of human rights approach is that environmental harm cannot engage human rights law unless it is clearly demonstrated that it affects the enjoyment of another existing human right. This limitation simultaneously serves as the strongest argument in favour of recognising a standalone right to a healthy environment, which would enable the protection of the environment as such, without the need to demonstrate violation of any other human right.<sup>42</sup> Scholars have indicated that the existing law, and especially procedural rights, are inadequate and insufficient to provide the meaningful protection of the environment and to guarantee the access to a good and healthy environment, thus they proposed a standalone human right to environment to fill this gap.<sup>43</sup>

Boyd argued that the recognition of this right would strengthen environmental laws and justice and increase the accountability of states and non-state actors for failing to protect the environment.<sup>44</sup> Another argument in favour of a standalone right to environment is that it can serve as ‘a lever to overcome classical hurdles in human rights-based environmental litigation, such as locus standi and, more generally, a burden of proof that is often too heavy on applicants.’<sup>45</sup> Furthermore, it could reduce costs and empower the judiciary and other organizations to improve environmental law implementation.<sup>46</sup>

Conversely, some scholars criticise the notion of a standalone right. Handl described such attempts as ‘duplicative efforts’, and instead advocates for further

39 Leib, 2011, p. 99.

40 Chalabi, 2025, p. 6.

41 Turner, 2004, p. 285.

42 Lewis, 2018, p. 60.

43 Lewis has thoroughly examined and presented the opinions of scholars found in older literature. Lewis, 2018, pp. 63–64.

44 He has also identified other benefits that do not have a legal nature but are important for the protection of the environment. Boyd, 2018, pp. 25–41.

45 Boyd, 2011, p. 181.

46 Vilchez and Savaresi, 2021, p. 4.

development of the existing environment protection structures and mechanisms.<sup>47</sup> More recently, Knox in his Report to the Human Rights Council, recognised that the ‘explicit recognition of the human right to a healthy environment thus turned out to be unnecessary for the application of human rights norms to environmental issues’. However, he recommended that the Human Rights Council ‘consider supporting the recognition of the right in a global instrument’.<sup>48</sup> His proposal was based on the experience of countries that provide constitutional protection to the right to environment.

A general argument against introducing new human rights without sufficient justification, for the reason that it may undermine the integrity of the human rights overall, was also employed in the case of the recognition of the right to environment.<sup>49</sup> As Shelton points out ‘environmental protection probably cannot be wholly incorporated into the human rights agenda without deforming the concept of human rights and distorting its program’.<sup>50</sup>

One of the basic shortcomings of this right is its vagueness and lack of precise definition. Lee argued that ‘without rigorous definition, a right to a healthy environment risks remaining an irrelevant member of the group of third-generation human rights which have proliferated recently’.<sup>51</sup> Moreover, scholars have expressed fears that it will distract attention from improving the nexus between environment and human rights. In summary, the benefits and shortcomings of both the “greening of human rights” and the recognition of a standalone right to the environment suggest a need for further theoretical elaboration and examination of their implications for human rights theory and practice.

Another recently developed approach breaks the traditional link between human interests, human rights, and the environment. This emerging body of law recognises legal rights for nature and its elements, such as rivers, mountains, and other natural objects.<sup>52</sup> A famous example is New Zealand’s *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017*, which, in Section 14, declared the *Whanganui River* a legal person with fundamental rights, powers, duties, and liabilities.<sup>53</sup> This was the first legislation worldwide to recognise the legal personality of a river.<sup>54</sup> Although this approach is both innovative and attractive, it does not establish a new relationship between human rights and the environment. Rather, it represents a specific legal approach to the issue of preservation of the physical and even spiritual values of the natural environment. This approach could be interpreted in a wider context of the dichotomy of anthropocentric protection of the environment vs. protection for its own sake, i.e. for the purpose of saving the nature because of its intrinsic value. However, even

47 Handl, 1992, p. 137.

48 Knox, 2018, p. 4.

49 Lewis, 2018, p. 65.

50 Shelton, 2006, p. 169.

51 Lee, 2000, p. 297.

52 Lewis, 2018, p. 5.

53 New Zealand Parliament, 2017.

54 Collins and Esterling, 2019, pp. 2–3.

in the case of the recognition of the legal personality of natural objects, which has contributed to their better protection and preservation, the positive effects of this innovation always include the benefits of people living close to natural objects. This is the proof that the anthropocentric and nature-centric approaches to the protection of environment are not opposed but, intertwined, interdependent and interconnected.

A new theoretical model of the right to environment has been proposed by Chalabi, based on his NIC theory of human rights. Drawing on his critique of the limitations found in three existing theories of rights (the interest theory of rights, the needs-based approach, and the capability approach) Chalabi developed an integrated theory that highlights the interconnection and interrelation between human needs, interests, and capabilities (NIC) upon which basic human rights are grounded. As Chalabi points out ‘being endowed with a basic right consists of being capable of meeting one or more of basic needs in accordance with interests’.<sup>55</sup> The same author extends this approach to the right to environment as follows: ‘being endowed with a right to the environment consists of being capable of living in an environment of *certain qualities* where human beings *can* meet their basic needs in accordance with their interests’.<sup>56</sup> He further elaborates that the phrase ‘certain qualities’ includes also the sustainability of an environment of particular qualities over time. According to this integrative theoretical approach, every act or even omission that negatively affects the quality and sustainability of environment will represent infringement of the right to environment.

One common question regarding any human right is whether it is individual or collective. This theory expands the right to a healthy environment as a “multi-level concept”, providing a system of protection on three levels: (1) the right to environment as an individual right; (2) the right to environment as a collective right; and (3) the right to environment as a global right. Individuals would be able to invoke this right to protect their individual interests regarding the environment, while ‘the scope and severity of harm at this level can be limited to specific person(s) and the number of people affected can be low with often even focusing on the current or near future harms’.<sup>57</sup> At the collective level, it recognises the shared environmental interests of communities and groups, emphasising the protection of biodiversity that sustains collective well-being. The global level addresses environmental harms with planetary-scale impacts, such as climate change, which threaten life on Earth and require protection beyond local or national boundaries. This multi-level framework moves away from a “one-size-fits-all” approach, allowing for a graded understanding of environmental harm based on factors such as severity, scope, and irreversibility. It also implies differentiated forms of legal protection, obligations, and standing for individuals, collectives, and global actors.<sup>58</sup>

55 Chalabi, 2025, p. 9.

56 Chalabi, 2025, p. 10.

57 Chalabi, 2025, p. 13.

58 Chalabi, 2025, p. 19.

### 3. Moral Approaches to the Human Right to Environment

Since the advent of the environmental law in the 1970s, works that established the field of environmental ethics have also been published. From the outset, the debate on ethical and moral approaches to the environmental crisis engaged both theologians and philosophers.<sup>59</sup> However, the discussion was centred on the relationship between humanity and nature, even though this dualism sometimes has been found as one being responsible for the environmental crisis.

The question of the justificatory foundations for a human right to an environment of particular quality can be positioned within the classic jurisprudential debate between legal and moral theories of rights. Rather than undertaking an exhaustive analysis of these theories,<sup>60</sup> this section addresses whether the right to a healthy environment can be understood as a moral right, thereby providing grounds for its recognition by international law.

One of the most well-known articulations of the law-centred theory of rights is Bentham's provocative assertion: '*Right*, the substantive *right*, is the child of law: from *real* laws come *real* rights; but from *imaginary* laws, from laws of nature, fancied and invented by poets, rhetoricians, and dealers in moral and intellectual poisons, come *imaginary* rights'.<sup>61</sup> This law-centred approach has dominated the international human rights theory, practice and scholarship. Nonetheless, it has become evident that legal theories of rights suffer from conceptual disadvantages. Rodríguez-Garavito argues that 'rights are fundamentally moral claims about the intrinsic worth of every human being, and of the importance of the prerogatives they protect to a dignified human life'.<sup>62</sup> Similarly, Sen asserts that human rights are articulations of social ethics and represent 'significant ethical claims'.<sup>63</sup> In another work, Sen further notes that 'human rights can be seen as primarily ethical demands. They are not principally "legal," "proto-legal" or "ideal-legal" commands'. Human rights as ethical demands may indeed inspire legislation; however, their influence on lawmaking is an additional feature rather than an essential characteristic of human rights themselves. Sen, therefore, proposes two threshold conditions that an ethical demand – such as the right to a healthy environment – must meet to qualify as the basis of human rights: special importance and social influenceability.<sup>64</sup>

The right to environment of particular quality meets both threshold conditions. The protection of the environment is undeniably of special importance on national, regional, and international levels. While it has not yet been universally acknowledged as a human right, significant efforts by governments, non-governmental

59 Kawal, 2017, p. 14.

60 Herstein, 2023.

61 Bentham, 1792, p. 523.

62 Rodríguez-Garavito, 2018, p. 157.

63 Sen, 2006, pp. 2917–2919.

64 Sen, 2004, p. 319.

organizations, religious groups, and others seek to enshrine the right to a healthy environment and to raise public awareness of its significance for human well-being and the enjoyment of fundamental rights and freedoms. Furthermore, this right is socially influenceable, as the future of human societies hinges on the state of the environment and, conversely, its realisation depends on the decisions of human-controlled entities and individuals such as governments, civil society, religious organizations etc.<sup>65</sup> Therefore, Rodríguez-Garavito's conclusion that the entitlement to a healthy environment already constitutes a human right is compelling,<sup>66</sup> even as full recognition at international and regional levels remains to be achieved.

#### **4. Shared Biblical-Theological Foundations of the Christian Understanding of Ecology**

The Bible represents the primary source of faith for all traditional Christian communities. Although it is first and foremost a religious text, the Bible also contains foundational principles concerning humanity's relationship with nature and the created world. For ecologists and all those concerned with environmental issues, the study of the Scripture provides an essential framework for understanding the human role within creation.

At the heart of Christian cosmology lies the doctrine that God is the Creator of the world and that the world was brought into being out of nothing (*creatio ex nihilo*). From this doctrine – articulated especially in the Book of Genesis – several conclusions may be drawn that are directly relevant to the preservation of the natural environment:

- a) God is the Creator of the entire world in all its diversity: of heaven and earth, light and darkness, water and land, plants and animals. The world did not come into being by chance; rather, God deliberately willed to create it as a harmonious, meaningful, and interconnected whole (Gen 1). The phrase repeatedly found in the creation account – 'And God saw that it was good' (Gen 1:12) – indicates that God's creative act was not arbitrary, but that everything created has its own authentic place within the order of creation and within God's providential design for the world. This also implies that creation is inherently good and possesses value in itself, independent of human utility; it must not, therefore, be regarded merely as a resource to be (mis)used by humanity.
- b) God not only created the world, but also continues to care for it actively, sustaining and renewing creation. This ongoing divine involvement in the natural world is attested to in numerous biblical passages (cf. Ps. 104:24–30; Ps. 19; etc.).

65 Rodríguez-Garavito, 2018, p. 158.

66 Rodríguez-Garavito, 2018, p. 159.

- c) Ultimately, God creates the human being in His own image and entrusts him with dominion over the created world and authority over all living beings (Gen. 1:26–28). This dominion, however, ought to be interpreted not as an arbitrary rule, but rather as a vocation of responsible stewardship over creation – an order which God Himself brought into being and declared good. Accordingly, the continuation of the biblical narrative affirms: ‘The Lord God took the man and put him in the Garden of Eden to till it and keep it’ (Gen. 2:15). From a biblical-theological perspective, the human task is thus to safeguard the integrity of nature through conscientious governance, reflecting the divine concern for all living creatures, as exemplified in the account of Noah (Gen. 6–9), where God’s care extends beyond humanity to encompass the entirety of animate life.
- d) God appointed the human being to govern creation, thereby entrusting him with responsibility for the entirety of the created order. Nevertheless, the human remains but one of God’s creatures – intimately bound to the whole of nature. This interconnectedness is clearly reflected in the biblical doctrine of original sin (Gen. 3), wherein the earth itself becomes cursed as a consequence of human transgression. Sin thus disrupts not only the relationship between God and humanity, but also the harmony between humanity and nature. Due to human sinfulness the earth suffers, and it is the human being who bears the primary responsibility for restoring the original relationship between God and creation. This includes overcoming the corruption that entered the material world as a result of sin (cf. Rom. 8:20–22) and working toward the redemption of all that is material.
- e) A fundamental transformation in the relationship between God and humanity occurs through the Incarnation of Christ. The Son of God, through whom the world was created (John 1:3), becomes human, assumes human nature – that is, a material body – and enters into the created order. Through Christ, reconciliation between humanity and God is accomplished (cf. Col. 1:15–20; Eph. 1:10), and this redemptive act inevitably bears implications for the natural world as well. By taking on a material body, Christ affirms the enduring value of creation, and through His Transfiguration (cf. Matt. 17:1–9), it becomes evident that human salvation does not entail the annihilation of the material world, but rather its transfiguration. In Christ, all becomes a new creation (2 Cor. 5:17), and the Christian hope in the Kingdom of Heaven necessarily includes the renewal and transformation of the entirety of creation.

## **5. Distinctives, Documents and Initiatives Within the Christian Churches**

The biblical teaching on the creation and salvation of humanity and the world constitutes a fundamental and indispensable foundation for ethical and ecological engagement among Christians across all denominations. Nevertheless, as with

certain other doctrinal matters, one can observe distinctive emphases and specific approaches among various Christian churches in their treatment of ecological concerns. Furthermore, all Christian churches – both at local and global levels – have initiated and continue to promote numerous practical initiatives aimed at awakening and cultivating awareness of the theological and spiritual foundations of ecology. The number of such texts and initiatives has grown exponentially over recent decades, rendering a comprehensive overview nearly impossible. Therefore, in what follows, we shall present only the most theologically significant documents and initiatives.

### 5.1. The Catholic Church

Although Catholic theology had previously offered more or less explicit reflections on environmental protection and the human relationship to nature and material resources,<sup>67</sup> one of the earliest direct acknowledgments of the emerging ecological crisis can be found in the Apostolic Letter ‘*Octogesima Adveniens*’ by Pope Paul VI. In this letter, the Pope draws attention to the increasingly evident ecological crisis as a consequence of human activity – specifically, the result of the reckless exploitation of nature and natural resources, a process in which humanity ultimately becomes its own victim.<sup>68</sup> Following this initial call, subsequent popes – as well as bishops, theologians, and various Catholic Church organizations – began to engage systematically with ecological issues,<sup>69</sup> offering ecclesial responses to the growing environmental challenges. In the encyclical ‘*Sollicitudo rei socialis*’, which primarily addresses economic development and global inequality as pressing social concerns, Pope John Paul II critiques consumerism and emphasises that economic progress must not come at the expense of indiscriminate exploitation of natural resources, some of which are finite and non-renewable. Every form of societal development must incorporate a moral dimension, one that takes into account the integrity of both living and non-living nature, as well as the broader natural order.<sup>70</sup>

The necessity of respecting the divinely ordained and natural order is further emphasised by Pope John Paul II in his encyclical ‘*Centesimus Annus*’ in which he introduces the concept of ‘human ecology’. In this context, he affirms that care for the natural environment is inseparable from care for the human person, thereby establishing a profound link between ecology and anthropology: ‘In addition to the irrational destruction of the natural environment, we must also mention the more serious destruction of the human environment, something which is by no means receiving the attention it deserves. Although people are rightly worried [...] about preserving the natural habitats of the various animal species threatened with extinction, [...] too little effort is made to safeguard the moral conditions for an authentic ‘human ecology’. Not only has God given the earth to man, who must use it with respect for the

67 Cf. for example Pastoral Constitution on the Church in the Modern World *Gaudium et Spes*, 1965, p. 34.

68 *Octogesima Adveniens*. Apostolic Letter of Pope Paul VI, 1971, p. 21.

69 Bándi, 2022, p. 41.

70 *Sollicitudo Rei Socialis*, 1987, p. 34.

original good purpose for which it was given to him, but man too is God's gift to man. He must therefore respect the natural and moral structure with which he has been endowed'.<sup>71</sup> Care for nature and the preservation of the environment thereby becomes care for the human person; the ecological crisis is thus understood as intrinsically linked to the spiritual and moral crisis of humanity.

This integrative approach to ecology is further developed and deepened by Pope Benedict XVI in his encyclical '*Caritas in Veritate*', where environmental protection is closely linked to ethics, social injustice, solidarity, and the broader socio-political framework:

'There is need for what might be called a human ecology, correctly understood. The deterioration of nature is in fact closely connected to the culture that shapes human coexistence: when 'human ecology' is respected within society, environmental ecology also benefits. Just as human virtues are inter-related, such that the weakening of one places others at risk, so the ecological system is based on respect for a plan that affects both the health of society and its good relationship with nature'.<sup>72</sup>

Pope Francis underscores the fact that the ecological crisis is simultaneously a social and political crisis, and that humanity's relationship with nature is shaped by a complex interplay of economic, political, cultural, ethnic, and other factors. In his encyclical '*Laudato si'*', he moves beyond the boundaries of conventional environmental discourse and develops the concept of integral ecology. Behind integral theology lies the idea<sup>73</sup> that all creation – since God is the Creator of everything that exists – is intrinsically interconnected and constitutes 'a kind of universal family'.<sup>74</sup> Therefore, nature is not merely the environment that man inhabits; rather, the human being is part of nature and is in constant interaction with it. For this reason, the Pope emphasises:

'Recognising the reasons why a given area is polluted requires a study of the workings of society, its economy, its behaviour patterns, and the ways it grasps reality. [...] It is essential to seek comprehensive solutions which consider the interactions within natural systems themselves and with social systems. We are faced not with two separate crises, one environmental and the other social, but rather with one complex crisis which is both social and environmental'.<sup>75</sup>

71 *Centesimus Annus*, 1991, p. 38.

72 *Caritas in Veritate*, 2009, p. 51.

73 Cf. Heimbach-Steins, 2015, p. 8.

74 *Laudato si'*, 2015, p. 89.

75 *Laudato si'*, 2015, p. 89.

A comprehensive approach to addressing this crisis must also take into account the cultural particularities of different peoples and regions – especially indigenous communities and their cultural traditions. In this context, Pope Francis introduces the concept of ‘cultural ecology’, which emphasises that ecology entails respect for cultural heritage in the broadest sense of the term.<sup>76</sup> The Pope sees the solution to the ecological crisis in a fundamental transformation of lifestyle and mindset, grounded in an awareness of the shared origin and destiny of all creation. He places particular emphasis on ecological education and spirituality.<sup>77</sup>

In addition to the aforementioned papal encyclicals, there exists a substantial body of official documents issued by the Catholic Church that address ecological concerns (for instance, the entirety of Chapter Ten of the ‘Compendium of the Social Doctrine of the Church’). Furthermore, numerous research initiatives (such as the ‘The Laudato Si’ Research Institute’) and practical undertakings are being launched either independently by the Vatican or in collaboration with other stakeholders (for example, the ‘Laudato Si’ Action Platform’).

### **5.2. The Orthodox Church**

A more systematic engagement with the ecological crisis within the Orthodox Church began in the mid-1980s, during preparations for the Pan-Orthodox Council. Following initial discussions on ecology at the Third Pan-Orthodox Pre-Council Conference held in Chambésy near Geneva, a series of inter-Orthodox consultations on environmental protection ensued. One such consultation took place on the island of Patmos in 1988, from which emerged an initiative that ultimately led Ecumenical Patriarch Dimitrios I to issue the first Encyclical on the environment in 1989.<sup>78</sup> The Encyclical emphasises human responsibility for the contemporary ecological crisis: ‘The abuse by contemporary humanity of its privileged position within creation and of the Creator’s order ‘to have dominion’ over the earth (Gen. 1:28) has already led the world to the edge of apocalyptic self-destruction’.<sup>79</sup> Due to extreme rationalism and egocentricity, humanity behaves toward creation as an arbitrary ruler. In contrast, the Orthodox Church

‘continuously declares that humanity is destined, not to exercise power over creation, as if it were the owner of it, but to act as its steward, cultivating it in love and referring it in thankfulness, respect, and reverence to its Creator’.<sup>80</sup>

It is noteworthy that Ecumenical Patriarch Dimitrios I, already in his first Encyclical, refers to the model of ‘steward of creation’, which would later become one of the most prevalent frameworks for describing humanity’s relationship with nature, directly

76 *Laudato si’*, 2015, pp. 143–146.

77 *Laudato si’*, 2015, Chapter 6.

78 Cf. Chryssavgis, 2015, p. 6.

79 Chryssavgis, 2003, p. 37.

80 Chryssavgis, 2003, p. 38.

opposing the model of ‘proprietor and possessor’. In addition to theoretical reflections on the causes of the contemporary ecological crisis, Patriarch Dimitrios I also launched a practical initiative through this Encyclical: he proclaimed September 1st as the Day of Environmental Protection. On this day, special prayers are offered within the Ecumenical Patriarchate for the safeguarding and preservation of God’s creation.<sup>81</sup>

A significant impetus to Orthodox engagement with environmental issues was given by Ecumenical Patriarch Bartholomew, who has led the Ecumenical Patriarchate since 1991. The most emblematic testimony to his efforts in environmental preservation is his informal title ‘the Green Patriarch’.<sup>82</sup>

Environmental concerns were also included on the agenda of the Pan-Orthodox Council (officially titled ‘The Holy and Great Council of the Orthodox Church’), which was held in 2016 on the island of Crete. The protection of the environment was addressed in three of the Council’s final documents. The most concise diagnosis of the causes of the contemporary ecological crisis, as well as a proposed solution, is found in the document ‘the Message of the Holy and Great Council of the Orthodox Church’:

‘It is clear that the present-day ecological crisis is due to spiritual and moral causes. Its roots are connected with greed, avarice and egoism, which lead to the thoughtless use of natural resources, the filling of the atmosphere with damaging pollutants, and to climate change. The Christian response to the problem demands repentance for the abuses, an ascetic frame of mind as an antidote to overconsumption, and at the same time a cultivation of the consciousness that man is a ‘steward’ and not a possessor of creation’.<sup>83</sup>

As a means of overcoming the ecological crisis, the Orthodox Church first emphasises repentance for the sin of humanity’s distorted relationship with nature. This is followed by a fundamental transformation in humanity’s approach to creation – one no longer shaped by possessive and consumerist mentalities.<sup>84</sup> The result of repentance and the transformation of humanity’s relationship with nature must be asceticism – that is, restraint, self-limitation, and frugality – as a remedy for the consumerist mentality and human greed for natural resources and goods, which humanity is morally obliged to preserve for future generations.<sup>85</sup>

81 Cf. Chryssavgis, 2003, p. 38. This initiative was later joined by several Orthodox Churches and ecumenical church organizations, such as the World Council of Churches and the Conference of European Churches.

82 Cf. *The Green Patriarch: His All-Holiness Ecumenical Patriarch Bartholomew*.

83 *Message of the Holy and Great Council of the Orthodox Church*, 2016, p. 8.

84 *Encyclical of the Holy and Great Council of the Orthodox Church*, 2016, p. 14.

85 *The Mission of the Orthodox Church in Today’s World*, 2016, p. 10.

Drawing upon these conciliar texts, as well as other Orthodox writings that address ecological concerns,<sup>86</sup> it becomes evident that the ecological crisis is not merely an ethical issue, but a profoundly theological and existential one. Accordingly, engagement with ecology, for the Orthodox Church, constitutes a faithful adherence to its own doctrine and tradition. Metropolitan John Zizioulas identifies two aspects of Orthodox theology as the most compelling testimony to this claim: the central place of the Eucharist (Divine Liturgy) in the life and teaching of the Orthodox Church, and the ascetic tradition. Designating humanity as the ‘Priest of Creation’, Metropolitan Zizioulas asserts that the human being is called to cultivate and transform the created world, offering it to God in gratitude – just as, in the Divine Liturgy, bread and wine are offered to God.<sup>87</sup> On the other hand, the ascetic tradition precisely points humanity toward this vocation, liberating it from a selfish and possessive attitude toward nature.<sup>88</sup>

### ***5.3. Churches of the Reformation and Ecumenical Movement***

One of the distinctive features of contemporary ecological awareness within the churches of the Reformation is that it is often expressed through engagement in the ecumenical movement, in which Reformation churches have played a significant role since the very beginnings of its development in the early decades of the 20<sup>th</sup> century. Although environmental protection was not unknown to earlier theological thought, following the General Assembly of the World Council of Churches in New Delhi in 1961 – which laid the theological foundations for later ecological initiatives – and especially from the early 1970s and the ‘discovery of ecology’, the World Council of Churches became one of the key actors in the ecological movement. The WCC was among the first to formulate the principle of ‘sustainability’ – at a conference in Bucharest in 1974 and later at its General Assembly in Nairobi in 1975 – thus influencing political debates on the subject.<sup>89</sup> During the 1980s, the World Council of Churches also developed the concept of ‘Justice, Peace and Integrity of Creation’ as a theological and practical response to the global crises of the time, including ecological degradation, poverty, and discrimination.<sup>90</sup> This concept advocates an integral approach and does not separate the spiritual from the social; rather, it affirms that Christian life in the contemporary world entails a commitment to justice, the promotion of peace, and the protection of the environment – three dimensions that are intrinsically interconnected. The ‘Justice, Peace and Integrity of Creation’ framework was later adopted as a programmatic orientation by the World Council of Churches and is promoted through education, public engagement, and ecological initiatives. Among the practical responses to the ‘Justice, Peace and Integrity of Creation’ call is the ‘Season of

86 Cf. for example *The Basis of the Social Concept of the Russian Orthodox Church*, 2000, p. 13; *For the Life of the World: Toward a Social Ethos of the Orthodox Church*, 2020, p. 8.

87 Cf. Zizioulas, 2003, p. 8; Zizioulas, 2011, pp. 133–141.

88 Cf. Zizioulas, 2003, pp. 8–9.

89 Cf. Stückelberger, 2015, p. 12.

90 Cf. Preman Niles, 1994.

Creation’, held annually from September 1 to October 4<sup>91</sup> which includes ecological actions, educational programs, prayers for the created world, etc.

In addition to their ecological engagement through ecumenical organizations, the churches of the Reformation have also articulated their own positions on ecology through various documents. In 1993, the Evangelical Lutheran Church in America issued the statement ‘Caring for Creation: Vision, Hope, and Justice’, in which it emphasises that, although the Church participates in political, economic, and scientific discussions on ecology, care for the planet is fundamentally a spiritual matter.<sup>92</sup> ‘Creation – Not For Sale’ was one of the three sub-themes of the main theme ‘Liberated by God’s Grace’, which marked the 500<sup>th</sup> anniversary of the Reformation and was organised by the Lutheran World Federation in 2017.

In 2004, the World Alliance of Reformed Churches adopted the Accra Confession, which affirms that faith and justice are inseparable – that the struggle against economic and ecological injustice is a matter of faith in Christ, not merely a social, political, or ethical concern. This statement strongly condemns the consumerist mentality, greed, and selfishness, which result in the devastation of the environment.<sup>93</sup> Among the practical initiatives that have received significant attention in ecumenical and ecological circles is the ‘Decade for Climate Justice’. On December 1, the World Communion of Reformed Churches officially launched the ‘Decade for Climate Justice’ with the aim, among other things, of raising awareness about the urgency of climate action and fostering solidarity with communities affected by climate change. The impact of this initiative is further highlighted by the fact that, on June 21, 2025, the World Council of Churches officially inaugurated the Ecumenical Decade of Climate Justice Action.<sup>94</sup>

In addition to global initiatives, numerous ecological movements and projects exist at the local level. One such initiative is ‘Eco-Congregation Hungary’ of the Reformed Church of Hungary, which promotes ethical and sustainable practices within local communities, with particular emphasis on environmental preservation, education, and practical projects.<sup>95</sup> The Reformed Church in Hungary is also an active member of the European Christian Environmental Network (ECEN), which aims to facilitate the exchange of experiences in ecological engagement and to encourage joint witness in caring for the created world.

91 Cf. Season of creation: ‘September 1st was proclaimed as a day of prayer for the environment by the late Ecumenical Patriarch Dimitrios I in 1989. The Orthodox Church year starts that day with a commemoration of how God created the world. On 4 October, Roman Catholics and other churches from the Western traditions commemorate Francis of Assisi, known to many as the author of the Canticle of the Creatures.’

92 Cf. Caring for Creation: Vision, Hope and Justice, 1993, p. 1.

93 Cf. Accra Confession.

94 Cf. World Council of Churches Launches Ecumenical Decade of Climate Justice Action, 2025.

95 Cf. Perry, 2003.

## 6. Conclusion

In this book chapter, the main approaches to the relationship between the environment and human rights have been presented, including the analysis of the most important benefits and shortcomings of each approach. Considering the overall picture, it can be concluded that procedural environmental rights, together with two approaches to substantive right to environment of particular quality should be considered as complementary, compatible and mutually reinforcing. Not only are the procedural environmental rights compatible with the substantive right to environment, but they can contribute to its efficiency as well. Furthermore, the recognition of a standalone human right to an environment of particular quality does not preclude the ongoing process of the ‘greening’ of human rights. On the contrary, the interconnection and intersection of different human rights have become hallmark features of contemporary human rights systems, and therefore, recognising a standalone right to the environment can strengthen the greening of other human rights.

The recognition of the legal personality of the nature and its objects, even though it is an interesting and provocative path towards the legal protection of the environment, does not contribute to the relationship between environment and human rights. In such cases some rights of these legal persons are explicitly recognised, however, it cannot be concluded that they are endowed with all the human rights or that they can contribute to the recognition of the standalone right of human beings to an environment of particular quality.

The proposal to recognise a standalone right to the environment based on the NIC theory of law fits within the broader approach of establishing a substantive, standalone human right to an environment of particular quality. However, it is an advanced theoretical proposal grounded on firm theoretical foundations, whereas similar proposals have mostly reflected and resulted from practical needs for environment protection.

The discourse on the moral foundations of the right to environment moves in the same direction. As has been demonstrated, the moral demand for a healthy environment meets the threshold conditions to qualify as the basis of a human right.

In conclusion, the initiative to recognise a standalone right to an environment of particular quality dominates recent scholarship, and it is likely that this important right will be universally recognised in the future. Nevertheless, its theoretical foundations require further development, as most existing proposals justify their claims primarily through practical implications without sufficiently engaging with established human rights theories.

Given the contemporary positions of Christian Churches on ecological issues, it is evident that Lynn White Jr.’s assertion – that the theology of certain Christian traditions contributed to legitimising an exploitative attitude toward nature – no longer reflects present-day reality. Despite certain (though not particularly significant) differences in their approaches to ecology, all Christian Churches, grounded in

biblical foundations, emphatically affirm that creation is the work of God and, as such, deserves reverence and protection.

Nature is not merely a backdrop for human existence; rather, having been created as good and bearing significance within God's salvific plan, it possesses intrinsic value. The current theological perspectives of Christian Churches on ecology, along with their practical initiatives and active engagement in environmental protection, demonstrate not only an awareness of these truths but also a readiness to advocate vigorously for the respect and preservation of nature.

The sheer number of environmental initiatives launched by churches today is virtually immeasurable. Furthermore, when considering the theoretical contributions of Christian Churches to ecological discourse, one should highlight their integral approach – an understanding that ecology and environmental protection cannot be viewed in isolation from economic, political, cultural, and other societal factors.

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# Human Rights and the Environment: A Normative and Institutional Framework in the UN

Gyula BÁNDI

## ABSTRACT

This paper presents the development of a new human right: the right to a clean, healthy and sustainable environment. This proved to be a challenging endeavour. Although the official catalogue of human rights does not contain this right, legal scholars from the 1970s have urged its inclusion in the wider system. Environmental rights are considered to be as third generation rights, urging states and the international community to act in favour of environmental protection. They are also considered a clear moral obligation, a view shared by global churches. This paper outlines the evolution of this human rights concept from the UN Stockholm Summit in 1972 to the present day, through various summits, conferences, and conventions. One European regional convention that takes environmental rights as its basis is the 1998 Aarhus Convention. Unfortunately, several obstacles hinder the inclusion of these rights in the human rights system due to differences in focus. Nevertheless, this development could continue via soft law documents and judgements, including those of the European Court of Human Rights, and new UN institutions such as the Special Rapporteur on the Right to a Clean, Healthy and Sustainable Environment. After many discussions and published documents by the UN Human Rights Council, the Council itself agreed in 2021 and the UN General Assembly agreed in 2022 that the right to a clean, healthy and sustainable environment should be recognised as a human right, finally putting the topic on the right track.

## KEYWORDS

third generation rights, moral obligations, special rapporteurs, right to a clean, healthy and sustainable environment

## 1. The Potential Location of the Environmental Human Right and Some Selected Major Moral Considerations

Today, one can easily answer the question, how important is the human right concept? To say that it is definitely a promising way to evaluate the value a legal system grants to a certain subject is to examine whether it belongs to the code of human rights. The human rights model is the product of ideas that led to the French Revolution, in which the rights of individuals were taken as guarantees against the actual regime. From

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that point on, people's rights have always been considered proof of the significance of a given regulatory area; this does not necessarily always mean the codification of such rights.

Because the concept of human rights always refers to the value of a certain legal theme at each stage of development, these demands have become human rights that interested humans the most. The best early example is that during the revolutionary years of the 18th century, freedom of property, speech, religion, and the right to elect and be elected, among others, were prerequisites for future political and social development. Subsequently, other rights, such as social and cultural rights or later, the right to live in peace, emerged in the body of human rights during the last centuries.

Based on the historical development of the human rights concept, it is a commonly acknowledged method to make a distinction between three generations of human rights – as it has been known worldwide, following the article of Karel Vasak<sup>1</sup>; nevertheless, we should not forget that this, or any other categorisation is relative – or, according to some, might even be counterproductive<sup>2</sup> – as every clustering and all lines between these groups are variable. Nevertheless, being generally accepted and having their own valuable messages, these groups are easy to manage.

The first generation is characterised by political freedom and rights to property, that is, everything connected to self-determination and the right to development. This group of rights originated in the 18th century, but is still a full member of the code of rights. In the case of first generation rights, the state has always been obliged to stay out of the given problem and refrain from doing something. Thus, the best protection of the rights of liberty and property is the freedom to have anything in private ownership and to be allowed to sell and buy these subjects of property without any restriction. Of course, it is impossible to conceive of this right to its fullest extent and exclude state intervention. In the case of property rights, the sphere of exclusive state property itself limits freedom.

The second generation of human rights became more important when freedom and development had already been secured, at least in part, from the end of the 19th century, and some qualitative guarantees of human life became vital from the perspective of human beings. These guarantees are mostly connected to social security, cultural rights, working conditions, and so on. The protection of the rights of the second generation requires active conduct and active involvement on behalf of the state to safeguard the implementation of these rights. Thus, the right to provide basic education for citizens may only function if it is organised and financed by the state.

The third generation of human rights is based on the recognition that the direct conditions of our survival are in danger, which means, first, the quality of life itself. Thus, the right to 'a healthy and ecologically balanced'<sup>3</sup> environment, or the right to live in peace and avoid wars, particularly nuclear or chemical warfare, are the best

1 Vasak, 1977.

2 Juss, 1998.

3 Juss, 1998.

representatives of this concept. State actions are not sufficient to secure these rights; only international cooperation and action may be fruitful. The development of international environmental law is a consequence of understanding the need for international cooperation. These rights are also considered as “solidarity rights” – as Vasak summarised accurately: ‘Since these rights reflect a certain conception of community life, they can only be implemented by the combined efforts of everyone: individuals, states and other bodies, as well as public and private institutions’. One author<sup>4</sup> argued that because of the rapid development we face, human values are seriously damaged, which clearly means that we must take special care of them. Therefore, the need to protect these rights is present at all levels. Other authors clearly refer to the intense international dimension of these rights, as they were created due to globalisation. It is not surprising why the right to development is also a part of third generation rights.<sup>5</sup> Nonetheless, many believe that ‘Environmental rights do not fit neatly into any single category or “generation” of human rights’,<sup>6</sup> – looking at its several constituents, such as participatory or procedural rights.

Currently, due to the overestimation of rights over duties which guarantee the employment of any rights, there is a growing tendency to reinforce duties and obligations. As Pope Benedict XVI wrote,

‘An overemphasis on rights leads to a disregard for duties. Duties set a limit on rights because they point to the anthropological and ethical framework of which rights are a part, in this way ensuring that they do not become licence. Duties thereby reinforce rights and call for their defence and promotion as a task to be undertaken in the service of the common good. Otherwise, if the only basis of human rights is to be found in the deliberations of an assembly of citizens, those rights can be changed at any time, and so the duty to respect and pursue them fades from the common consciousness.’<sup>7</sup>

When drafting a protocol to the European Convention of Human Rights concerning the right to a healthy environment, the rapporteur added:<sup>8</sup>

‘12. At present, we are witnessing what could be called a fourth generation of fundamental rights, or a generation of rights and duties for the society of the future. Society as a whole and each individual in particular must pass on a healthy and viable environment to future generations. That is quite simply the principle of solidarity between generations.’

4 Hajjar Leib, 2011, pp. 53–54.

5 Kondorosi, 2005.

6 Birnie, Boyle and Redgwell, 2009, p. 271.

7 Benedict XVI, 2009, point 43.

8 Mendes Bota, 2009, under the title: 3.5. An additional protocol to the European Convention on Human Rights as a debt owed to future generations.

The above considerations do not necessarily mean that the right to environment can easily find its position within the body of human rights. In the context of the right to environment, the term “environment” is usually supplied with certain attributes. Mostly, it is called the right “to healthy environment” or the right to an “environment worthy of man”, etc. The draft model environmental act of the Council of Europe from 1994<sup>9</sup> reads, ‘Everyone has a right to an ecologically stable and healthy environment’. As we proceed, the current UN language will come to the fore; until then, it is better to be impartial.

However, before discussing normative and institutional frameworks, a short glimpse into moral considerations may also be vital. Our moral survey is limited to Catholic teaching, which is still leading in Europe. The basis of the social teaching of the church is certainly the *Rerum novarum*,<sup>10</sup> taking care of the well-being of the people, identifying it as a “common good”: ‘The state has a legitimate duty to promote the common good’, and ‘(29) [T]he state must sacredly protect the rights of all people, be they anyone’. This is a clear recognition of human rights more than half a century before the international community expressed a similar recognition in the Universal Declaration of Human Rights. In the same encyclical sense, the protection of creation in the present sense has not been markedly articulated. Here, we should not enter into a comprehensive analysis of the teaching; therefore, we immediately go to the first encyclical of Pope Saint John Paul II, *Redemptor hominis*<sup>11</sup>:

‘(17) Human rights: “letter” or “spirit”

The Church has always taught the duty to act for the common good and, in so doing, has likewise educated good citizens for each State. Furthermore, she has always taught that the fundamental duty of power is solicitude for the common good of society; this is what gives power its fundamental rights. Precisely in the name of these premises of the objective ethical order, the rights of power can only be understood on the basis of respect for the objective and inviolable rights of man. The common good that authority in the State serves is brought to full realization only when all the citizens are sure of their rights.’

Twenty years later, in 1999, Pope Saint John Paul II devoted an entire World Day of Peace message to human rights,<sup>12</sup> taking human dignity as a starting point, continuing with the universality and indivisibility of human rights, and subsequently focusing on some of the human rights that have become increasingly important. Among many other elements, in addition to the prohibition of all forms of discrimination, the right

9 Council of Europe, 1994, Art. 3, para. 1. See more details in chapter V.

10 Leo XIII, 1891.

11 John Paul II, 1979.

12 John Paul II, 1999.

to self-fulfilment, solidarity, and peace. Paragraph 10 concerns responsibility for the environment:

‘(10) The promotion of human dignity is linked to the right to a healthy environment, since this right highlight the dynamics of the relationship between the individual and society. A body of international, regional and national norms on the environment is gradually giving legal form to this right. But legislative measures are not sufficient by themselves. . . . The world’s present and future depend on the safeguarding of creation, because of the endless interdependence between human beings and their environment. Placing human well-being at the centre of concern for the environment is actually the surest way of safeguarding creation; this in fact stimulates the responsibility of the individual with regard to natural resources and their judicious use.’

The Compendium of the Social Doctrine of the Church<sup>13</sup> discusses the issue of human rights as a priority. This takes place in Part IV of Chapter III, according to the premise of which:

‘(152) The movement towards the identification and proclamation of human rights is one of the most significant attempts to respond effectively to the inescapable demands of human dignity’. Later, there is a unified approach to human rights: ‘(154) Human rights are to be defended not only individually but also as a whole: protecting them only partially would imply a kind of failure to recognise them.’ In the Compendium’s specific chapter on the environment, one may read: ‘(468) The juridical content of “*the right to a safe and healthy natural environment*” is gradually taking form, stimulated by the concern shown by public opinion to disciplining the use of created goods according to the demands of the common good and a common desire to punish those who pollute. But juridical measures by themselves are not sufficient. They must be accompanied by a growing sense of responsibility as well as an effective change of mentality and lifestyle.’

Finally, I would like to draw attention to two more Vatican statements, both of which are linked to the seventieth anniversary of the Universal Declaration of Human Rights. In chronological order, the first is Pope Francis’ New Year’s greeting for diplomats accredited to the Holy See.<sup>14</sup> On the occasion of this anniversary, the Pope states, primarily representing the general opinion of the Holy See on human rights, that human rights are essential to the reality of man’s central role, the image of God, and his likeness. He then notes the *changes* in the human rights catalogue, the appearance of “new rights”, including the right to health, or the relationship between the right

13 Pontifical Council for Justice and Peace, 2004.

14 Francis, 2018.

to life and peace. The speech subsequently addresses the duty to care for our land, which includes our obligations when interacting with nature. On the topic of climate change, it then focuses on the rights of future generations.

Of course, it is not only the Catholic Church that focuses on similar problems, namely our special relationship with nature – or the Creation, as it is clearly presented in the Assisi Declarations, with the participation of experts in the leading religions of the world – Buddhism, Christianity, Hinduism, Judaism, and Islam.<sup>15</sup>

## **2. The Right to Environment in International (Mostly UN) Context: A Review**

The following words are valid even in 2024:

‘Nevertheless, although UN Charter expressed the UN’s aims and purposes in far wider term than those of the League of Nations, nowhere is there any explicit reference to the aim of protecting, preserving, or conserving the natural environment or promoting sustainable development. This is hardly surprising. There was little awareness in 1945 of any need to protect the environment, except on a limited and ad hoc basis ... the subsequent evolution of the UN’s power to adopt policies or take measures directed on environmental objectives has to be derived from a broader interpretation of the Charter and of the implied powers of the organization.’

Here, the authors refer to Art. 1 and 55 of the Charter.<sup>16</sup> This should be kept in mind when evaluating both the road to environmental policy and environmental human right approach.

### **2.1. UN Summits**

The right to environment as a requirement first appeared in international conferences, primarily the specific UN conferences, among which the first was the United Nations Conference of the Human Environment<sup>17</sup> in 1972. Principle 1 of the Conference – and we may take the numbering as an important message – stated:

‘Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial

15 Faith in Conservation, 1986.

16 Birnie, Boyle and Redgwell, 2009, p. 58.

17 United Nations, n.d.

and other forms of oppression, and foreign domination stand condemned and must be eliminated’.

This principle covers virtually everything that comes only after Stockholm: a solid right to live under acceptable environmental conditions associated with human dignity and well-being (which should not necessarily mean only material conditions) in a broader sense, the mention of the present and similarly, future generations, and taking it all as an obligation (responsibility) simultaneously. The 1972 declaration proved to be slightly more demanding than the messages of the coming UN environmental conferences. Following the first entrée, moving ahead and becoming more progressive proved to be slightly challenging.

Summarizing the role of Stockholm within environmental human rights, we might agree with the author:

‘The driving force in this direction has been gaining momentum since the 1972 Stockholm Conference on the Human Environment, which proclaimed linkage between human rights and the environment. Since then, a number of questions have been answered, such as the collective dimensions of human rights; the justiciability of economic, social, and cultural rights; the existence of procedural and substantive human rights obligations regarding environmental protection; and the interplay between universality and diversity.’<sup>18</sup>

Twenty years later, the Rio Declaration on Environment and Development<sup>19</sup> was far less progressive as instead of reinforcing the human right concept, stating only in Principle No. 1: ‘Human beings are at the centre for sustainable development. They are entitled to a healthy and productive life in harmony with nature’. Dinah Shelton wrote<sup>20</sup> that this was due to uncertainty and debates about the proper place for human rights law in the development of international environmental law. Contrarily, there are other positive elements of Rio, such as sustainable development law – Principle 4 – and public participation – Principle 10 as a procedural background to the would-be human right or the precautionary principle – Principle 15.

As a general comment:

‘Since Stockholm a growing number of international texts have included references to environmental rights or a right to an environment of a certain – or uncertain quality. ...Although the 1950 European Convention on Human Rights does not contain a right to environment, case law of the European Commission and Court of Human Rights indicates that environmental deterioration

18 Orellana, 2015, p. 75.

19 United Nations, 1992.

20 Shelton, 1992.

can lead to violations of human rights that are recognized by the Convention, including the right to privacy and family life, and the right to property.<sup>21</sup>

The third UN Summit was held in Johannesburg in 2002, adopting, among others, The Johannesburg Declaration on Sustainable Development, which<sup>22</sup> did not mention the environmental human right; instead, the indivisibility of human dignity was highlighted (point 18). The whole declaration balances development and sustainability, with many such elements that could appear in the 2015 SDG.<sup>23</sup>

The Rio+20<sup>24</sup> summit in 2012 must also be mentioned to close the circle of UN global conferences. “The Future We Want” is again a preparatory document of the future SDG, stating the same as 20 years earlier: ‘6. We recognize that people are at the centre of sustainable development...’ Human rights are certainly recognised in points 8 and 9 without even mentioning the idea of environmental rights.

## ***2.2. Contemporary International Instruments, Conventions***

Unfortunately, in the realm of international human rights law, there is no global human rights convention that explicitly adopts the right to environment as a codified basic right. Nevertheless, this right appears to be a condition for the quality of life. Certain regional conventions and judicial practices<sup>25</sup> managed to overcome this common model; however, real progress was made in domestic legislation. Most European domestic legislations now accept the right to environment as a basic citizen’s right.

Granting a human right to environment – whatever attribute is used – still represents a great challenge and responsibility to domestic law, and it is a much greater challenge to international human rights law. ‘Under domestic constitutions and international human rights law, obligations are owed to individuals by the State, and the function of rights is to provide a means for such obligations to be enforced.’<sup>26</sup> This question requires substantial dedication on behalf of the state/states and right-bearers. As we see below, it is difficult to push through any such new challenge, which also implies a type of system change.

If we want to understand how environmental rights are reflected in international human rights law,<sup>27</sup> we may distinguish three groups of international documents: the official codes of human rights – UN or European conventions, covenants – which do not mention environmental issues or the right to environment; non-binding

21 Kiss and Shelton, 1993, p. 43.

22 United Nations, 2002a.

23 United Nations, n.d. b.

24 United Nations, 2012.

25 In Europe the best example is the European Court of Human Rights, having an extensive case-law, see the list of most important cases from April 2024: European Court of Human Rights, 2024.

26 Merrills, 2007, p. 673.

27 A handy summary may be: United Nations, 2020.

international documents – such as the Stockholm Declaration and Action Plan for the Human Environment or Rio Declaration on Environment and Development, mentioned above, and in its principle No. 1; environmental agreements which mention the right to environment, such as the Aarhus Convention,<sup>28</sup> which considers the right to environment as the footing. The preamble reads as follows:

‘Recognizing also that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of the present and future generations.’

It goes without saying that the most crucial item in the list of the first group – multilateral treaties – is the Universal Declaration of Human Rights from 1948.<sup>29</sup> This Declaration certainly did not mention environmental issues, which did not appear at that time as a potential human rights issue. There were some international agreements and even case law (see Trail Smelter from 1941),<sup>30</sup> but these sporadic calamities could not summarise as a huge global and holistic subject matter after World War II, as it is today.

‘The Universal Declaration of Human Rights, 44 adopted alongside the United Nations Charter, began the process of redefining sovereignty to include responsibilities to citizens and inhabitants. As members of the United Nations, states committed themselves to “universal respect for observance of human rights and fundamental freedoms”. The Universal Declaration focuses primarily on the proper limits of state power vis-à-vis individuals, particularly those who are members of marginalized racial, ethnic, or religious minorities. As such, international human rights law deals mainly with how people should be treated by their government and its institutions.’<sup>31</sup>

The Declaration is built on human dignity, as is clear from the first paragraph of the Preamble:

‘Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’, and also from Art. 1. The only probable and remote link in the Declaration with the environment might be Art. 25. Para. 1: ‘Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and

28 United Nations Economic Commission for Europe, 1998.

29 United Nations, 1948.

30 For a pertinent survey see: Prunella, 2014.

31 Bratspies, 2015, p. 39.

medical care and necessary social services, ...' Here, we reiterate our short moral survey, and the way human dignity slowly, but effectively inserted environmental conditions.<sup>32</sup> Hence, Weeramantry prioritised the different human rights in an innovative way: 'Protecting the environment is also an essential part of the current doctrine of human rights, as it is a prerequisite for many human rights, such as the right to health and life.'<sup>33</sup>

Before discussing the contemporary history of the progress made in connection with the explicit environmental human right, some other agreements should also be studied. Almost 20 years later, the Declaration was completed with two covenants: the International Covenant on Economic, Social, and Cultural Rights<sup>34</sup> and International Covenant on Civil and Political Rights.<sup>35</sup> We may find some elements in both covenants, which may somehow relate to our subject matter: Economic, Social, and Cultural; 'Art. 7. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

'... (b) Safe and healthy working conditions...;

Art. 12. 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

0...(b) The improvement of all aspects of environmental and industrial hygiene;' Civil and Political 'Art. 6. 1. Every human being has the inherent right to life. ...'

These references are quite remote and mentioning them is not functional; however, for the sake of clarity, they should be discussed. Sometime – decades – later two UN documents appeared in the scene which might really be used, which have existing connections to the greater domain of environmental issues.

The earlier is the Convention on the Rights of the Child,<sup>36</sup> which could not avoid having some direct references to environmental issues, as the paramount value of environmental conditions became increasingly visible. Art. 24 reads:

32 '(10) The promotion of human dignity is linked to the right to a healthy environment, since this right highlights the dynamics of the relationship between the individual and society' in: John Paul II, 1979.

33 Separate opinion of Judge Weeramantry in International Court of Justice, 1997.

34 United Nations, 1966a.

35 United Nations, 1966b.

36 United Nations, 1989.

‘2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: ...

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution; ...

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents; ...’

Another 10 years have passed, and a new UN document is coming to the fore: the UN Declaration on the Rights of Indigenous Peoples.<sup>37</sup> The preamble is clear in this respect: the environmental conditions and the rights are connected: ‘Recognizing that respect for indigenous knowledge, cultures, and traditional practices contributes to sustainable and equitable development and proper management of the environment, ...’ In Art. 29 two separate issues are mentioned parallelly: one concerns environmental conditions as such – ‘1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. ...’, while the second is related with a new method of colonialism: ‘2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.’

In our categorisation, this first group focuses on global UN papers, which at the highest level – the so-called human rights’ code – does not contain environmental human rights, but as we can see, emerging examples still exist. Other steps taken by the UN and its different bodies are discussed later. Moreover, there are regional human rights catalogues, which are slightly more advanced in this respect; when talking about the likelihood to have a general human right of this kind, we agree with the author<sup>38</sup>: ‘Indeed, in a regional context this latter step has already been taken...’ At least in the African Charter on Human and Peoples’ Rights (1981)<sup>39</sup> – ‘Article 24: All peoples shall have the right to a general satisfactory environment favourable to their development’ – and in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador” (1988)<sup>40</sup> –

37 United Nations, 2007.

38 Merrills, 2007, p. 664.

39 Organisation of African Unity, 1981.

40 Organization of American States, 1988.

‘Article 11, Right to a Healthy Environment: 1. Everyone shall have the right to live in a healthy environment and to have access to basic public services. 2. The States Parties shall promote the protection, preservation, and improvement of the environment.’

These two human rights documents are explicit in nature and direct in terms of their objectives.

Looking at the second group – policy papers and environmental agreements – of international documents from the outset of environmental human rights, the story is much more complex. The Stockholm Declaration has already been mentioned, and we agree that the Rio UNCED summit did not directly discuss the human rights issue; however, many elements, mostly procedural, such as public participation, were discussed. The other two environmental summits were also mentioned above. There are many such official or semi-official papers which we might discuss, but here, we refer to one example only, the “product” of a specified UN institution, the WHO – European Charter on Environment and Health from 1989.<sup>41</sup> The preamble has a clear message of the interdependency of different human right issues ‘Recognizing the dependence of human health on a wide range of crucial environmental factors, ...’ Since the whole document is devoted to the human right issue, just the beginning, the two sides of the coin – rights and obligations – are mentioned here:

‘1. Every individual is entitled to: an environment conducive to the highest attainable level of health and wellbeing; information and consultation on the state of the environment, and on plans, decisions and activities likely to affect both the environment and health; participation in the decision-making process.

2. Every individual has a responsibility to contribute to the protection of the environment, in the interests of his or her own health and the health of others’.

The third group of international documents is a kind of mixture, where regional agreements or specific environmental agreements are linked, all having the attribute to take into consideration the environmental human rights. Following the procedural aspects underlined in Rio 1991, the best example may be the Aarhus Convention, also a UN convention, under the Economic Commission for Europe.<sup>42</sup> The self-evaluation of the Aarhus Convention<sup>43</sup> is as follows:

‘The Aarhus Convention is a new kind of environmental agreement. It links environmental rights and human rights. It acknowledges that we owe an obligation to future generations. It establishes that sustainable development can be achieved only through the involvement of all stakeholders. It links

41 FPS, 2006.

42 United Nations Economic Commission for Europe, 1998.

43 United Nations Economic Commission for Europe, 2003.

government accountability and environmental protection. It goes to the heart of the relationship between people and governments. The Convention is therefore not only an environmental agreement; it is also a Convention about government accountability, transparency and responsiveness.

Ensuring the rights of access to information, public participation and access to justice can create an ethos in which violation of other more basic human rights, starting with the right to human life itself, becomes less possible or less likely, thereby contributing to the goal of stability and security. The Aarhus Convention represents an important step towards securing these rights.'

The Aarhus Convention proved to be a perfect sample document, which other regions also wished to apply, and in Rio+20 process there were humble efforts to make it global; however, only the Escazú Agreement<sup>44</sup> has been approved twenty years later. This could receive considerable attention, as it is written in the preface of the same publication: 'The Regional Agreement is a ground-breaking legal instrument for environmental protection, but it is also a human rights treaty. Its main beneficiaries are the people of our region, particularly the most vulnerable groups and communities'. As the preamble reads:

'Emphasizing that access rights are interrelated and interdependent, and so each and every one of them should be promoted and implemented in an integrated and balanced manner,  
Convinced that access rights contribute to the strengthening of, inter alia, democracy, sustainable development and human rights.'

It is important to understand, that 'The language used by different instruments is far from being homogeneous', and

'Human rights treaties of the past decade are fewer in number than the total of environmental agreements adopted during the same period and most of those that have been concluded have been at the regional level. In general, global treaties have not included specific reference to the environment or to environmental rights. In contrast, even prior to the Rio Conference, regional instruments contained provisions on environmental rights.'<sup>45</sup>

Our final conclusion is:

'International environmental law is especially soft. The congress of international environmental accords has fallen short of expectations for protecting

44 United Nations Economic Commission for Latin America and the Caribbean, 2018.

45 Shelton, 2002, Background Paper No. 1, Introduction.

environmental rights. Despite the abundance of treaties and conventions, there is no independent international environmental rights treaty.<sup>46</sup>

The climate change negotiations could also benefit from the human rights concept, as it was also mentioned in the UNFCCC Conference of the Parties (COP27) in Sharm el Sheikh:

‘The Conference of the Parties ... Acknowledging that climate change is a common concern of humankind, and that Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to a clean, healthy and sustainable environment, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity...<sup>47</sup>

### 3. The Obstacles to Recognising Environmental Human Rights

Human rights have their own historic development path, and this might definitely be identified in the case of the first and second groups of rights, as their conceptual frameworks are much closer to one another. While group three demonstrates a different theoretical basis: less individual, more global, and holistic. Additionally, there are practical reasons which do not support the easy harmonisation: ‘The international protection of human rights and environmental protection represent two of the fundamental values and aims of modern international society. While each subject area has developed in larger parts independently of the other...<sup>48</sup> The differences in the virtues have also been identified by the same scholars.

‘Potentially conflicting differences of emphasis still exist, however: the essential concern of human rights law is to protect individuals and groups alive today within a given society, while the purpose of environmental law is to sustain life globally by balancing the needs and capacities of present generations of all species with those of the future. The broad protection of nature at times may conflict with preservation of individual rights.<sup>49</sup>

46 May and Daly, 2015, p. 21.

47 United Nations Framework Convention on Climate Change, 2022.

48 Kiss and Shelton, 1992, p. 141.

49 Kiss and Shelton, 1992, p. 187.

Many believe that the human right to a – healthy, or any other classifications might be listed in its place – environment represents a different concept with several distinctions from the “traditional” human rights. Some<sup>50</sup> highlight the differences, as in the above reading, indicating that these traditional rights have their own limits, such as; traditional human rights ultimately protect individuals; consequently, in the case of environmental damage, the damaging effect on individuals should be identified and, in many cases, these direct and substantial individual impacts are difficult to recognise; the interests of individual human beings and the environment do not necessarily correspond with one another, or even contrarily, the full implementation of human rights might easily damage the environment; current human rights mostly protect the current generations, while – as it clearly stems from the concept of sustainable development – the environment must be preserved not only for the current generations but even more for the future generations.

While most third generation or solidarity rights are collective rights and several other existing rights – children and indigenous people, just to refer to those agreements, already mentioned above – have a primarily collective dimension, the difference between human beings as the single right-holder or the environment, being a complex and mostly living organism, might raise serious questions. Currently, although there are several strong moral and legal arguments about the rights of nature<sup>51</sup> – reinforcing the idea of the protection of Creation<sup>52</sup> – or animal rights,<sup>53</sup> many still have serious reservations. Additionally, many other questions might be raised, such as in the case of such collective rights, who stands for representing them?

The major problem – we should think about collective rights, who is the right-holder, and who might represent them – is very similar to the above, but at least one more issue should also be added, namely the vision of the future. Generational equity is difficult to address, the interest of the current generations’ *vis-à-vis* the uncertain future: what are the interests of the future, how long is the future, who may decide? Why should the current generations limit satiating all their needs for an indefinite future? This has been discussed in several studies.<sup>54</sup>

50 Thornton and Beckwith, 2004. p. 365.

51 ‘It is the recognition that our ecosystems – including trees, oceans, animals, mountains – have rights just as human beings have rights. Rights of Nature is about balancing what is good for human beings against what is good for other species, what is good for the planet as a world. It is the holistic recognition that all life, all ecosystems on our planet are deeply intertwined. Rather than treating nature as property under the law, rights of nature acknowledges that nature in all its life forms has the right to exist, persist, maintain and regenerate its vital cycles.

And we – the people – have the legal authority and responsibility to enforce these rights on behalf of ecosystems. The ecosystem itself can be named as the injured party, with its own legal standing rights, in cases alleging rights violations’. See the preface of the Global Alliance for the Rights of Nature, n.d., or one of the basic sources: after the first publication in 1972 Stone, 2010; or about the ethical considerations: Nash, 1989.

52 Bándi, 2021, pp. 227–249.

53 Bekoff and Meaney, 1998.

54 See, for example: Bándi, 2022, p. 55.

What has not been mentioned above is strictly connected to the previous obstacle: economic interests versus non-material interest? Economic values or moral values? One might easily be accomplished, for example, by using the GDP as an indicator, although its real usefulness is a larger question.<sup>55</sup> However, how can nonmaterial assets be evaluated?

Finally, the same question may be raised again: right and/or duties. Therefore, the direction needs to be identified. Every person knows that the enjoyment of human rights mandates on behalf of the state or international community. However, in the case of environmental human rights, the right-holder and obligated is the same.<sup>56</sup> An excellent recent example – although not within the UN, but in the European context – is the “*Klimasenioren*” case of the European Court of Human Rights<sup>57</sup>, which among others concludes:

‘545. Accordingly, the State’s obligation under Article 8 is to do its part to ensure such protection. In this context, the State’s primary duty is to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change. This obligation flows from the causal relationship between climate change and the enjoyment of Convention rights, as noted in paragraphs 435 and 519 above, and the fact that the object and purpose of the Convention, as an instrument for the protection of human rights, requires that its provisions must be interpreted and applied such as to guarantee rights that are practical and effective, not theoretical and illusory.’

The details of the duties of the state are listed under point 550 of the same judgment.

Other scholars partly follow the aforementioned lines and proceed in slightly different ways, providing an even better understanding of the main obstacles.

‘There are many reasons that human rights regimes that are truly international and trans-regional do not necessarily protect environmental rights effectively. The first is that international human rights regimes are not designed to address environmental rights. ... Second, as a practical matter, to be taken seriously in existing human rights regimes, environmental tethered to another recognized right... Third, international human rights regimes, although formally enforceable, ‘suffer ... from weak institutional and compliance mechanisms’.

55 Hungarian National Bank, 2024.

56 As clarified in the Hungarian Fundamental Law, Art. P) ‘(1) Natural resources, in particular arable land, forests and the reserves of water; biodiversity, in particular native plant and animal species; and cultural artefacts, shall form the common heritage of the nation, it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations’.

57 European Court of Human Rights, 2024.

... Last, even incorporating human rights conventions by reference does little to advance environmental rights.<sup>58</sup>

Wat has been summarised above does not really facilitate easy decision-making, mostly if it goes beyond mere statements and becomes regulatory or practical reality. In domestic legislation, this might work better, as the verdict is in the hands of a single legislator or government; however, at the international or even global level, reaching a common agreement is much more complicated.

There are diverse potential pathways to encompass environmental interests into the human rights arena. There exist simpler and more difficult options. Twenty-five years ago – and as we shall see next, the outcome of the variations most likely has been settled two years ago – the following possibilities were mentioned by scholars<sup>59</sup>: There are four main approaches to the relationship between human rights and the environment that have emerged, and they primarily complement each other.

‘The first is to utilize or emphasize relevant human rights guarantees in international environmental instruments. This approach selects from among the catalogues of human rights those rights most relevant to the aims of environmental protection...

The second approach recasts or applies existing human rights guarantees and institutions when environmental harm occurs. This approach is unreservedly anthropocentric and supported by indications of the impact of environmental deterioration...

The third possibility is to formulate a new human right to an environment that is not defined in purely anthropocentric terms – an environment that is not only safe for humans, but one is that ecologically balanced and sustainable in the long term....

Finally, a fourth approach questions utilization of human rights language, preferring to address environmental protection as a matter of human responsibilities rather than rights... The concept of nature’s rights has been proposed in a variety of formulations...’

The main elements proved to be similar to the above example in other scholar’s works.<sup>60</sup>

Nonetheless, summing up the views, evaluations, and studies in the field, there is a very relevant summary of the conceptual problem:

‘However, what are human rights for? The most convincing justification, it is submitted, is that human rights are intended to ensure the basis conditions

58 May and Daly, 2015, pp. 26–27.

59 Kiss and Shelton, 1992, pp. 142–144.

60 Anderson, 1996.

needed for right-holders to pursue their various goals. Originally developed as a way of recognizing the unique value of every individual, human rights have now been extended to collectives where they fulfil a similar function in promoting the autonomy of ethnic and religious minorities, indigenous peoples, and other groups.... For present purposes, however, the significant point is that a persuasive rationale for human rights is that they enable us to address the realization of individual and group autonomy, which would be difficult, if not impossible, to achieve in other ways, thereby giving them a special place in legal and moral argument.<sup>61</sup>

## **4. The Development of the UN Approach Around the Environmental Human Right Concept**

### ***4.1. Different Soft Law Documents***

In the mid-80s, the question, ‘how can the code of human rights be extended?’ already came to the scene. In 1986, the UN General Assembly adopted a resolution, paragraph 4, which adopted guidelines indicating that new human rights instruments should: be consistent with the existing body of international human rights law; be of fundamental character and derive from the inherent dignity and worth of the human person; be sufficiently precise to give rise to identifiable and practicable rights and obligations; provide, where appropriate, realistic and effective implementation machinery, including reporting systems; attract broad international support.

These requirements may also be valid in the case of environmental human rights laws. However, at the beginning, no binding legal instruments were adopted, and frankly, this is still the case.

Around – a little bit earlier and a little bit later – the 1992 UNCED Conference in Rio, the first important documents were presented to the public. As it is written in the part on history of the Earth Charter, an informal but important document:<sup>62</sup>

‘In 1987 The World Commission on Environment and Development (known as “the Brundtland Commission”) launched Our Common Future Report with a call for a “new charter” to set “new norms” to guide the transition to sustainable development. Following that, discussion about an Earth Charter took place in the process leading to the Earth Summit in Rio de Janeiro in 1992, but the time for such a declaration was not right. The Rio Declaration became the statement of the achievable consensus at that time. In 1994, Maurice Strong (Secretary-General of the Rio Earth Summit) and Mikhail Gorbachev, working through organizations they each founded (Earth Council and Green

61 Merrills, 2007, p. 666.

62 Earth Charter Initiative, 2000.

Cross International, respectively), launched an initiative (with the support from the Dutch Government) to develop an Earth Charter as a civil society initiative. The initial drafting and consultation process drew on hundreds of international documents. An independent Earth Charter Commission was formed in 1997 to oversee the development of the text, analyze the outcomes of a world-wide consultation process and to come to an agreement on a global consensus document.’

The Charter was finally launched as a project in 2000 and Art. 12. concerns rights: ‘Uphold the right of all, without discrimination, to a natural and social environment supportive of human dignity, bodily health, and spiritual well-being, with special attention paid to the rights of indigenous peoples and minorities.’ The whole Charter is a wonderful set of declarations and may also be considered a wish-list.

The UN process towards the environmental human rights issue began with the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities, which in its 1989 session, added the topic of human rights and the environment to its agenda, appointing a Special Rapporteur who presented reports between 1991 and 1994. The most renowned from our point of view is the “Ksentini” report from 1994<sup>63</sup>. Providing a complete survey of the problem, which, besides the presentation of the right to a satisfactory environment, emphasises that the right to environment is essential for the enjoyment of other human rights, such as life or health, while vulnerable groups, such as minorities, also receive special attention. There are several recommendations in the report, such as:

‘258. The “human rights” component of the right to a satisfactory environment lends itself, however, to immediate implementation by various bodies, under existing mechanisms for following up regional and international human rights instruments. The practice being developed within those bodies is decisive and should bring into sharper focus the content of the right to a satisfactory environment, the ways and means of implementing it, and the related procedural aspects.

259. The Special Rapporteur recommends that the various human rights bodies should examine, in the various fields of concern to them, the environmental dimension of the human rights under their responsibility....’

‘Based on a private endeavour a number of environmental law experts and human rights specialist convened in Geneva in spring 1994 in order to draft principles on human rights and the environment. The group assembled at the invitation of an American private association, the Sierra Club Legal Defence Fund. The draft declaration circulated among governments and experts.’ The paper gives the following introduction on itself: ‘The Draft Declaration is the first international instrument that comprehensively addresses the linkage

63 United Nations Commission on Human Rights, 1994.

between human rights and the environment. As this is a realistic view on the importance of the drafting process, we may take it as a useful example for educational purposes and introduce the main components of the draft declaration with explanations.<sup>64</sup>

In the annex, the report listed the core principles, which began with (Part. I) the following requirements or statements:

- ‘1. Human rights, an ecologically sound environment, sustainable development and peace are interdependent and indivisible.
2. All persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible.
3. All persons shall be free from any form of discrimination in regard to actions and decisions that affect the environment.
4. All persons have the right to an environment adequate to meet equitably the needs of present generations and that does not impair the rights of future generations to meet equitably their needs.’

These basic elements have been expanded to several similar components of environmental rights, such as the right to the protection and preservation of the air, soil, water, sea-ice, flora, and fauna, and the essential processes and areas necessary to maintain biological diversity and ecosystems (Part II.6) or other major items of the holistic approach to environmental protection; as well as procedural rights such as access to information, and finally the duties: Part IV. 21. ‘All persons, individually and in association with others, have a duty to protect and preserve the environment.’ Unfortunately, there is not enough room to analyse this fundamental document in detail, but it might be clear from these examples that the complex system around environmental human rights could have already been developed thirty years ago.

The list of constituents of the draft principles is a mixture of general ideas regarding environment and sustainable development. Some elements refer directly to the interests of developing countries and their protection of the rights of poor people and minorities. The right not to be evicted from homes and land, coupled with the demand for restitution, compensation, and/or appropriate and sufficient accommodation or land, is relevant in countries where the legal system is not really characterised by the rule of law concept. The same applies for the special article on indigenous people. Additionally, the entire list is a genuine summary of the relevant elements of the right to environment.

What happened later? A very short summary by Shelton:

64 United Nations Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities, 1994.

‘The Human Rights Commission decided to request a report of the Secretary General on the issues raised by the report and Draft Principles, based on the comments of states, intergovernmental and non-governmental organizations. The Secretary-General submitted reports in 1997 and 1998. At its 1998 session, the Commission decided to appoint a review committee to submit a revised version of the Draft Declaration.’

More recently, in Res. 2001/65, the U.N. Human Rights Commission affirmed that ‘a democratic and equitable international order requires, inter alia, the realization of... [t]he right of every person and all peoples to a healthy environment. The Commission’s resolutions on toxic and dangerous wastes similarly refer consistently to the human rights to life, health and a sound environment for every individual and affirm that illicit traffic in and dumping of toxic and dangerous products and wastes is a serious threat to these rights’.<sup>65</sup>

The development of the environmental legal order proved to be a principal issue in the four global conferences mentioned above. The general legal issues, awareness-raising, system-oriented approach, training of the people, officials, or even judges were and still are in the hands of the UN Environmental Programme (UNEP),<sup>66</sup> but the human right to environment is connected to the Commission of Human Rights and its High Commissioner, and – as they come to the fore – the Special Rapporteurs. Moreover, one should not forget that many other subcommittees might play a role in this process, and knowing the fundamental position of environmental rights should be taken as a precondition of all other human rights. As we do not go into the details of UNEP activities, it is vital to mention the Environmental Rights Initiative, which began in 2018.<sup>67</sup> According to their summary:

‘We achieve the above Rights-based Approach through the following work areas: promote access to information on environmental rights; help governments fulfil environmental rights, assist business to move beyond a compliance culture; give a bigger voice to environmental defenders; provide legal and technical support.’

After the Ksentini report, nothing extraordinary occurred. ‘The response of the UN Human Rights Commission and of states generally was not favourable to this approach, and the proposal made no further progress’.<sup>68</sup> What is more surprising is that, in the same book the authors mention, that ‘Many scholars have also argued that the elaboration of an international rights to a decent environment is undesirable and unnecessary...’

65 Shelton, 2006, p. 169.

66 See as the current source: United Nations Environment Programme, 2025.

67 United Nations Environment Programme, n.d.

68 Birnie, Boyle and Redgwell, 2009, p. 279.

In the subsequent years, experts demonstrated a positive attitude towards the environmental human right issue. In a joint UNEP (United Nations Environmental Programme)-OHCHR (Office of the High Commissioner for Human Rights) seminar,<sup>69</sup> referring to earlier meetings, it was summarised: ‘3. These sets of national and international developments indicate the close connection between the protection of human rights and environmental protection, in the context of sustainable development. They reflect the growing interrelationship between approaches to ensuring human rights and environment protection, as well as the synergies that have developed between these previously distinct fields.’ The meeting did not go too far, as they simply agreed: ‘18. The experts recognized that normative links between the human rights and environmental fields need to be reinforced, beyond existing guarantees provided in national and international instruments and practices.’

However, the idea of taking steps in the direction of a substantive right in the near future proved to be realistic:

‘18. (c) With regard to substantive rights, further steps need to be taken: ... (iv) To support the growing recognition of a right to a secure, healthy and ecologically sound environment, either as a constitutionally guaranteed entitlement/right or as a guiding principle of national and international law’;

In addition, the combined efforts of UNEP and OHCHR stayed on the agenda, while strengthening the institutional mechanisms and conditions, among others, in the preparation for the Johannesburg summit.

Nevertheless, after some years of hesitation, the idea could turn into reality,<sup>70</sup> and a little less than a decade later, the Commission on Human Rights could come up with a relatively new concept,<sup>71</sup> not mentioning some other minor steps, as there were many scholarly works, other reports, and papers in this direction. The Resolution of 2003 could go back to 1972 and to the Ksentini report and others, mentioning the fact, that ‘... environmental damage can have potentially negative effects on the enjoyment of some human rights...’ This document did not literally accept the existence of such a human right; unfortunately, point 4 may not be taken as such a message

(‘4. Reaffirms that everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms and calls upon States to take all necessary measures to protect the legitimate exercise of everyone’s human rights when promoting environmental protection and sustainable development’),

69 United Nations, 2002b.

70 See expert meetings, with preparatory papers, such as: Shelton, 2002.

71 United Nations Commission on Human Rights, 2003, chap. XVII.

the Commission could not disregard the fact that while they were arguing about the necessity of such a declaration, a reference to the right to water was emerging (see point 8) in the meantime.

Later, the OHCHR came back<sup>72</sup> to the same issue, with a slightly different attitude, slightly stronger words, widening the horizon, looking at the positive aspect of environmental protection, and slowly moving on the right track:

‘Taking note that respect for human rights can contribute to sustainable development, including its environmental component,  
Considering that environmental damage, including that caused by natural circumstances or disasters, can have potentially negative effects on the enjoyment of human rights and on a healthy life and a healthy environment,  
Considering also that protection of the environment and sustainable development can also contribute to human well-being and potentially to the enjoyment of human rights.’

The right to a decent/healthy/etc. environment was still not mentioned, although again, we could move a little forward: ‘3. Calls upon States to take all necessary measures to protect the legitimate exercise of everyone’s human rights when promoting environmental protection and sustainable development...’

Many other papers are worth discussing, but here we introduce only a special innovative line of human rights discussions, turning away from the traditional concept of international community and human rights and/or governments and human rights towards a broader vision, turning towards business as such. The Business and Human Rights project<sup>73</sup> provides a clear relationship in its preamble: ‘Stressing that the obligation and the primary responsibility to promote and protect human rights and fundamental freedoms lie with the State, emphasizing that transnational corporations and other business enterprises have a responsibility to respect human rights.’ This first resolution proved to be the official initiation of a large project, establishing working group and forum, and adopting Guiding Principles on Business and Human Rights.<sup>74</sup> This new framework shall contain existing human rights and human right principles; therefore, environmental human rights definitely form a part of it.

#### ***4.2. Institutions and Special Rapporteurs***

The real position of the UNEP in the advancement of environmental human rights has already been mentioned, as – pursuing the UN institutional structure and the responsibility of the different institutions – the main player proved to be the Office of the High Commissioner of Human Rights (OHCHR). There is no use and room to analyse all the expert meetings and papers of this organisation, but it is adequate to mention

72 United Nations Commission on Human Rights, 2005, chap. XVII.

73 United Nations Human Rights Council, 2011.

74 United Nations, 2011.

the role of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities as a splendid example. Human rights institutions can create a system of special rapporteurs,<sup>75</sup> some of whom have a crucial mandate regarding environmental issues.

A short summary of the activities of the most relevant rapporteurs, in order of their year of establishment: Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes<sup>76</sup> since 1995, which has a very close correlation with human rights. A recent example is a report of the Rapporteur, describing:

‘1. Lack of accountability is aggravating the increasing toxification of our planet and the resulting infringements of human rights such as the rights to life, health and a clean, healthy and sustainable environment. Individuals and groups exposed to hazardous substances and wastes (hereinafter, such substances and wastes are also referred to as “toxics”<sup>1</sup>) suffer from reproductive injustices, neurological impairments, and several types of cancer, among other serious health conditions. However, impunity is the norm, rather than the exception, for polluters and for Governments that enable toxic pollution.’<sup>77</sup>

Special Rapporteur on indigenous peoples since 2001,<sup>78</sup> connecting indigenous peoples’ existence to their genuine environmental conditions. One thematic annual report that focused on climate change issues affecting indigenous people<sup>79</sup> among others concludes:

‘119. In order to prove their commitment to honour their human rights obligations, States must acknowledge the implications of climate change on human rights in the context of climate change mitigation and adaptation law and policies. As noted by the Intergovernmental Panel on Climate Change,

75 According to the United Nations Office of the High Commissioner for Human Rights, 2025a: ‘The special procedures of the Human Rights Council are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. They are non-paid and elected for 3-year mandates that can be reconducted for another three years. As of November 2023, there are 46 thematic and 14 country mandates.’

76 The mandate on hazardous substances and wastes was first established in 1995 by the United Nations Commission on Human Rights (Commission Resolution 1995/81). The mandate has been renewed most recently in 2023 through resolution A/HRC/RES/54/10. See: United Nations Human Rights Council, 2023a. The current office is the Special Rapporteur on toxics and human rights.

77 Orellana, 2025.

78 In 2001, the Commission on Human Rights decided to appoint a Special Rapporteur on the rights of indigenous peoples, as part of the system of thematic Special Procedures. The Special Rapporteur’s mandate was renewed by the Commission on Human Rights in 2004, and by the Human Rights Council in 2007. It was most recently renewed in 2022 in resolution 51/16. United Nations Office of the High Commissioner for Human Rights, 2025b.

79 United Nations Human Rights Council, 2017.

indigenous traditional knowledge systems and practice are a major resource for adapting to climate change and will contribute to making such measures more effective.’

It goes without saying that the role of the Special Rapporteur on the human rights to safe drinking water and sanitation has a very close relationship with the environmental rights since the establishment of the institution in 2008.<sup>80</sup> As climate change has a huge impact on these issues, our examples come from a recent thematic report:<sup>81</sup> ‘3. Previously, discussions about climate change have repeatedly taken place without reference to human rights. Although it is often taken as a purely physical phenomenon, climate change cannot be discussed without acknowledging its wide-ranging social and economic impacts.’ In 2008, the Human Rights Council (HRC) expressed concerns that climate change ‘poses an immediate and far-reaching threat to people and communities around the world’ (resolution 7/23). In a following resolution in March 2009 (resolution 10/4), the HRC noted that the impacts of climate change on human rights ‘will be felt most acutely by those segments of the population who are already in a vulnerable situation’. Referring to basic human rights documents, the report underlines

‘9. The human right to safe drinking water was recognized by the UN General Assembly (resolution 64/292) and the Human Rights Council (resolution 15/9), which derives from the right to an adequate standard of living,’ and later, ‘10. Climate change affects the enjoyment of the human rights to safe drinking water and sanitation and as part of States’ obligation to respect, protect and fulfill those rights, States are required to take steps to assess, mitigate and adapt to the impact of climate change on human rights to water and sanitation’.

80 The mandate was formalised in Human Rights Council resolution 7/22 in 2008, and most recently renewed in Human Rights Council resolution 51/19. United Nations Office of the High Commissioner for Human Rights, n.d. a.

81 United Nations, 2022.

The activities of the Special Rapporteur on the human right to a clean, healthy, and sustainable environment is the most relevant for our research. It was established in 2012.<sup>82</sup> The activities of this rapporteur are discussed in detail below.

The most recent component of the group of special rapporteurs is the Special Rapporteur on the promotion and protection of human rights in the context of climate change.<sup>83</sup> The scene-setting report<sup>84</sup> of the current rapporteur addressed some basic questions related to her current and future activities:

‘75. The present report has mapped a significant amount of guidance on human rights issues and applicable international human rights law obligations in relation to climate change mitigation, including the use of technology and carbon credits, adaptation, just transition, finance, and loss and damage. ... 76. The Special Rapporteur stresses the importance of intersectionality for the promotion and protection of human rights in the context of climate change and sets out a number of relevant recommendations from special rapporteurs and treaty bodies.’

### ***4.3. Special Rapporteur on the Human Right to a Clean, Healthy, and Sustainable Environment***

When establishing<sup>85</sup> the position of a new special rapporteur in the field of human rights and the environment the HRC referred in the preamble to several previous UN documents in the field of environment from Stockholm onwards, particularly including resolution 16/11 of 24 March 2011 on human rights and the environment, and using a much more comprehensive term, than the title of the resolution: ‘2. Decides to appoint, for a period of three years, an independent expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, whose tasks will be’ (only a short summary below of the most relevant questions): to study, the enjoyment of a safe, clean, healthy, and sustainable

82 The Human Rights Council established the mandate for the Independent Expert on human rights and the environment in 2012 (resolution 19/10). Mr. John Knox was appointed the first Independent Expert on human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment for a three-year term. His mandate was further extended in March 2015 as a Special Rapporteur for another three years (resolution 28/11). In March 2018, the Human Rights Council further extended the mandate (resolution 37/8) and appointed Mr. David. R. Boyd as the Special Rapporteur for three years. In March 2021 the Human Rights Council extended the mandate for another three years (resolution 46/7). The mandate was extended again on 3 April 2024, and the title changed to Special Rapporteur on the human right to a clean, healthy, and sustainable environment (A/HRC/RES/55/2). United Nations Office of the High Commissioner for Human Rights, n.d. b.

83 The mandate of the Special Rapporteur on the promotion and protection of human rights in the context of climate change established by the UN Human Rights Council at its 48<sup>th</sup> session in October 2021 (RES/48/14). United Nations Office of the High Commissioner for Human Rights, n.d. c.

84 United Nations, 2024.

85 United Nations Human Rights Council, 2012a.

environment; to identify, promote, and exchange views on best practices; to make recommendations; to work in close coordination with different organs, even with academia; to report.

Later, this resolution was reinforced and slightly modified in some cases; the latest being in April 2024,<sup>86</sup> while in the meantime, the duties widened, adding visits to other countries, broadening partnerships, or dealing with vulnerable groups.

Following the founding resolution, the newly appointed rapporteur introduced the first report – ‘The first report of the Independent Expert is intended to place the mandate in a historical context, present some of the outstanding issues relevant to the relationship between human rights and the environment and describe the current and planned programme of activities’; at the end of 2012,<sup>87</sup> summing up the road of environmental right to 2012, underlining that in the 80s and early 90s: ‘9. In short, environmental concerns have moved from the periphery to the centre of human efforts to pursue economic and social development’. The report also summarised other human rights which are vulnerable to environmental degradation, expressing: ‘19. In a real sense, all human rights are vulnerable to environmental degradation in that the full enjoyment of all human rights depends on a supportive environment. However, some human rights are more susceptible...’ Later, the report turned to human rights which are vital for environmental policymaking, such as public participatory rights. Many issues have been raised under human rights obligations and best practices, ranging from vulnerable groups to private actors. At the end of the report, it becomes clear that the first years should be devoted to framing the whole issue:

‘58. In the last two decades, the relationship of human rights and the environment has received much attention. Some fundamental aspects of that relationship are now firmly established, but many issues are still not well understood. Clarification of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment is necessary in order for States and others to better understand what those obligations require and ensure that they are fully met, at every level from the local to the global.’

The compilation of “good practices” continued afterwards, adding national or international examples and cases year-by-year,<sup>88</sup> followed by the resolutions of the Human Rights Council<sup>89</sup> to acknowledge the work done by the Rapporteur and urging states and other institutions for cooperation. Some years later, when solid foundations were available, the Special Rapporteur issued a report on the merits of the case, sixteen

86 The latest is A/HRC/RES/55/2 Resolution adopted by the Human Rights Council on 3 April 2024 55/2. United Nations Human Rights Council, 2024.

87 United Nations Human Rights Council, 2012b.

88 Such as: United Nations, 2015.

89 Such as: United Nations Human Rights Council, 2018.

principles of human rights and the environment,<sup>90</sup> summarising what had been achieved in five years. As the report underlines:

‘8. The 16 framework principles set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. Each framework principle has a commentary that elaborates on it and further clarifies its meaning. The framework principles and commentary do not create new obligations. Rather, they reflect the application of existing human rights obligations in the environmental context...’

Another important message is:

‘3. The framework principles are not exhaustive: many national and international norms are relevant to human rights and environmental protection, and nothing in the framework principles should be interpreted as limiting or undermining standards that provide higher levels of protection under national or international law.’

While the content of the report is not innovative, the first two principles are essential, providing the basis for the coming years:

‘Framework principle 1: States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights. Framework principle 2: States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment.’

It is also stressed that: ‘Human rights and environmental protection are interdependent...’ In the subsequent principles, we could learn about the prohibition of discrimination, different pillars of public participation, education, environmental impact assessment, standard setting and proper enforcement, cooperation, vulnerable groups, and indigenous people.

The most significant report of the rapporteur – which might be taken as a starting point of the further process leading to approval – is the one in July 2018:<sup>91</sup>

‘53. The relationship between human rights and the environment has evolved rapidly over the past five decades, and even more so over the past five years. The greening of well-established human rights, including the rights to life, health, food, water, housing, culture, development, property and home and private life, has contributed to improvements in the health and well-being of people across the world. However, work remains to be done to further clarify

90 United Nations Human Rights Council, 2018b.

91 United Nations General Assembly, 2018.

and, more importantly, implement and fulfil the human rights obligations relating to a safe, clean, healthy and sustainable environment. Of paramount importance in this regard is the legal recognition of the right to a healthy environment at the global level, so that this fundamental human right can be enjoyed by all persons in all States, rather than in the subset of countries where it is currently recognized. The global recognition of this right would fill a glaring gap in the architecture of international human rights.

54. There can be no doubt that the right to a healthy environment is a moral right, essential to the health, well-being and dignity of all human beings. However, to ensure that this right is respected, protected and fulfilled, it requires legal protection. ... Recognition of the right to a healthy environment by the United Nations would not only make this right universal in application but would also serve as a catalyst for the implementation of stronger measures to effectively respect, protect, fulfil and promote this right.’

## **5. The Resolutions of the UN Human Rights Council and UN General Assembly**

Pursuing the procedure introduced above under the authority of the High Commissioner for Human Rights, on 8 October 2021, the UN Human Rights Council adopted the 48/13 Resolution,<sup>92</sup> recognising that the right to a clean, healthy, and sustainable environment is a human right. Examining the previous progress made in this respect, this proved to be the most reasonable step. The Resolution is not legally binding, but its near-unanimous adoption shows a consensus on the formulation, content, and

92 United Nations Human Rights Council, 2021a.

importance of this human right.<sup>93</sup> The Resolution is a clear follow-up to the previous documents, beginning with the denomination and design of tasks of the Special Rapporteur, followed by reports and subsequent Council resolutions. The Resolution in its preamble – among others – emphasised the critical role of this new right: ‘contribute to and promote human well-being and the enjoyment of human rights’ and also contrarily: ‘that environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights’. The conclusion is clear: ‘Acknowledging the importance of a safe, clean, healthy, and sustainable environment as critical to the enjoyment of all human rights.’

All these have been summarised in the resolution itself, namely, that the Human Rights Council and 15 other UN entities agree with the following:

- ‘1. Recognizes the right to a safe, clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights;
2. Notes that the right to a safe, clean, healthy and sustainable environment is related to other rights that are in accordance with existing international law.’

The ball is now in the court of the General Assembly: ‘4. Invites the General Assembly to consider the matter.’

What happened next, might be considered as the expected step forward, but the evaluation is still correct:

‘On 28 July 2022, the GA adopted a landmark resolution recognizing the human right to a healthy environment. ... an unprecedented decision, adopted with unparalleled support (161 votes in favor, no votes against, and eight abstentions). The GA resolution sends a powerful message that there is widespread, worldwide support for this right – which is already recognized

93 As the story might be important, here is a summary, signed by Aguila, 2021; ‘In September 2020, a Core Group of States on Human Rights and the Environment (Costa Rica, Morocco, Slovenia, Switzerland and the Maldives) started informal discussions on the possible international recognition of the right to a safe, clean, healthy and sustainable environment. In March 2021, 69 States, among which figured previously reluctant States such as Germany, endorsed a statement unequivocally calling for the recognition of this right.

The Core Group’s initiative gathered thundering support. More than a thousand NGOs rallied behind their clarion call, including renowned organizations such Birdlife International, Greenpeace, and Amnesty International, or specialized organizations like the Center for International Environmental Law and the Global Pact Coalition. Fifteen UN Agencies also issued a letter endorsing the right’s recognition. This prodigious mobilization owes much to the tremendous leadership of UN Special Rapporteur on Human Rights and Environment David R. Boyd and his predecessor John Knox.

On October 8, 2021, and after a year of sustained advocacy, the Human Rights Council adopted Resolution 48/13 by a vote of 43 in favor, none against, and 4 abstentions (China, India, Japan, Russia). In spite of these abstentions and the absence of the United States from the Council, the adoption of this resolution reveals near-unanimous support from the international community for the right to a healthy environment’.

in 156 countries at the national and regional levels.... The GA resolution on the right to a healthy environment was the result of States' commitment on environmental issues, many years of advocacy and collaboration by national human rights institutions, civil society organizations, Indigenous Peoples, children and young people, and business actors, among others, and supported by UN entities....<sup>94</sup>

The final HRC and the GA resolution (76/300)<sup>95</sup> is slightly limited if compared with the mandate of the special rapporteur and to the draft resolution,<sup>96</sup> as “safe” as a qualifying component is missing; the current adopted language refers to a human right to a ‘clean, healthy and sustainable’ environment. “Safe” might refer either to the importance of peaceful cooperation in connection with the environmental interests or might cover the different areas of environmental safety, but a link to developing countries could have been pointed out; nevertheless at the final stage of discussions, it has been removed from the final wording. However, the term “safe” is present in many internal references: safe drinking water, safe climate, safe food, and so on.

How it has finally been formulated as GA resolution:

- ‘1. Recognizes the right to a clean, healthy and sustainable environment as a human right;
2. Notes that the right to a clean, healthy and sustainable environment is related to other rights and existing international law;
3. Affirms that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law;
4. Calls upon States, international organizations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all.’

Soon after the approval of the resolution, the special rapporteur clearly justified the real need for such a human right:<sup>97</sup>

‘6. The biggest problem is not the Sustainable Development Goals themselves, but the way they are perceived and portrayed by States as merely aspirational, when in fact the Goals are built on a robust foundation of legally binding and

94 United Nations, 2023.

95 United Nations General Assembly, 2022.

96 United Nations Human Rights Council, 2021b.

97 United Nations General Assembly, 2022.

enforceable human rights law and international environmental law. The Goals cannot magically transform legally binding obligations into unenforceable political pledges. The absence of explicit human rights standards in the Goals and targets has negatively impacted both the international human rights agenda and the sustainable development agenda.’

As Inger Andersen, Executive Director, UNEP summarised the content of the right:

‘While there is not a universally agreed definition of the right to a healthy environment, the right is generally understood to include substantive and procedural elements. The substantive elements include clean air; a safe and stable climate; access to safe water and adequate sanitation; healthy and sustainably produced food; non-toxic environments in which to live, work, study and play; and healthy biodiversity and ecosystems. The procedural elements include access to information, the right to participate in decision-making, and access to justice and effective remedies, including the secure exercise of these rights free from reprisals and retaliation.’<sup>98</sup>

This work has not been completed by the abovementioned resolutions; endeavours at different levels are more numerous than before. One good example is the resolution

98 United Nations Development Programme, United Nations Environment Programme and Office of the United Nations High Commissioner for Human Rights, 2023.

of the UN Human Rights Council in 2023, listing the obligations of states;<sup>99</sup> the OHCHR in 2024 published useful guidance,<sup>100</sup> providing an accurate summary of national and international tendencies and, among others, a survey of cases and laws.

## 6. Conclusions

Human pressure on the environment which one might have witnessed at least since the beginning of the industrial revolution some decades ago has resulted in continuing danger and damage, equally degrading environmental values as well as human interests and values. Soon after the adoption of the Universal Declaration of Human Rights, the erosion of all these values became clearly visible and worrying, substantially changing the characteristic content of human dignity, which is recognised as the basis of other human rights. Human dignity, similar to most human rights, may not prevail in a degraded environment. It is widely acknowledged that human rights communicate a special message, substantial human values, and are closely related to morals. Consequently, if a human value or interest approaches the level of human

99 United Nations Human Rights Council, 2023b. These obligations include:

- a) To respect, protect, and fulfil human rights, including in all actions undertaken to address environmental challenges;
- b) To adopt and implement strong laws ensuring, among other things, the rights to participation, to access to information and to justice, including to an effective remedy, in environmental matters;
- c) To facilitate public awareness and participation in environmental decision-making, including of civil society, women, children, youth, Indigenous Peoples, peasants, older persons, persons with disabilities and others who depend directly on biodiversity and ecosystem services, by protecting all human rights, including the rights to freedom of expression and to freedom of peaceful assembly and association;
- d) To implement fully their obligations to respect, protect, and fulfil human rights without discrimination of any kind, including in the application of environmental laws and policies;
- e) To promote a safe and enabling environment in which individuals, civil society organizations, including environmental human right defenders and those working on human rights and environmental issues can operate free from threats, hindrance, and insecurity;
- f) To provide for effective remedies for human rights violations and abuses, including those relating to the enjoyment of the human right to a clean, healthy, and sustainable environment, in accordance with their international obligations;
- g) To establish, maintain and strengthen effective legal and institutional frameworks to regulate the activities of public and private actors in order to prevent, reduce, and remedy harm to biodiversity and ecosystems, taking into account human rights obligations and commitments relating to the enjoyment of a clean, healthy, and sustainable environment;
- h) To take into account human rights obligations and commitments relating to the enjoyment of a clean, healthy, and sustainable environment in the implementation of and follow-up to the Sustainable Development Goals, bearing in mind the integrated and multisectoral nature of the latter;
- i) To increase funding and support for, and collaboration with, grass-roots women's organizations working on environmental and human rights issues, and for the implementation of gender action plans under multilateral environmental agreements.

100 United Nations Office of the High Commissioner for Human Rights, 2024.

rights, this is a positive evaluation and clear point of reference. Thus, there is a strong expectation for the existence of an environmentally rooted human right.

However, while most of the states have some reference to a right to a mostly “healthy” environment,<sup>101</sup> the road to an internationally recognised human right is much more complicated. The Universal Declaration has not changed since 1948, similar to the European Convention of Human Rights since 1950, while policy papers and declarations such as several regional human rights agreements or other specialised conventions recognise such a right. In the last thirty-four years several messages and recommendations came from scholars, institutions, and even religious organisations and churches to respond to needs, and to manifest sustainable development interests in a human rights reaction, but the speed of UN bodies to introduce such a substantial change is not too fast. Even the emerging international judicial practice demonstrates the necessity of a new right, and consequently, something had to be done: the slow-moving UN organs needed to come closer to a conclusion.<sup>102</sup>

The resolutions of the Human Rights Council in 2021 and as a follow-up to the General Assembly in 2022 now directly accepts the *raison d’être* of the right to a clean, healthy, and sustainable environment. The direct need to extend the Universal Declaration in this direction is no longer a question; it is definitely a historic move. Still, this resolution is not binding under international law; some treaty instruments would be necessary for its fullest implementation or for the practice of international law to embed this right into customary law. Nevertheless, we are on the right track, and the way forward undeniably leads in the required direction.

101 Even the first Hungarian environmental act – Act II. of 1976 – was one of them and since 1989 it is a constitutional right.

102 One may find a perfect survey of this process in the judgment of the Case of *Verein Klimaseni-orinnen Schweiz and Others v. Switzerland*; European Court of Human Rights, 2024.

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# The Development of the Climate Change Framework Within the UN With Particular Attention to Human Rights; Central and Eastern European Perspective

Agata KOSIERADZKA-FEDERCZYK

## ABSTRACT

This article analyses the evolution of the international legal framework on climate change in relation to human rights, with a particular focus on Central and Eastern European (CEE) countries. Demonstrating that human rights and climate systems have evolved separately over a period of time, the article analyses how UN bodies, in particular the Human Rights Council and the General Assembly, have gradually recognised the impact of climate change on rights such as the right to life, health and property. The article characterises the CEE countries covered by the analysis from the perspective of transition and its consequences to date. Achieving a zero-carbon economy by 2050, as desired by the EU, or fulfilling the commitments imposed on countries in the Paris Agreement, is conditioned, among other things, by the economic situation of the country. One aspect of incorporating human rights into climate policy is judicial protection and the role that courts are beginning to play in it by adjudicating cases. This is confirmed by the data cited in the article, which points to a growing number of court cases (heard before national and international courts) in which human rights obligations are invoked to push countries to take more decisive mitigation and adaptation measures. The article proposes a number of recommendations, one of which is the development of a transparent national and international legal framework. The findings highlight the dynamic interrelationship between climate policy and human rights and call for the creation of more coherent regional and national frameworks that take human rights into account in a meaningful way in climate policy.

## KEYWORDS

climate change law, climate litigation, CEE countries, human rights, ECHR

## 1. Introduction

In recent years, the international community has made significant efforts to define legal standards and incorporate human rights into the context of climate change.

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These efforts are supported by discussions on the protection of human rights relating to a clean, healthy and adequate environment, as evidenced by the extensive literature on the relationship between human rights and the natural environment. They are also supported by the results of research on anthropogenic climate change, which has led to research focusing on the relationship between climate change and human rights.<sup>1</sup>

Finding common ground between two regimes that developed at different stages of the legal evolution, and that are characterised by different substantive norms, methodological assumptions, axiological premises and implementation mechanisms has been and will continue to be a challenge, as this process is not yet complete. Some of these challenges have been surmounted, while others still require time to be resolved.

In this article, ‘human rights law’ refers to multilateral human rights treaties at international and regional (supranational) levels. ‘Human rights’ refers to the wide range of rights that are covered by these treaties, including economic, social, cultural, civil and political rights. Various political philosophies, ethical principles and normative justifications have given rise to many different concepts of human rights.<sup>2</sup>

International policy pursued within the United Nations has shaped climate change. This is evident in legal instruments such as the UNFCCC, the Kyoto Protocol and the Paris Agreement, as well as numerous documents adopted during the annual Conferences of the Parties (COPs).

Taking the perspective of Central and Eastern European (CEE) countries draws attention to their situation and looks at what unites and divides them. Some of these countries cooperate within multi-member, formalised international organisations with established legal personalities, such as the European Union and the North Atlantic Treaty Organisation. Almost all of them also form smaller forums for cooperation, which are most often focused on international cooperation or broadly understood development activities.

Some examples of international cooperation between countries in Central and Eastern Europe include the Central European Initiative, the Visegrad Group, the Council of the Baltic Sea States, the Bucharest Nine, the Three Seas Initiative, the Sławków Format, the Central Five and the Lublin Triangle. Examples of cooperation involving selected CEE countries include multilateral cooperation in the Baltic Sea Region (BSR), the Varna Four and the European Political Community.

The numerous forms of cooperation mentioned above show that there is a lack of cooperation that would include only the CEE countries discussed in this article and that would focus on cooperation in the area of climate change policy. Undoubtedly, an advantage is that the existing forms of cooperation demonstrate a commitment to fostering relations that transcend the shared geographical location.

1 Kenig-Witkowska, 2024, p. 44.

2 McInerney-Lankford, Darrow and Rajamani, 2011, p. 4.

### ***1.1. Presentation of the Hypothesis and Research Objectives***

As all of the countries analysed in this article participate in the human rights and climate change regime established within the United Nations, the first part of the article analyses how the organisation's approach to human rights in the context of climate change has developed. The analysis then focuses on presenting the perspective on climate change and human rights in the following Central and Eastern European countries: Albania, the Czech Republic, Slovakia, Romania, Hungary, Poland, Bulgaria, Montenegro, Croatia, Bosnia and Herzegovina, North Macedonia, Slovenia, Serbia, Georgia, Moldova and Ukraine. The last part will cover climate-related court cases and their significance and impact on selected CEE countries.

According to the adopted thesis, the relationship between climate change and human rights is dynamic and subject to constant change. While the UN's positions can be seen as leading in shaping these relations, it should be noted that they are formed with the participation of states. This participation includes acceptance expressed through voting, for example. One example of this can be found in a recent act adopted by the UN: UN Human Rights Council Resolution No. 48/13, adopted on 8th October 2021, which recognises the right to a clean, healthy and sustainable environment. This resolution was adopted with 43 votes in favour, 4 abstentions (China, Japan, India and Russia) and no votes against. Another example is UN General Assembly Resolution No. 76/300, adopted on 28th July 2022, which recognises the right to a clean, healthy and sustainable environment. This resolution was adopted with 161 votes in favour, 8 abstentions and no votes against.<sup>3</sup>

The activities of the UN also play a key role in shaping international climate policy. All CEE countries are parties to legal acts, either acting individually or represented by the EU. This means that they are subject to the requirements that arise from these acts. These obligations are expressed, for example, in the Paris Agreement. They include the development of NDCs, reduction targets and other national measures. This also includes the development of national legislation. It is the task of states to incorporate international policy into their domestic legal systems. However, the implementation of international standards may vary from country to country.

### ***1.2. Justification for Adopting a Central and Eastern European Perspective***

Most Central and Eastern European (CEE) countries underwent profound political and economic transformation in the 1990s, following the collapse of the communist system. For some, this period represented an opportunity to establish state structures after gaining independence. This applied not only to Moldova, Georgia and Ukraine, but also to countries that emerged as a result of division, such as the Czech Republic and Slovakia, as well as the countries of the former Yugoslavia: Croatia, Bosnia and Herzegovina, Montenegro, Slovenia, Serbia and North Macedonia. However, in countries such as Poland, Hungary, Bulgaria and Romania, this period was dominated by a major restructuring of state institutions, economies and societies as a result of the

3 Kolarz, 2022, p. 1.

collapse of the Soviet Union. In Albania, the transition to a new political system was prompted by the fall of the communist regime.

These fundamental changes at state level also affected the regulatory framework, enabling broader constitutional provisions relating to environmental issues including, in some countries, the right to a clean environment. An analysis by J.E. Szilágyi of eight CEE countries studied in this article shows that this right is explicitly enshrined in the constitutions of the Czech Republic, Hungary, Serbia, Slovakia, Slovenia and Romania.<sup>4</sup> The right to a clean environment is also enshrined in the Constitution of Georgia.<sup>5</sup>

The constitutions of other countries (e.g. Poland and Albania) contain references to environmental protection without explicitly formulating this right. These constitutions lack references to climate change, which can be explained by the timeline: at the time the constitutions were adopted, this issue did not yet play a significant role.

The collapse of the communist system also had a significant impact on the economic and social spheres. The failure of numerous industrial facilities, primarily due to their uncompetitive nature in the new and free market, substantial alterations in the proprietorship framework of farming, unparalleled unemployment and expanding accumulations of inadequacy formed the socio-economic reality of these nations at the start of the transformation.<sup>6</sup>

Today, these countries remain internally diverse, with national processes taking different forms in different territorial units. Moreover, many of the challenges facing Central and Eastern European countries have a clear regional dimension.<sup>7</sup> The legacy of the transition period has left the region with social tensions and inequalities, as well as a high level of dependence on traditional industrial sectors, particularly the energy sector. In some countries, this energy sector is based on fossil fuels such as coal. This means that energy security and economic development remain priorities for many CEE countries, often at the expense of climate or social concerns.

The accession of some of the countries in question to the European Union has accelerated the region's development. Poland, Hungary, the Czech Republic, Slovakia, Slovenia and Malta became members of the organisation on 1st May 2004, followed by Bulgaria and Romania three years later. Croatia, which joined in 2013, remains the EU's youngest member. Albania, Bosnia and Herzegovina, Montenegro, Georgia, North Macedonia, Moldova and Serbia all have candidate status. In terms of climate change policy, this means that national policies must align with the EU's climate ambitions. Additionally, the EU4Climate programme, funded by the European Union and implemented by the UNDP, supports countries in implementing the Paris Agreement and improving their domestic climate policies and legislation. This programme

4 Szilágyi, 2022, pp. 497–498.

5 Georgia Constitution, Art. 29.

6 Gorzelak, 2020, p. 13.

7 Gorzelak, 2020, p. 11.

covers Georgia, the Republic of Moldova and Ukraine, as well as Armenia, Azerbaijan and Belarus.<sup>8</sup>

Central and Eastern European countries have benefited from two of the European Union's main priorities: the cohesion policy and the common agricultural policy. The current economic situation in some Central and Eastern European countries poses one of the most significant challenges to the future of European integration and cohesion with the West.

Accessing the European Union has clearly benefited the economic and institutional structures of Central and Eastern European countries. These countries' overall economic growth has undoubtedly accelerated and helped them converge with Western European countries,<sup>9</sup> but it has not completely eliminated development disparities. From this perspective, combining climate action with human rights protection may be perceived in the region as an additional regulatory and financial burden, particularly given the limited budgetary and technological capacities of some countries.

### ***1.3. Perceptions of Human Rights in the Context of Climate Change***

The link between human rights and climate change lies in the state's obligations. States are obliged to respect, protect, fulfil and promote all human rights for all people, regardless of any form of discrimination.<sup>10</sup>

The process of incorporating human rights into international legal instruments began in 1948 with the United Nations Universal Declaration of Human Rights (UDHR).<sup>11</sup> However, this declaration is programmatic in nature only, expressing the will to protect the areas it defines as human rights. Currently, human rights are protected by many legal instruments. Alongside the UDHR, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are considered to form the core of international human rights law. The European system is also reinforced by the Charter of Fundamental Rights of the European Union (EU). While the literature highlights a consistent approach to rights protection, it also emphasises the varying degrees of protection, particularly within regional conventions.<sup>12</sup>

The core international human rights treaties do not recognise an independent right to a clean environment. However, it is generally accepted that inadequate environmental conditions can undermine the effective enjoyment of other rights. These include the rights to life, health, water and food. For instance, the ICESCR obliges states to implement measures to 'improve all aspects of environmental and industrial hygiene' to ensure the realisation of the right to health. Similarly, the Convention on

8 Eu4climate, 2025.

9 Gorzelak, 2020, p. 43.

10 OHCHR, 2015, p. 2.

11 UN, 1948.

12 McInerney-Lankford, Darrow and Rajamani, 2011, p. 5.

the Rights of the Child (CRC) requires states to consider ‘dangers and risks to health arising from environmental pollution’ to ensure the right to health of children is met.

In terms of environmental rights, the Protocol of San Salvador is unique in including the ‘right to live in a healthy environment’ among its economic, social and cultural rights.<sup>13</sup> The African Charter on Human and Peoples’ Rights also includes a specific right to ‘satisfactory living conditions’, but as a right of peoples rather than individuals.<sup>14</sup>

Human rights are equal, indivisible, interrelated, interdependent and inalienable. Furthermore, human rights are legally protected and impose obligations in relation to acts and omissions, particularly on states and state actors.<sup>15</sup>

In conventions, the state’s responsibilities with regards to human rights have been formulated in different ways. The term ‘respect’ is interpreted as requiring the state to avoid violating rights,<sup>16</sup> whereas the obligation to ‘ensure’ rights requires more from the state than merely avoiding direct violations. It requires positive action to secure the right or protect against its loss or interference by private actors.<sup>17</sup>

At the same time, countries have defined responsibilities with regards to climate change. These include reducing anthropogenic greenhouse gas emissions through regulatory measures (e.g. climate change mitigation) to prevent the adverse effects of climate change, both currently and in the future. They also include adaptation measures aimed at building resilience to the destructive consequences of climate change.

Climate change interacts with human rights. Most attention is focused on the effects of climate change that negatively impact human rights. This impact has been well-identified in the literature and primarily affects the right to life, health, self-determination, development, housing, water, food, education, participation, and the rights of future generations and particularly vulnerable persons.<sup>18</sup> This demonstrates that the scope of the impact extends beyond the right to a clean environment, including the right to a stable climate.<sup>19</sup>

The interaction between climate change and individual human rights is not uniform. It is influenced by factors such as the nature of the rights in question and vulnerability to climate change. Furthermore, the negative effects will vary depending on the extent to which climate change is intensified, as well as the extent to which it is identified in the future.

The human rights framework requires global efforts for the mitigation and adaptation to climate change to be carried out in accordance with relevant human rights standards and principles. These include the rights to participation and information, transparency, accountability, justice, and non-discrimination.

13 OAS, 1989, Art. 11(1).

14 OAU, 1981, Art. 24; McInerney-Lankford, Darrow and Rajamani, 2011, p. 104.

15 OHCHR, 2015, p. 6.

16 McInerney-Lankford, Darrow and Rajamani, 2011, p. 5.

17 Ibid.

18 OHCHR, 2015, pp. 13–24.

19 UNDP, 2023, p. 9.

Public participation in political affairs is a well-established right, enshrined in various treaties and soft law instruments.<sup>20</sup> The principle of public participation in decision-making, as proposed by Szabó, can be divided into two parts, namely the right to be heard and the right to influence decisions.<sup>21</sup> In environmental matters, this is implemented by the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the ‘Aarhus Convention’), which aims to implement certain provisions of the 1992 Rio Declaration, particularly Principle 10. The three pillars of this Convention ensure open access to environmental information (active and passive), participation in certain types of matters and judicial protection.<sup>22</sup>

## 2. Incorporating Human Rights into the UN Climate Discourse

Since climate change became an international issue in the mid-1980s, it has mainly been addressed in intergovernmental negotiations aimed at achieving a consensus on reducing national greenhouse gas emissions. Following the adoption of the UNFCCC in 1992 and the subsequent launch of the Kyoto Protocol, these negotiations have appeared to be making promising progress.<sup>23</sup>

Within the United Nations system, the perception of climate change has evolved from viewing it solely as a threat to the environment and economic development, to increasingly recognising its impact on the realisation of fundamental human rights. This shift in perception is evident in the content of General Assembly resolutions, the actions of the Human Rights Council, and most recently in documents accompanying global climate negotiations.

### 2.1. *Initial Separation: Climate and Human Rights as Separate Areas (1992–2007)*

The original UN climate framework documents, particularly the UNFCCC, focused primarily on reducing greenhouse gas emissions, adapting to climate change, and promoting sustainable development. Climate change was then seen as a scientific, technical and environmental issue, not as something that was directly linked to the protection of individuals in terms of human rights. While the Convention explicitly stated its objective to ‘protect the climate system for the benefit of present and future generations of humanity’, the document contained no explicit references to human rights.

Nevertheless, at that time, attempts were already being made in the literature to establish a connection between the two areas. For example, it was noted that the UNFCCC was opened for signature at the Earth Summit in Rio de Janeiro, and

20 Blanco, 2021, p. 284.

21 Szabó, 2014, p. 101.

22 Annan, 2000.

23 Bodansky, 2010, p. 512.

therefore the Rio Declaration was proposed as a kind of preamble to the Convention. However, the reference to the right to development in principle 3 of the Declaration was considered too weak to conclude that human rights had been incorporated into the climate change regime.<sup>24</sup> For several years, the two regimes developed independently and largely without paying attention to one other, with different objectives in mind.<sup>25</sup>

Despite the lack of a connection between human rights documents and climate change, the Inuit attempted to establish one when they submitted a petition to the Inter-American Commission on Human Rights in 2005. They explained how climate change was affecting the Arctic environment and violating their human rights, including their rights to life, health, property, and cultural identity. They then argued that the United States had violated its human rights obligations by failing to mitigate its contribution to climate change. At that time, such a claim would have seemed absurd, and the Commission refused to consider the petition.<sup>26</sup> However, it succeeded in drawing public attention to the serious effects of global warming on the Inuit people, sparking further dialogue on the human rights implications of climate change.<sup>27</sup> In retrospect, this petition was the first in a series of efforts to incorporate human rights into climate change legislation.

The Malé Declaration on the Human Dimension of Global Climate Change, adopted by representatives of small island developing states in November 2007, was the impetus for incorporating human rights into the climate change regime.<sup>28</sup> This declaration was the first intergovernmental statement to recognise that climate change has ‘clear and direct implications for the full enjoyment of human rights’. It also urged the Conference of the Parties (COP) to the UNFCCC and UN human rights bodies to launch a joint initiative to evaluate the impact of climate change on human rights.

In the same month, the OHCHR issued a public statement at the Bali Climate Change Conference (COP-13), recognising that ‘climate change may adversely affect the fundamental human rights of present and future generations’ and reminding the COP that governments have moral and legal obligations to protect and promote fundamental human rights in the fight against climate change.<sup>29</sup>

This period is characterised by an increasingly clear link between climate change and various human rights, including the right to life (e.g. the impact of natural disasters), the right to health (e.g. waterborne diseases), the right to housing and property (e.g. climate-related migration), and the right to food and water.

24 Roschmann, 2013, p. 2018.

25 McInerney-Lankford, Siobhan, Darrow and Rajamani, 2011, p. 36.

26 Randall 2007, p. 49; Osofsky, 2007, p. 676.

27 Osofsky, 2007, p. 696.

28 Knox, 2019, p. 166.

29 OHCHR, 2007, p. 1.

## **2.2. Increased Awareness of the Social Impacts of Climate Change (2008–2014)**

In March 2008, the United Nations Human Rights Council (UNHRC) expressed concern for the first time that climate change posed a direct and far-reaching threat to people and communities worldwide, and requesting that the Office of the High Commissioner for Human Rights (OHCHR) prepare a report on the impact of climate change on human rights.<sup>30</sup> The Office subsequently published a report in 2009 entitled ‘Report on the relationship between climate change and human rights’,<sup>31</sup> which describes how climate change threatens the enjoyment of a wide range of human rights. It discusses specific examples of the rights most directly affected by climate change, including the rights to life, food, water, health, housing, and self-determination.

The literature presents the main conclusions of the OHCHR report as follows: (1) climate change threatens the enjoyment of a wide range of human rights; (2) climate change does not necessarily violate human rights; (3) human rights law nevertheless imposes obligations on states with regard to climate change; and (4) these obligations include the duty to cooperate internationally.<sup>32</sup>

Despite stating that there is ‘broad agreement that climate change has a negative impact on the realisation of human rights in general’, the OHCHR noted that ‘it is less clear whether and to what extent such effects can be classified as human rights violations in the strict legal sense’. This reflected the position of many developed countries who were willing to accept that climate change may interfere with human rights, but did not acknowledge that this constitutes a violation of international human rights law.<sup>33</sup> The OHCHR justified this conclusion by referring to the challenges of causality, attribution, and future damage associated with climate change.<sup>34</sup>

In the context of state responsibility however, another statement in the report is important: even non-state action that does not constitute a human rights violation may require the state to take steps to protect those affected by the action.<sup>35</sup>

Within the UNFCCC’s international climate change regime, the 2010 COP in Cancún formally recognised the link between climate change and human rights. The parties agreed that countries ‘should, in all climate change-related actions, fully respect human rights’.<sup>36</sup> Although the UNFCCC entered into force in 1994, human rights were not included in its documents until the Cancún Agreements in 2011.<sup>37</sup> The agreements took a further UN Human Rights Council resolution (No. 10/4, March 2009) into account, which indicates that the consequences of climate change have direct and indirect impacts on the enjoyment of human rights. It also emphasises that the parties should respect human rights in all climate change-related actions.<sup>38</sup>

30 UNHRC, 2008, Resolution 7/23.

31 OHCHR, 2009, A/HRC/10/61.

32 Knox, 2009, p. 477.

33 Knox, 2009, pp. 489–490.

34 OHCHR, 2009, p. 70.

35 Knox, 2009, p. 478.

36 UNFCCC, 2011, Decision 1/CP.16.

37 UNFCCC, 2010, pp. 2,4.

38 UNFCCC, 2010, p. 4, p. 1.8.

The UN Human Rights Council has since adopted several resolutions on human rights and climate change.<sup>39</sup> These resolutions emphasise the potential of existing state commitments, such as ‘informing and strengthening’ climate change law and policy by ‘promoting policy coherence, legitimacy, and sustainable outcomes’.<sup>40</sup> This paved the way for COP21 in Paris to prioritise human rights within the climate regime. However, this expectation was not met in the final text of the Paris Agreement.

### ***2.3. Incorporating Human Rights Language into Global Climate Negotiations (2015–2020)***

In the lead-up to COP21, the UN Human Rights Council emphasised the need for all states to strengthen international dialogue and cooperation in order to counteract the negative impact of climate change on human rights enjoyment, including the right to development.<sup>41</sup> In February 2015, the non-binding, voluntary Geneva Pledge for Human Rights in Climate Action was adopted. This referred to the link between climate change and human rights, which had been recognised by both the UNFCCC COP<sup>42</sup> and the Human Rights Council.<sup>43</sup> The pledge emphasises the importance of taking into account the impact of climate change on human rights, and of recognising the centrality of human rights to climate action. Countries committed to promoting cooperation between their representatives in the Human Rights Council and the UNFCCC, as well as facilitating the exchange of knowledge and best practices. Initially signed by 18 countries, the commitment has since been joined by others.<sup>44</sup>

The Paris Agreement is the first binding multilateral climate agreement to refer to human rights.<sup>45</sup> This is done directly in the preamble, but not in the normative part of the text.

It should be recognised that when action is taken to address climate change, human rights obligations, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in particularly vulnerable situations should be respected, promoted and fulfilled by States.

This is a clear recognition that climate policy must be consistent with international human rights standards, creating a framework for the further integration of these two legal orders. However, it has been argued in legal scholarship that the Paris Agreement does not sufficiently take into account the scale of the threat posed by climate change to human rights.<sup>46</sup>

39 UNHRC, 2011, Resolution 18/22; UNHRC, 2014, Resolution 26/27; UNHRC, 2015, Resolution 29/15.

40 Ibid.

41 OHCHR, 2015, p. 6.

42 UNFCCC COP Decisions 1/CP.16 and 1/CMP.6.

43 UNHRC, 2008, Resolution 7/23; UNHRC, 2009, Resolution 10/4; UNHRC, 2011, Resolution 18/22; UNHRC, 2014, Resolution 26/27.

44 The Geneva Pledge, 2015, pp. 1–2.

45 Adelman, 2018 p. 17.

46 Adelman, 2018, p. 18.

#### ***2.4. Recognition of the Right to a Healthy Environment as a Human Right (2021–Present)***

In the Glasgow Climate Pact, adopted at the UNFCCC COP26 conference, the parties recognised that climate change is a common challenge for humanity, and while taking action to address it, the parties should respect, promote and fulfil their human rights obligations, including the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and persons in vulnerable situations, as well as the rights to development, gender equality, the empowerment of women and intergenerational justice.<sup>47</sup>

The General Assembly (GA) has also addressed the issue of the environment. In its 2018 resolution 72/277, ‘Towards a Global Pact for the Environment’, it called on the Secretary-General (SG) to submit a report identifying potential gaps in international environmental law and proposals to strengthen protection. In Resolution 73/333 of 2019, the General Assembly (GA) called on the international community to take concrete action, including intensifying the exchange of information on environmental protection.

On 8th October 2021, the Human Rights Council adopted resolution 48/13, proposed by Costa Rica, the Maldives, Morocco, Slovenia and Switzerland, which explicitly recognises the right to a clean, healthy and sustainable environment. Until now, this status had only been granted by the African Charter on Human and Peoples’ Rights and the Protocol of San Salvador to the American Convention on Human Rights.

The next step in strengthening the UN’s institutional framework in the area of human rights and climate change was the establishment of a Special Rapporteur on the promotion and protection of human rights in the context of climate change by Resolution No. 48/14 (Russia objected and China, Eritrea, Japan and India abstained). The reports and recommendations of this Special Rapporteur, as well as that of the UN Special Rapporteur on Human Rights and the Environment, who was appointed in 2012, are used in legislative processes and international practice. They point to the need to implement a human rights-based approach (HRBA) to climate policy.

These efforts culminated in the adoption the UN General Assembly Resolution 76/300 on 28th July 2022. This landmark resolution<sup>48</sup> recognises the human right to a healthy environment. One of the six substantive rights recognised is the right to a stable climate, while procedural rights include the right to participation, information, and access to justice.<sup>49</sup>

Although not formally binding, these resolutions are of great declarative and interpretative importance. They confirm the global consensus that environmental protection, including climate protection, is an integral part of protecting human dignity and the fundamental rights of individuals. They also send a clear signal that

47 UNFCCC COP, 2021, p. 2.

48 UNDP, 2023, p. 7.

49 UNDP, 2023, p. 9.

this right enjoys widespread support around the world and that it needs to be incorporated into regional and national frameworks to ensure its protection.<sup>50</sup>

### 3. The Perspective of the Analysed CEE Countries

All of the countries analysed are parties to the three fundamental conventions that form the core of international human rights protection. They are also all parties to the Aarhus Convention, which, among other things, introduces judicial protection in environmental matters. As signatories to the UNFCCC and the Paris Agreement, all countries are involved in integrating human rights into climate policy. They are therefore all bound by the same international legal framework. Additionally, EU-CEE countries are bound by EU law, including the EU Charter of Fundamental Rights, while candidate countries are in the process of aligning their legal regulations with the *acquis*.

#### 3.1. Climate Change in CEE Actions

In the initial period after the collapse of the centralised system, no comprehensive regional policy was formulated in any Central and Eastern European country and regional aspects of social and economic policy virtually did not exist.<sup>51</sup> The accession of some Central and Eastern European countries to the European Union has given regional development and policy a new dimension. However, this policy has been almost entirely subordinated, both financially and substantively, to cohesion policy. The objective of reducing regional disparities through structural funds and the Cohesion Fund has not always been achieved, since the absorption capacity of relatively underdeveloped regions is lower than that of urban centres.<sup>52</sup>

The CEE countries discussed here differ in terms of GHG emissions. According to the 2023 Global Carbon Budget data (excluding LULUCF), Poland ranks first with 289 million tonnes of CO<sub>2</sub> emissions. Ukraine ranks second with 136 million tonnes, almost half of Poland's emissions. Next are the Czech Republic with 86 million tonnes, Romania with 68 million tonnes, and Hungary with 40 million tonnes. Albania and Moldova have the lowest emissions, each with between 5 and 6 million tonnes.<sup>53</sup>

Poland has experienced a decoupling of the relationship between GDP growth and greenhouse gas emissions over the last 19 years (1988–2021). Between 1988 and 2021, greenhouse gas (GHG) emissions (including LULUCF) were reduced by approximately 32%, while GDP grew more than threefold.<sup>54</sup> However, given the persistently high level of emissions in the economy, far-reaching changes are needed in many sectors to meet the international and EU's climate policy commitments.

50 Vardosanidze and Kiss, 2023, p. 14.

51 Gorzelak, 2020, p. 23.

52 Gorzelak, 2020, p. 41.

53 Our World in Data, n.d.

54 Ministerstwo Klimatu i Środowiska, 2023, p. 7.

Despite significant progress in energy production and consumption, as well as environmental protection, air quality remains poor in many regions and localities in Central and Eastern Europe. Dependence on individual heating systems fuelled by low-quality fossil fuels remains a problem in several countries (e.g. Poland), causing severe air pollution during the heating season.<sup>55</sup>

Central and Eastern European countries and their regions face many challenges, particularly with regards to the competitiveness of their economies on global or local markets, and especially for those that border strong European economies. As analyses show,<sup>56</sup> a common drawback of these countries is their relatively low level of technological advancement. Progress in this area has mainly been achieved through importing technology from the West, while domestic potential for creating and disseminating innovation remains weak and is concentrated in Central and Eastern Europe's largest cities.<sup>57</sup> This condition may play a significant role in the process of transitioning to climate neutrality, since a country's level of technological advancement can influence the speed of this process.

In CEE countries that are also EU members, climate policy is strongly determined by the European Union. The EU has set a clear climate target of reducing net greenhouse gas emissions (i.e. emissions minus removals) by at least 55% compared to 1990 levels, by 2030, with the aim of achieving climate neutrality by 2050. The sectoral regulations adopted, and the solutions applied therein are intended to achieve this target.

Six years after its adoption, the European Green Deal (EGD) has raised many concerns and controversies. Among other things, the applicability of the EGD to the current international situation has been questioned. The risks identified include a negative impact on countries' economic situations and, consequently, on labour markets, as well as a reduction in state budget revenues.<sup>58</sup> Given their specific economic situation, as outlined in this article, the risks to EU-CEE countries may be more detrimental than to other EU countries, thereby jeopardising the achievement of the EU's climate policy objectives.

Poland's climate policy is set out in various documents, including the National Energy and Climate Plan (KPEiK) for 2021–2030 and the National Environmental Policy 2030 (PEP2030). Even the updated 2024 version of the KPEiK makes no link between climate policy and human rights.<sup>59</sup>

Slovenia is one of the countries that has decided to adopt a legally binding target of carbon neutrality and climate resilience by 2050. This goal is included in the resolution on the long-term climate strategy for 2050, which was adopted on 13th July 2021. The resolution also sets out strategic sectoral targets for 2050 (and 2040) that must be consistently incorporated into all sectoral documents and plans. While the document

55 Gorzelak, 2020, p. 35.

56 Radosevic, Yoruk and Yoruk, 2020, pp. 180–181.

57 Gorzelak, 2020, p. 33.

58 EESC, 2024.

59 Ministerstwo Klimatu i Środowiska, 2024.

reaffirms the broad recognition of the right to a clean environment (enshrined in the Slovenian Constitution), it does not directly link this right to human rights and climate change.<sup>60</sup>

Moldova's climate policy framework is set out in Law No. 74/2024 on climate action, which was adopted on 11th April 2024. Moldova has adopted a net zero emissions target for 2050 and a regulatory framework to enable progress towards the global climate change adaptation goal. One interesting solution is the establishment of a National Commission on Climate Change, which is an inter-institutional government body responsible for coordinating and approving climate change policy.<sup>61</sup>

Similarly, Georgia established a Climate Change Council in 2020 to ensure the effective implementation of the Paris Agreement.<sup>62</sup>

The Albanian government has also recently bolstered its commitment to tackling climate change and disasters by reinforcing the relevant national legal framework, which is grounded in scientific findings and aims to eliminate the inequalities and vulnerabilities faced by specific social groups. Law No. 155/2020 on climate change is set to play a key role in reducing greenhouse gas emissions, improving adaptation to climate change, and mitigating its negative effects.<sup>63</sup>

According to World Bank analyses, achieving net-zero greenhouse gas emissions across the entire economy of the six Western Balkan countries (the former Yugoslavia and Albania) by 2050 would require a complete transformation of the energy system. This would entail radical changes to the energy sector, including transitioning to renewable energy sources and phasing out coal-fired power plants.<sup>64</sup> Due to their geographical location and shared ambition to join the EU, the economic development trajectories of these countries are closely linked to the EU.<sup>65</sup>

As noted in the report, the EU accession process is the main driver of climate action in the Western Balkans and Albania. However, this so-called 'Brussels effect' has not yet been sufficient to transform the political economy of individual countries and their institutions. The integration of climate change into public finance management is in its early stages and there are limited mechanisms for the sustainable financing of climate action. Strongly mandated and sufficiently resourced climate-responsive institutions, as well as high-level political support for climate action, are essential for the effective implementation of ambitious commitments.<sup>66</sup>

Bosnia and Herzegovina and Serbia are cooperating with international organisations, including the World Bank, the EBRD and the UNDP, to develop just transition policies to ensure the economic and social recovery of coal-dependent regions.<sup>67</sup>

60 Slovenia, 2021.

61 Moldova, 2024a.

62 Georgia, 2020.

63 Albania, 2020.

64 WBG, 2024, p. 15.

65 WBG, 2024, p. 4.

66 WBG, 2024, p. 35.

67 WBG, 2024, p. 34.

Public attitudes towards climate policy vary. A 2024 EIB survey of EU-CEE countries found that 59% of Romanians considered climate change adaptation to be a priority for the state. This figure was 50% for the Bulgarian population, 46% for the Hungarian population, 43% for the Slovenian population, and 40% for the Croatian population. However, this figure was much lower among Slovaks (35%), Czechs (30%) and Poles (25%). The EU average is 50%.<sup>68</sup> These results show public attitudes towards climate change and can be seen as an indication of openness to economic and financial efforts relating to the transition towards climate neutrality.

### ***3.2. Human Rights and CEE Countries***

An analysis of selected climate policy documents from CEE countries reveals a limited connection between climate policy and human rights. This can partly be explained by the fact that such a connection is a relatively recent addition to international climate policy. In most of cases, documents from a few years previously were drafted when such a link wasn't as advanced as it is today. An exception is Georgia, which, as one of only 14 countries worldwide and the sole CEE country analysed, addressed climate change and human rights in its INDC, submitted in 2015.<sup>69</sup>

In its NDC 3.0 submission in 2025, as part of the five-year cycle, Moldova emphasised that adaptation measures must consider these overlapping risks to ensure inclusive planning that addresses the specific needs of vulnerable groups.<sup>70</sup>

In Moldova, human rights in the context of climate change were addressed in the National Programme for the Promotion of Human Rights 2024–2027.<sup>71</sup> The section entitled 'Right to a healthy environment' includes three tasks: (I) eliminating sources of environmental pollution; (II) regularly collecting and disseminating information on the state of the environment in accordance with the Aarhus Convention; and (III) empowering and informing citizens of their right to a healthy and sustainable environment.

One of the WBG report's recommendations for climate policy is to create a broader basis for dialogue with civil society organisations, including environmental organisations, women, young people, scientists involved in climate action and political decision-makers.<sup>72</sup>

An example of youth engagement can be seen in the 2021 Macedonian NDC, which was prepared with the involvement of young people through virtual consultations.<sup>73</sup> The Georgian authorities also mention consultations with groups with specific needs and civil society organisations involved in climate change in their 2021 NDC<sup>74</sup>.

68 EBI, 2024.

69 UNEP, 2015, p. 30.

70 Moldova NDC 3.0, 2025, p. 62.

71 Moldova, 2024b, p. 21.

72 WCG, 2024, p. 36.

73 Republic of North Macedonia NDC, 2021, p. 20.

74 Georgia NDC, 2021, p. 38.

However, Bosnia and Herzegovina's 2021 NDC<sup>75</sup> lacks information on the involvement of any civil society groups. Bosnia and Herzegovina's 2020–2030 climate change adaptation and low emission development strategy acknowledged that opportunities for civil society involvement were limited, especially for non-governmental and local community organisations, due to financial, human resource and political constraints. Proposed remedies included greater involvement of civil society at a local level.<sup>76</sup>

The level of public participation is illustrated by the statement made by Javor & Beke. According to them, despite many extensive theoretical analyses, descriptions of regulatory frameworks and even case studies on practical implementation, knowledge of the attitudes, beliefs and general views of society and institutional actors are limited.<sup>77</sup> Although this statement refers to the situation in Hungary, it can be considered to apply more universally.

Taking the voice of social groups into account is crucial in ensuring the fairness of such policies, building public support for them, and ensuring that the ecological transition is just.<sup>78</sup>

Albania asserts that states have a duty to: (I) prevent significant damage to climate systems and environmental elements that could infringe human rights; (II) ensure that measures taken in response to the effects of climate change do not lead to human rights violations; and (III) provide redress for human rights violations resulting from significant damage to climate systems and environmental elements.<sup>79</sup>

## 4. Climate-Related Court Cases

### 4.1. *The Role of Climate-Related Court Cases*

The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other instruments, including national human rights instruments, require states to provide effective remedies for human rights violations. One such measure is judicial protection. It is therefore natural that regional and national courts and tribunals have come to play an important role in the human rights protection system. This also applies to the area under discussion, i.e. establishing the link between human rights and climate change.

D. Bodansky notes that court cases are a response to government inefficiency. Affected communities and non-governmental organisations (NGOs) have turned to national and regional courts, as well as international quasi-judicial human rights treaty bodies, to prove that inadequate responses to climate change violate

75 Bosnia and Herzegovina NDC, 2021.

76 Bosnia and Herzegovina, 2020, p. 145.

77 Javor and Beke, 2014, p. 244.

78 WCG, 2024, p. 36.

79 Albania, 2024, p. 32.

internationally recognised human rights.<sup>80</sup> Similarly, S. Varvastian sees the ineffectiveness of government action as the root cause of the lawsuits.<sup>81</sup>

Available summary reports show that the number of court cases concerning climate change is growing worldwide. Some literature even refer to an explosion of climate cases.<sup>82</sup> In 2017, there were 884 such cases; by 2020, this figure had risen to 1,550; and by 2022, it had further increased to 2,180.<sup>83</sup> While the majority of these cases were filed in the United States (approximately 70%), the number of jurisdictions is also increasing, rising from 24 in 2017 to 65 in 2022.<sup>84</sup> Europe (not counting cases from the United States) ranks second with around 31.2% of cases. The European countries with the highest number of complaints in 2022 were the United Kingdom (79), Germany (38), France (22) and Spain (17).<sup>85</sup> A proportion of these cases concern human rights. Due to the insufficient measures taken by states to prevent climate change and its effects, as well as growing public awareness of human rights, the number of cases is expected to continue rising.

The difficulties faced by the courts are myriad. These difficulties stem from, among other things, the fact that climate change lawsuits based on human rights claims differ from conventional court proceedings,<sup>86</sup> and are a novelty in both international and national legal systems. These lawsuits coincide with the growing importance of human rights on the international stage, as well as the links between these rights and climate change. This includes normative changes, which form the basis of the link set out in the preamble to the Paris Agreement. Alongside these political and legal changes at an international level, claims for rights in climate change disputes aim to draw public and political attention to the harmful consequences of these changes for people. Arguments are being put forward to motivate state action.

Climate change and its effects, such as rising sea levels and extreme weather events like floods and droughts, have already impacted millions of people. Many scientists have attempted to develop a concept of state responsibility for climate issues, but the complexity of the matter means that this remains an ongoing issue. The literature rightly emphasises the importance of explaining from the outset that climate change may threaten or interfere with the enjoyment of a particular human right. However, this does not mean that those responsible for implementing that right under international law have violated their human rights law obligations.<sup>87</sup>

By ruling on the merits, courts contribute to establishing a link between human rights and climate change. One of the most significant European rulings was handed down in the *Netherlands v. Urgenda* case, in which the Dutch courts (court of first

80 Bodansky, 2010, p. 512.

81 Varvastian, 2021, p. 369.

82 Neill and Alblas, 2020, p. 59.

83 UNEP, 2023, p. 12.

84 UNEP, 2023, p. 15.

85 UNEP, 2023, p. 18.

86 Markell and Ruhl, 2012, p. 25.

87 McInerney-Lankford, Darrow and Rajamani, 2011, p. 11.

instance, court of appeal and supreme court) found that the Dutch government had violated its obligations under the European Convention on Human Rights by failing to reduce carbon dioxide emissions more rapidly.<sup>88</sup>

The Dutch court noted that the obligation to take appropriate measures arises in the occurrence of threats to the environment that have a negative impact on large groups or the entire population in the long term. Referring to the European Convention on Human Rights (ECHR), the court noted that, while Articles 2 and 8 (which protect the right to life and the right to respect for private and family life, respectively) cannot result in the imposition of an impossible or disproportionate burden on the state, these provisions require the state to take suitable measures to prevent an immediate threat within reasonable limits. The court recalled that domestic law must offer an effective remedy against violations or imminent violations of rights protected by the ECHR (Article 13). In conclusion, it stated that national courts must be able to provide effective legal protection.<sup>89</sup> Although the decisions of national courts interpreting the ECHR are not binding on any other Member State, the question remains as to whether this ruling will serve as a strategic model for achieving similar results by using the ECHR to hold national governments legally accountable for implementing climate change mitigation objectives.<sup>90</sup>

The ECtHR has also heard a case concerning climate change, namely the *KlimaSeniorinnen* case. In this case, a substantive ruling was also handed down, finding that the state had failed to fulfil its positive obligations under international climate change regulations. The Court found that Switzerland had failed to establish an adequate domestic regulatory framework, including a carbon budget or national greenhouse gas emission limits.<sup>91</sup>

The expansion of the number of jurisdictions concerns both cases before national courts and international tribunals. According to J. Krommendijk, the limited number of climate change cases heard by the ECtHR is due to the difficulties non-governmental organisations face in meeting the formal criteria, since they are not direct ‘victims’ and *actio popularis* does not exist.<sup>92</sup> The author lists six factors relating to the ECtHR that restrict its involvement in climate cases. The first is the absence of an enshrined right to a healthy or clean environment in the ECHR, a point also emphasised by Dutch courts.<sup>93</sup> An effective response to this factor could be the ECtHR statement expressed in the aforementioned *KlimaSeniorinnen* case that Article 8 of the ECHR also includes

88 Urgenda, 2018. In a similar vein, on 24 March 2021, the German Federal Constitutional Court issued the *Klimabeschluss* ruling, obliging the federal legislature to establish detailed and forward-looking regulations on emission thresholds. The aim was to ensure the achievement of emission reduction targets and the equitable distribution of environmental burdens across generations (1 BvR 2656/18, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20).

89 Urgenda, 2020.

90 Spoelman, 2020, pp. 751–752.

91 European Court of Human Rights, 2024.

92 Krommendijk, 2021, p. 71.

93 Krommendijk, 2021, pp. 71–72.

the right to effective protection by state authorities against the serious negative effects of climate change on life, health, well-being, and quality of life.<sup>94</sup>

#### 4.2. *The Climate-related Court Cases and CEE Countries*

A significant step forward is needed to translate the prevailing scientific consensus on the causes and negative effects of climate change – and the growing consensus among countries – into clear and authoritative commitments by countries in this area. The CEE countries discussed here are linked to climate-related court cases in different ways. Firstly, they are being sued before national courts or international tribunals. Poland has the highest number of climate cases of all the CEE countries.

An example of a case decided before a national court is *Klimatická žaloba ČR v. the Czech Republic*. In its 2022 ruling, the Municipal Court in Prague ordered the state to take urgent measures to combat climate change and to develop a precise plan for implementing the Paris Agreement targets. This decision was subsequently appealed, and ultimately the courts dismissed the claim.<sup>95</sup>

Since 31st January 2023, proceedings have been pending before the Romanian national court following an action brought by the non-governmental organisation *Declic*, acting together with a group of individuals. The action calls for the government to take the following measures: (1) Achieve a 55% reduction in greenhouse gas emissions by 2030 compared to 1990 levels and achieve climate neutrality by 2050; (2) Increase the share of renewable energy in final energy consumption to 45% and improve energy efficiency by 13% by 2030; (3) Implement specific and coherent plans to mitigate and adapt to climate change, including annual carbon budgets, to achieve the objectives of the Paris Agreement.<sup>96</sup>

An important signal regarding the growing role of courts in state climate protection measures came from Hungary. In June 2025, the Hungarian Constitutional Court ruled<sup>97</sup> that Article 3(1) of the XLIV 2020 Climate Protection Act, which required a 40% reduction in greenhouse gas emissions by 2030 compared to 1990 levels, was invalid. The Court found the provision unconstitutional on the grounds that it was insufficient to address the escalating climate crisis. According to the Court, the provision failed to uphold the principles of intergenerational justice, precaution, and the prevention.<sup>98</sup> It is worth noting that in its ruling, the Court went beyond national law, recognising that the above arguments also lead to the non-compliance of the provision with international law, namely the UNFCCC, the Paris Agreement and the ECHR.<sup>99</sup>

94 European Court of Human Rights, 2024.

95 *Klimatická žaloba ČR v. Czech Republic*, 2022, 2023.

96 *Declic et al. v. The Romanian Government*, 2023.

97 Judgement 5/2021 of the Hungarian Constitutional Court in case II/3536/2021 (on the constitutionality of Article 3(1) of the Climate Protection Act).

98 Hungarian Constitutional Court, n.d.

99 Judgement 5/2021, point 9. Support in the proceedings before the Court was provided by the Social Reflexion Institute (Társadalmi Reflexió Intézet) acting as Amicus Curie, which in its comprehensive opinion addressed both climate change and the existing case law of the courts in the field of human rights.

The Court granted the Hungarian Parliament time until 30th June 2026 to adopt comprehensive climate legislation, after which the aforementioned provision will cease to be legally binding. The new legislation must go beyond mere mitigation of climate change effects and include robust adaptation and resilience strategies, tailored to Hungary's specific circumstances and the characteristics of the Carpathian region.<sup>100</sup> The ruling marks a turning point for environmental constitutionalism in Hungary.

The type of complaints affecting the CEE are those in which the complainant sues a whole group of states for various failures to act in the field of climate change in relation to human rights. Examples include the case before the ECtHR, *Duarte Agostinho and others v. Portugal and 32 Other States* (Application no. 39371/20), and the complaints *Uricchio v. Italy and 31 other States* (Application no. 14615/21) and *De Conto v. Italy and 32 other States* (no. 14620/21), in which all EU countries, and also Ukraine (*D. Agostino, Uriccho*) and Slovenia (*D. Agostino*) were sued.

In the *D. Agostino* case, when ruling on the matter of extraterritorial jurisdiction, the Court found no grounds for extending it as requested by the applicants. This ultimately led to the rejection of the complaint against all countries except Portugal. On 9th April 2024, the Court declared the complaint inadmissible.<sup>101</sup>

Another form of participation in climate cases is the presentation of expert opinions by states. It is noteworthy in this regard to mention the position expressed by Albania in one of the cases before the ECtHR, in which it confirms the significance of the Court's judgments and points out that clear and well-considered judicial guidance from the Court in response to questions put to it in proceedings should constitute a turning point.<sup>102</sup>

In the same opinion, Albania took the view that the close link between damage to the climate system and parts of the environment and human rights requires a 'harmonious interpretation'<sup>103</sup> of States' obligations under both the customary and treaty-based systems (in the field of the environment and human rights). In this regard, despite states' obligations to respect, protect and fulfil human rights had arisen from different contexts related to climate change, Albania divided them into the following three categories. Firstly, states have a responsibility to prevent significant damage to the climate system and parts of the environment that could violate human rights. Secondly, states have a duty to ensure that measures taken in response to the effects of climate change do not lead to human rights violations. Thirdly, states have an obligation to provide redress for human rights violations resulting from significant damage to climate systems and elements of the natural environment.<sup>104</sup>

Court cases often concern human rights under international law and national constitutions, the lack of (or insufficient) mitigation and adaptation to climate change

100 Ibid.

101 *Duarte Agostinho and Others v. Portugal and 32 Other States*, 2024.

102 Albania, 2024, p. 4.

103 Albania, 2024, p. 20.

104 Albania, 2024, pp. 36–40.

and its effects, and the failure to abandon the use of fossil fuels. The challenges in establishing a model of state responsibility for climate change-related actions, as outlined above, directly impact the countries concerned. Furthermore, the legal framework of climate policy created by the EU applies to CEE-EU countries, which may lead to additional interpretative doubts. As Ch. Eckes points out, the content of the ECHR, interpreted in the light of the *KlimaSeniorinnen* judgment, imposes higher requirements on Member States than EU law. According to Ch. Ecker, it can be assumed that the ECtHR would not accept the argument of ‘EU law as a shield’ protecting Member States from liability under the ECHR in the context of climate change mitigation. According to the Author this means that political and legal tensions may arise when national courts find national mitigation measures that are compatible with EU law, to be insufficient and incompatible with international law.<sup>105</sup>

## 5. The Challenges and Recommendations

The analysis presented in this article can be regarded as an introduction to the issue of the link between human rights protection and climate change, as well as state responsibility in this area, as seen through the prism of selected CEE countries. At this stage of the development of international policy and law, the following observations can be made:

The relationship between human rights and climate change is currently being conceptualised at an international level. It is vital to be transparent about these issues, since both of them are rooted in this particular dimension. This will help to determine the content of the state’s tasks and responsibilities. As has been noted, the *Urgenda* and *Klimabeschluss* cases deal with the state’s obligation in the context of the ‘entanglement’ of international law, EU law, constitutional law and national climate law.<sup>106</sup>

In the CEE countries analysed, there is a low level of institutional effectiveness in linking climate and human rights issues at the national level. Some authorities are responsible for addressing issues related to climate change, while others focus on ensuring the protection of human rights. This results in a further divergence of the two issues, extending to state policies and actions. Strengthening institutional cooperation between such bodies would facilitate the linking of both issues and broader consideration of human rights in strategic climate documents, including the implementation of a human rights-based approach (HRBA) to national climate policies.

It would also be beneficial to clearly formulate the state’s position on climate transition in national policy (in accordance with legal obligation), which would allow for meaningful and constructive participation in the further formulation of international

105 Ecker, 2025, p. 1023.

106 Láncoš, 2023, p. 76.

policy. Given the regional economic conditions of CEE countries, a joint presentation of such a position would strengthen its significance in the international arena.

It is clear that mechanisms for public participation, access to information and means of redress need to be strengthened. As outlined in the article, there are a number of examples of participation. However, it is important to note that these examples could be expanded upon. The Aarhus Convention, to which all CEE countries analysed in this article are parties, introduces broad solutions. In this regard, the EU CEE countries could provide support to the other CEE countries, taking into account their experience in implementing and applying not only the Aarhus Convention but also the corresponding EU legislation (e.g. Directive 2003/4/EU on public access to environmental information, Directive 2003/35/EC on public participation in respect of the drawing up of certain plans and programmes relating to the environment).

As is the case worldwide, an increase in climate-related court cases, including those concerning human rights, can also be expected in CEE countries. Among the global causes, those related to social expectations for greater state involvement in mitigation measures to reduce the carbon footprint of economies (e.g. Poland) are gaining importance in these countries. At present, the legal basis for state liability is derived from various national and international legal acts. This, in turn, has a number of negative implications for the courts and for the state itself.

A greater number of cases will require the courts to develop an approach to climate-related litigation. It is important to note that one of the tasks of the state that is often overlooked is the adequate preparation of the judicial authorities. There is a recognised need for greater specialisation and training in climate and environmental litigation. This is not surprising, given that climate litigation is a rapidly developing, factually complex and unequally distributed legal phenomenon. It is essential to establish support and technical advisory structures in the courts. Judges face a shortage or even a lack of experts, as highlighted by administrative court judges themselves.<sup>107</sup>

In terms of court rulings, the state has an obligation to enforce them. This is another element that states must prepare for. It is vital that a clear link between climate issues and human rights is established at the level of national documentation as part of such preparation.

## 6. Conclusion

The analysis in this article supports the thesis that the UN's global climate legal framework is moving towards full integration with human rights protection.

As recommendations were presented in the previous chapter, this section will present a few comments summarising the analysis.

107 Setzer, Narulla, Higham and Bradeen, 2022, p. 15.

It is becoming increasingly evident that international policy is integrating human rights and climate change. Any gaps in the law may be filled by case law, both from the ECtHR and national courts. In light of their international obligations, states have a duty to ensure that measures taken in response to the effects of climate change also respect human rights. Positive obligations to prevent human rights violations fall within the scope of the duty to ensure respect for those rights. It is evident that the majority, if not all substantive human rights give rise to a duty of prevention. This obligation stems from the effective interpretation of substantive law in conjunction with the general protection clause of the relevant human rights treaty. States Parties to that treaty are required to take legislative, judicial, administrative, educational and other appropriate measures to fulfil their legal obligations.

However, Central and Eastern European countries must overcome specific constraints in order to effectively implement this approach. Examples of this include environmental neglect inherited from the previous regime; an energy sector based on fossil fuels; and an economy based on traditional industries. Each of these elements poses challenges in the transition to a zero-emission economy. In this respect, most CEE countries will need to make greater efforts than Western European countries. Decisions on the energy mix will affect energy prices, which constitutes one of the pillars of economic development. As the article points out, CEE economies are characterised by their reliance on traditional sectors, which are heavily reliant on energy. The absence of a pragmatic, long-term strategy to formulate suitable plans will have consequences for society. On the one hand, there is an increase in new rights in the area of climate change, but on the other hand there is also a need to prepare for the costs of decarbonisation.

Securing financing is an integral part of the strategy. Although this article did not touch upon the matter, it is noteworthy that the economic development levels of these countries indicate that they are unable to shoulder the financial burden independently, thus requiring external financing.

The selected examples of measures taken by CEE countries cited in these chapters demonstrate the strengthening of participatory processes in climate policy-making, confirming that the right direction has been taken. The situation, as interpreted under international law, necessitates the recognition of participation as a component of human rights. It is therefore incumbent upon states to establish the systemic conditions for public participation.

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# Other Environmental Treaties Relevant for Human Rights Protection

Matúš MICHALOVIČ

## ABSTRACT

This chapter explores how a group of “classic” sectoral environmental treaties operate, in practice, as tools for protecting human rights, with a particular focus on Central and Eastern European (CEE) countries. It examines treaties on nuclear safety and radioactive waste (the Convention on Nuclear Safety and the Joint Convention), transboundary air pollution (CLRTAP), ozone layer protection (the Vienna Convention and the Montreal Protocol), hazardous waste (the Basel Convention), and biological diversity (the Ramsar Convention, CITES, the Bonn Convention and the CBD).

Across these regimes, the chapter traces how obligations to prevent environmental harm, manage risks and regulate dangerous activities translate into protection of the rights to life, health, food, water and a healthy environment. The CEE perspective is used to show how states with a legacy of heavy industry, nuclear energy and rich biodiversity rely on these treaties to address long-standing environmental pressures while meeting their human rights commitments.

The chapter argues that, although most of these agreements are not framed as human rights instruments, their implementation has become an important part of how states discharge their human rights obligations. At the same time, it highlights persistent weaknesses, including soft or unevenly enforced obligations and the continued exposure of vulnerable communities to environmental harm. The conclusion invites readers to critically assess the effectiveness of these treaty regimes and to consider how future practice could better integrate environmental and human rights protection.

## KEYWORDS

international environmental law; human rights; nuclear safety; air pollution; ozone layer; hazardous waste; biodiversity; Central and Eastern Europe

## 1. Introduction

Environmental degradation and human rights are closely connected. The condition of the environment directly affects individuals’ and communities’ ability to exercise fundamental human rights, including the rights to life, health, water, food, and a safe environment. As global challenges such as nuclear safety, air pollution, ozone depletion, hazardous waste, and biodiversity loss have become more urgent, international

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treaties have become essential for regulating environmental harm and protecting human well-being. This chapter examines several key environmental treaties that both protect the environment and play a critical role in safeguarding human rights globally.

Each area discussed in this chapter was selected because of its effects on the environment, human health, and, consequently, human rights. Nuclear activities, for example, present significant risks to the rights to life and health, especially following nuclear accidents or improper nuclear waste disposal. The Convention on Nuclear Safety and the Joint Convention are examined to show how international agreements address these risks and promote the safe management of nuclear materials.

This chapter also addresses air pollution as one of the most pressing environmental threats to human health, particularly in urban areas. The focus is primarily on the CLRTAP<sup>1</sup>, which serves as a critical framework for international cooperation in controlling transboundary pollutants that affect both ecosystems and respiratory health, as well as overall well-being.

The chapter examines ozone layer protection, focusing on the Vienna Convention and the Montreal Protocol, which have been essential in phasing out substances that deplete the ozone layer. By reducing exposure to UV radiation, these treaties play a crucial role in protecting the right to health, particularly by lowering the risks of skin cancer and cataracts. This section also presents a positive view of the regulation of ozone-depleting substances, identifying it as one of the most successful international regimes in environmental protection.

Further, hazardous waste control is addressed primarily through the Basel Convention. Improper waste disposal can devastate ecosystems and disproportionately affect vulnerable communities, making it a significant human rights concern. The Basel Convention requires responsible management of hazardous waste and holds countries accountable for the waste they generate.

Finally, the chapter examines biological diversity, focusing on key treaties such as the Ramsar Convention, CITES, the Bonn Convention, and the CBD. These treaties highlight the importance of protecting ecosystems and species, which are essential for sustaining life and ensuring the rights to food, water, and a healthy environment.

By the end of this chapter, students will understand international legal frameworks governing environmental protection and their direct relationship to human rights. They will learn how these treaties regulate environmental threats affecting both ecosystems and human health and safety. Students are expected to recognise the importance of international cooperation in addressing global environmental issues, and how compliance with these treaties enables countries to meet their human rights obligations. This chapter prepares students to critically assess the effectiveness of international treaties in protecting the environment and human rights, and to participate in legal and policy discussions at the global level.

1 A list of the abbreviations used appears at the end of the chapter.

## **2. Safeguarding Nuclear Safety: Managing Radioactive Waste for Human and Environmental Protection**

The connection between energy production and environmental effects is evident, as each energy source has a distinct environmental footprint. Nuclear energy, often classified as a low-carbon solution, has been widely adopted globally to reduce greenhouse gas emissions and address climate change. The low carbon dioxide emissions from nuclear power plants make them a potential option for emission reduction. However, nuclear energy presents specific environmental and safety challenges, primarily related to the management of radioactive waste and the risk of nuclear accidents. Although nuclear energy offers the potential to reduce carbon emissions, it requires careful management to prevent harm to human health and the environment. Improperly managed spent nuclear fuel and radioactive waste from nuclear power plants pose significant risks, as they can contaminate land and water for thousands of years. The development of safe, sustainable solutions for the permanent disposal of radioactive waste remains a fundamental concern for the international community, with ongoing efforts directed towards this objective.

International attention to the peaceful use of nuclear energy increased after the 1986 Chernobyl disaster. The consequences were extensive and transnational, demonstrating that nuclear safety concerns are inherently cross-border. This event highlighted the necessity of international cooperation, as national regulation alone could not prevent such disasters. Countries with developed nuclear industries quickly recognised that failing to promote nuclear safety from the outset would endanger both their populations and others globally.

This chapter examines two major international agreements adopted under the auspices of the IAEA that form the basis for nuclear safety and effective radioactive waste management: The Convention on Nuclear Safety and The Joint Convention. These agreements have been central to accident prevention, the safe operation of nuclear installations, and ensuring that nuclear power is used with full regard for health, safety, and environmental rights. They reflect the international community's commitment to achieving the highest standards of nuclear safety, thereby protecting present and future generations from the potential risks of nuclear energy.

### ***2.1. The Convention on Nuclear Safety***

The IAEA, established in 1957, aimed to accelerate and expand the contribution of atomic energy to global peace, health, and prosperity.<sup>2</sup> The IAEA has played a crucial role in establishing numerous legally binding nuclear safety principles and non-binding safety standards, with several international treaties adopted under its auspices. Among the first significant treaties are the Convention on Early Notification of a Nuclear Accident (1986) and the Convention on Assistance in the Case of a Nuclear

| 2 Statute of the IAEA, Article 2. |

Accident or Radiological Emergency (1986), both adopted in response to the Chernobyl reactor explosion. This discussion will focus on the Convention on Nuclear Safety, which is the cornerstone of the framework for ensuring the safety of nuclear power plants. This international treaty was drafted and adopted on 17 June 1994, entered into force on 24 October 1996, and currently has 95 Parties, including Hungary, Poland, Czech Republic, Slovakia, Romania, Slovenia, Serbia, Croatia, Montenegro, Bulgaria, Ukraine, and Bosnia and Herzegovina.

The Convention on Nuclear Safety has three primary objectives, which form the foundation for its international framework: (1) First, it aims to achieve and maintain a high level of nuclear safety worldwide by enhancing national safety measures and fostering international cooperation, including, where necessary, technical collaboration related to safety; (2) The convention seeks to establish and maintain effective defences in nuclear installations to protect individuals, society, and the environment from the harmful effects of ionizing radiation; (3) Lastly, it focuses on preventing accidents with radiological consequences and mitigating the impact of such accidents should they occur, ensuring that potential risks are minimized and managed effectively.<sup>3</sup>

Parties to the Convention on Nuclear Safety are subject to several obligations. A key requirement is to establish and maintain a comprehensive legislative and regulatory framework governing the safety of nuclear installations. This framework comprises specific elements intended to protect human health and the environment from risks associated with nuclear power: (1) First, Parties are required to establish national safety requirements and regulations for all nuclear facilities; (2) Second, they must implement a system of licensing for nuclear installations, prohibiting operation without a valid licence; (3) Third, the convention obliges member states to establish a system for regulatory inspections and assessments of nuclear installations to ensure compliance with safety regulations and licence conditions; (4) Finally, the framework must include mechanisms to enforce regulations and licence conditions, enabling authorities to suspend, modify, or revoke licences if necessary to ensure safety. These obligations provide a structured approach to nuclear safety, ensuring that all nuclear installations operate within a clear legal and regulatory framework, and thereby protect the public and the environment from potential risks.<sup>4</sup>

Each contracting Party must establish or designate a regulatory authority<sup>5</sup> responsible for implementing the legislative and regulatory framework specified in Article 7. This authority must have sufficient powers, expertise, financial support,

3 Convention on Nuclear Safety, Article 2.

4 Convention on Nuclear Safety, Article 7.

5 In Hungary, the Hungarian Atomic Energy Authority is responsible; in Poland, the National Atomic Energy Agency; in the Czech Republic, the State Office for Nuclear Safety; in Slovakia, the Nuclear Regulatory Authority of the Slovak Republic; in Romania, the National Commission for Nuclear Activities Control; in Slovenia, the Slovenian Nuclear Safety Administration; in Croatia, the State Office for Radiological and Nuclear Safety; in Bulgaria, the Nuclear Regulatory Agency of the Republic of Bulgaria; and in Ukraine, the State Nuclear Regulatory Inspectorate of Ukraine.

and human resources to perform its duties effectively and ensure compliance with nuclear safety standards.<sup>6</sup> Contracting Parties are also required to prioritise safety by taking appropriate steps to address general safety considerations. For example, they must ensure adequate financial and human resources,<sup>7</sup> implement quality assurance programmes,<sup>8</sup> carry out comprehensive and systematic safety assessments,<sup>9</sup> ensure that radiation exposure to workers and the public remains as low as reasonably achievable,<sup>10</sup> and establish both on-site and off-site emergency preparedness plans.<sup>11</sup>

Another set of duties concerns the safety of installations. In this context, the siting of nuclear installations must be carefully assessed, considering factors that could affect safety throughout the facility's projected lifetime. These considerations include potential effects on individuals, society, and the environment.<sup>12</sup> The design and construction of nuclear facilities must include multiple reliable layers of protection against the release of radioactive materials. Technologies used in design and construction must be either proven through operational experience or validated through rigorous testing and analysis. The design should also ensure that operations are reliable, stable, and easily managed.<sup>13</sup>

Despite the apparent robustness of this international agreement, it has been criticised for several shortcomings. First, the Convention on Nuclear Safety does not require uniform international safety standards and contains no provisions enabling the IAEA to enforce its standards through sanctions.<sup>14</sup> Second, the Convention lacks enforcement mechanisms, relying solely on peer reviews without sanctions, which makes it difficult to compel states to adopt stringent safety measures, as there are no penalties for non-compliance. Third, the Convention uses vague language, granting countries considerable discretion in implementing safety standards. Terms such as 'reasonably practicable' and provisions regarding shutdown timelines are open to broad interpretation, resulting in inconsistent enforcement of safety practices among states.<sup>15</sup>

## ***2.2. The Joint Convention on Spent Fuel and Radioactive Waste***

The second international treaty discussed in this subchapter is the Joint Convention, adopted on 5 September 1997 and entering into force on 18 June 2001. Currently, it has 90 Parties, including Hungary, Poland, Czech Republic, Slovakia, Romania, Slovenia, Serbia, Croatia, Montenegro, Albania, Bosnia and Herzegovina, North Macedonia, Bulgaria, Ukraine, Moldova, and Georgia. The Joint Convention applies to both spent

6 Convention on Nuclear Safety, Article 8.

7 Convention on Nuclear Safety, Article 11.

8 Convention on Nuclear Safety, Article 13.

9 Convention on Nuclear Safety, Article 14.

10 Convention on Nuclear Safety, Article 15.

11 Convention on Nuclear Safety, Article 16.

12 Convention on Nuclear Safety, Article 17.

13 Convention on Nuclear Safety, Article 18.

14 Marples and Cerullo, 2000; McMillan, 2001.

15 Faruque, 2013, p. 568.

fuel management and radioactive waste disposal, and has three primary objectives: (1) It aims to achieve and maintain high safety standards worldwide in spent fuel and radioactive waste management by strengthening national measures and promoting international cooperation; (2) It seeks to ensure effective protection at all stages of waste management to safeguard individuals, society, and the environment from the harmful effects of ionising radiation, both now and for future generations; (3) It focuses on preventing radiological accidents and mitigating their effects during any stage of waste management, ensuring robust defences are in place to minimise risks.<sup>16</sup>

The main structure and principal provisions reflect those of the Convention on Nuclear Safety. The Parties' fundamental responsibility is to ensure protection by taking appropriate actions at all stages of spent fuel management to safeguard people and the environment from radiological hazards. To meet this obligation, each Party must: (1) ensure that criticality and removal of residual heat during spent fuel management are properly addressed; (2) minimise radioactive waste generation, keeping it as low as practicable according to the adopted fuel cycle policy; (3) provide effective protection for individuals, society, and the environment by implementing suitable protective measures in line with national regulations and internationally recognised standards; (4) seek to avoid placing undue burdens on future generations, ensuring their exposure to risks is no greater than that of the current generation.<sup>17</sup>

The Joint Convention requires Parties to establish and maintain a comprehensive legislative and regulatory framework to ensure the safety of spent fuel and radioactive waste management. This framework includes a facility licensing system that specifies standards for the siting, design, construction, operation, closure, and safety assessment of both existing and proposed facilities. The Joint Convention also sets general requirements for the safe operation of spent fuel and radioactive waste management installations. Furthermore, it establishes a notification and consent regime for the transboundary movement of radioactive waste, consistent with the principles in the 1990 IAEA Code of Practice on the International Transboundary Movement of Radioactive Waste.

Unfortunately, similar to the first treaty, the Joint Convention also has several shortcomings related to its scope of application. First, spent fuel held at reprocessing facilities as part of a reprocessing activity is included only if the Contracting Party declares reprocessing to be part of spent fuel management.<sup>18</sup> Second, spent fuel and radioactive waste from military or defence programmes are excluded unless the relevant state Party declares them, or if these materials are permanently transferred to and managed within exclusively civilian programmes.<sup>19</sup>

16 Joint Convention, Article 1.

17 Joint Convention, Article 4 and 11.

18 Joint Convention, Article 3(1).

19 Joint Convention, Article 3(3).

### 3. Combatting Air Pollution: Legal Frameworks for Cross-Border Clean Air

Air pollution has long posed significant risks to both human health and the environment. Transboundary air pollution presents a particular challenge because pollutants emitted in one country can easily cross borders and affect the air quality of neighbouring countries. Despite substantial progress in air quality improvement, this issue remains critical in the European Union, where an estimated 300,000 people in Europe die prematurely each year due to air pollution.<sup>20</sup> Central and Eastern European (CEE) countries, with their history of industrial emissions and reliance on fossil fuels, have been among the most affected regions. The international community has established several frameworks to address these challenges, with the CLRTAP being a key framework for tackling this issue at both regional and global levels.

The CLRTAP was the first international legally binding agreement to address pollution on a broad regional scale. Over time, it incorporated several protocols targeting specific pollutants, and now serves as a comprehensive framework to minimise emissions of sulphur, nitrogen oxides, volatile organic compounds, and particulate matter, which cause acid rain, smog, and other air quality issues.

#### 3.1. *The Convention on Long-Range Transboundary Air Pollution*

The only major multilateral international treaty addressing the regulation and control of transboundary air pollution is CLRTAP, adopted on 13 November 1979 and entering into force on 16 March 1983. Currently, it has 51 Parties, including Hungary, Poland, Czech Republic, Slovakia, Romania, Slovenia, Serbia, Croatia, Montenegro, Albania, Bosnia and Herzegovina, North Macedonia, Bulgaria, Ukraine, Moldova, and Georgia. In this treaty, states affirmed their willingness to strengthen international cooperation, develop appropriate national policies, and coordinate national action to combat air pollution, including long-range transboundary air pollution.

Under the CLRTAP, Parties are required to ‘endeavour to limit and, as far as possible, gradually reduce and prevent air pollution including long-range transboundary air pollution’.<sup>21</sup> States that are Parties must also, without undue delay, develop policies and strategies to combat the discharge of air pollutants.<sup>22</sup> Additionally, Parties are obliged to contribute to reducing air pollution, including long-range transboundary air pollution, by exchanging information and reviewing their policies, scientific activities, and technical measures aimed at addressing air pollution.<sup>23</sup>

Despite its relatively soft obligations, the CLRTAP has served as a valuable framework for cooperation and the development of more specific measures and commitments. It has provided a basis for research and monitoring of problematic emissions,

20 European Parliament, 2024.

21 CLRTAP, Article 2.

22 CLRTAP, Article 3.

23 CLRTAP, Article 4.

as well as for coordination, information exchange, and consultation among countries. Since its entry into force in 1983, it has supported the development of eight protocols,<sup>24</sup> three of which are notable<sup>25</sup> for introducing cost-sharing arrangements for scientific monitoring and for pioneering flexible regulatory techniques and compliance controls – approaches that have become central to international environmental law.<sup>26</sup> Through these protocols, the CLRTAP has established a dynamic, science-based approach to addressing air pollution. This international treaty and its protocols have contributed to emission reductions across Europe and North America, and have supported scientific collaboration, technological innovation, and policy harmonisation among Parties.

#### **4. Protecting the Ozone Layer: Global Treaties and Their Impact on Health and Environment**

The depletion of the ozone layer has been a significant environmental issue since its identification in the 1970s. The ozone layer absorbs UV radiation from the sun in the Earth's stratosphere, protecting life on the planet. Without this layer, higher levels of UV radiation would reach the Earth's surface, causing serious health risks such as skin cancer, cataracts, and immune system suppression, as well as environmental damage to ecosystems, marine life, and agriculture. The ozone agreements are notable as the first international efforts to address a long-term issue in which present actions cause damage, but the full effects may not appear for decades. Decisions were made based on probable outcomes, given the delayed manifestation of harm.

In response to this global threat, the international community enacted the Vienna Convention and later the Montreal Protocol. These two agreements, regarded as among the most successful environmental treaties, led to a significant reduction in the production and consumption of ozone-depleting substances such as chlorofluorocarbons. The phasedown and eventual phase-out of these substances provided a stronger foundation for ozone layer recovery. Consumption of ozone-depleting substances has decreased by more than 99%, and scientists have confirmed that the ozone hole over Antarctica is shrinking and could disappear by 2050.<sup>27</sup> This chapter

24 The protocols to the CLRTAP are: (1) Geneva Protocol on Long-Term Financing of the Cooperative Programme for Monitoring and Evaluation of the Long-Range Transmission of Air Pollutants in Europe, 1984; (2) Helsinki Protocol on the Reduction of Sulphur Emissions or their Transboundary Fluxes by at least 30%, 1985; (3) Sofia Protocol Concerning the Control of Emissions of Nitrogen Oxides or their Transboundary Fluxes, 1988; (4) Geneva Protocol Concerning the Control of Emissions of Volatile Organic Compounds or their Transboundary Fluxes, 1991; (5) Oslo Protocol on Further Reduction of Sulphur Emissions, 1994; (6) Aarhus Protocol on Heavy Metals, 1998; (7) Aarhus Protocol on Persistent Organic Pollutant, 1998; (8) Gothenburg Protocol to Abate Acidification, Eutrophication and Ground-Level Ozone, 1999.

25 Ibid.

26 Galizzi, 2013, p. 483.

27 Ortiz-Ospina, 2024.

discusses the provisions of the Vienna Convention and Montreal Protocol and their effects on human rights, emphasising the importance of ozone layer protection for CEE countries.

#### ***4.1. Vienna Convention for the Protection of the Ozone Layer***

The Vienna Convention is considered the first international treaty specifically addressing a global environmental issue under international environmental law. It was adopted after five years of negotiation under the auspices of UNEP on 22 March 1974 and entered into force on 22 September 1988. Notably, it achieved universal support, with all industrialised and developing nations becoming Parties by 2009.<sup>28</sup> The Vienna Convention establishes a framework with four key categories of measures to protect people and the environment from ozone depletion, outlining the basic obligations for each Party: (1) Cooperate through systematic observations, research, and information exchange to better understand and assess the impact of human activities on the ozone layer, as well as the effects of ozone layer changes on human health and the environment; (2) Adopt appropriate legislative or administrative measures and collaborate in harmonizing policies to control, limit, reduce, or prevent human activities under their jurisdiction that may have, or are likely to have, adverse effects due to ozone layer modification; (3) Collaborate in the development of agreed measures, procedures, and standards for implementing the Vienna Convention, with the aim of adopting protocols and annexes to further its objectives; (4) Work with relevant international bodies to ensure effective implementation of the Vienna Convention and any protocols to which they are Party.<sup>29</sup>

The Vienna Convention serves as a framework convention, without specific obligations to reduce or limit ozone-depleting substances, because Parties could not agree on such measures at the time. Nevertheless, the Vienna Convention was one of the first treaties to explicitly address global environmental protection, broadly defining adverse effects to include changes to the climate and ecosystems that harm human health and natural productivity. It also reflects an early adoption of the precautionary principle, supporting preventive action before conclusive evidence of harm – an approach more progressive than earlier pollution treaties such as the CLRTAP.<sup>30</sup>

#### ***4.2. The Montreal Protocol on Substances that Deplete the Ozone Layer***

The Montreal Protocol, a legally binding agreement adopted on 16 September 1987 as a protocol to the Vienna Convention, committed countries to specific actions to phase out the production and consumption of ozone-depleting substances. While the Vienna Convention established the basis for international cooperation to protect the ozone layer, the Montreal Protocol advanced this by requiring concrete measures. It entered into force on 1 January 1989 and has become one of the most successful

28 Sands, 2018, p. 279.

29 Vienna Convention, Article 2(2).

30 Birnie, Boyle and Redgweel, 2009, pp. 350–351.

environmental treaties, with near-universal ratification by 198 Parties, including many Central and Eastern European countries such as Hungary, Poland, Czech Republic, Slovakia, Romania, Slovenia, Serbia, Croatia, Montenegro, Albania, Bosnia and Herzegovina, North Macedonia, Bulgaria, Ukraine, Moldova, and Georgia. The Protocol's effectiveness is due to its translation of the Vienna Convention's framework into specific, enforceable commitments for ozone layer protection.

The amendments to the Montreal Protocol are essential because they enable the treaty to respond to new scientific evidence and address emerging environmental threats to the ozone layer. By adding new controlled substances, accelerating phase-out schedules, and broadening the treaty's scope to include climate-related issues, these amendments have reinforced global efforts to protect both the ozone layer and the climate. Although there are numerous amendments and adjustments to the Montreal Protocol, five are particularly significant and prominent: (1) The London Amendment (1990) introduced a phase-out schedule for chlorofluorocarbons and other ozone-depleting substances, and established the Multilateral Fund to assist developing countries; (2) The Copenhagen Amendment (1992) accelerated the phase-out schedule for chlorofluorocarbons and halons, added hydrochlorofluorocarbons to the list, and enhanced the financial mechanism for developing countries; (3) The Montreal Amendment (1997) introduced a licensing system for the import and export of controlled substances and added methyl bromide to the list with a phase-out schedule; (4) The Beijing Amendment (1999) added controls for bromochloromethane and strengthened restrictions on the production and trade of hydrochlorofluorocarbons; (5) The Kigali Amendment (2016) targeted the phase-down of hydrofluorocarbons and hydrochlorofluorocarbons, addressing their effects on climate change with staggered timelines for developed and developing countries.

The Montreal Protocol is widely considered one of the most successful environmental treaties in history. Its strong framework and effective amendments have resulted in a significant reduction in the consumption of ozone-depleting substances. This reduction has contributed to the gradual recovery of the ozone layer and limited climate change, because many of these substances are greenhouse gases. The Montreal Protocol primarily aims to protect the health and food resources of current generations, based on the belief that humanity can address and reverse environmental harm before it becomes irreversible.<sup>31</sup> The success of the Montreal Protocol provides a model for international cooperation in addressing complex environmental issues.

## **5. Hazardous Waste Management: International Efforts to Safeguard Health and Ecosystems**

The generation and disposal of hazardous waste present significant risks to human health and environmental safety. Hazardous waste includes materials such as toxic

31 Lawrence, 2012, p. 32.

chemicals, medical waste, electronic waste, and industrial by-products, which can cause soil and water contamination, air pollution, and long-term ecological harm if not managed appropriately. The transboundary movement of hazardous waste, particularly from developed to developing countries, increases these risks because many countries lack the necessary infrastructure and regulatory frameworks for safe handling and disposal. The Basel Convention seeks to reduce hazardous waste generation and regulate its transboundary movement to ensure environmentally sound management.

### ***5.1. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal***

The Basel Convention, established to create a global framework for controlling the international movement of hazardous and other wastes, was negotiated under UNEP and based on the work of a group that used the Cairo Guidelines as a foundation. It was adopted on 22 March 1989 by the Conference of Plenipotentiaries in Basel, Switzerland, and entered into force on 5 May 1992. Currently, it has 191 Parties, including Hungary, Poland, Czech Republic, Slovakia, Romania, Slovenia, Serbia, Croatia, Montenegro, Albania, Bosnia and Herzegovina, North Macedonia, Bulgaria, Ukraine, Moldova, and Georgia. The treaty is structured around three main objectives: (1) reducing the generation of hazardous waste and promoting its environmentally sound management, regardless of disposal location; (2) restricting transboundary movements of hazardous waste, unless these comply with the principles of environmentally sound management; (3) implementing a regulatory system for cases in which transboundary movements are permitted.

The Basel Convention provides a comprehensive definition of ‘hazardous wastes’. To determine what is considered ‘hazardous’, it is first necessary to define ‘wastes’ under this treaty. The Convention defines wastes as ‘substances or objects which are disposed of, are intended to be disposed of, or are required to be disposed of by the provisions of national law’.<sup>32</sup> A waste is considered hazardous if it is listed in Annex I, unless it does not possess any of the characteristics specified in Annex III (e.g. flammability, explosivity, or toxicity). Additionally, waste not covered by this definition but classified or regarded as hazardous under the domestic laws of the exporting, importing, or transit Party is also considered hazardous.<sup>33</sup>

The contracting Parties may prohibit the import of hazardous wastes or other wastes for disposal under the Basel Convention, which requires other Parties to prohibit or not permit the export of such wastes. Article 4(5) also prohibits the export of hazardous waste to countries that are not Parties, unless a bilateral, multilateral, or regional agreement ensures environmentally sound management.

The Prior Informed Consent procedure, set out in Articles 6 and 7 of the Basel Convention, is a central mechanism for regulating the transboundary movement of

32 Basel Convention, Article 2(1).

33 Basel Convention, Article 1(1).

hazardous wastes. Under this procedure, any Party intending to export hazardous waste must notify the receiving country and provide detailed information about the shipment, including its nature, composition, and disposal methods. The receiving country must then give explicit consent, conditional consent, or denial before the export can proceed. Transit countries must also be notified and must provide their consent. This process ensures that hazardous waste is not transferred without the knowledge and approval of all involved states, preventing illegal dumping and supporting safe, environmentally sound management.

The Basel Convention condemns illegal trafficking of hazardous waste and establishes a response mechanism to address it. It includes provisions requiring re-import of hazardous waste if the disposal contract cannot be fulfilled. In these cases, the state of export must ensure that the exporter retrieves the waste if no alternative environmentally sound disposal arrangements are possible.<sup>34</sup>

The contract mechanism of the Basel Convention remains active, and since its adoption, several significant developments have occurred. In September 1995, the third Conference of the Parties to the Basel Convention in Geneva adopted the Basel Ban Amendment. This amendment, which entered into force on 5 December 2019 after a lengthy delay, imposes a broader ban on waste shipments. It specifically prohibits all hazardous waste shipments from wealthy countries – primarily OECD members and EU countries listed in a new Annex VII – to countries not included in Annex VII. For waste shipments intended for recycling or recovery, the amendment requires a phase-out of such transfers from Annex VII countries to destinations outside this group.<sup>35</sup>

Another significant development in this regime was the adoption of the Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal in 1999, however, it has not yet entered into force. The protocol regulates civil liability for damages resulting from the transboundary movement of hazardous and other wastes, including incidents caused by illegal trafficking.

## **6. Preserving Biological Diversity: International Agreements for Ecosystem and Human Welfare**

The protection of biological diversity is essential for both ecosystem health and human well-being. Biodiversity supports food security, water supply, climate regulation, and overall ecosystem resilience. Rapid biodiversity loss due to human activities, such as land conversion, climate change, pollution, and unsustainable exploitation of natural resources, directly threatens these benefits and the rights of current and future generations.

34 Basel Convention, Article 9.

35 Wirth and Sachs, 2021, p. 584.

In response to these global problems, several international agreements have been adopted to safeguard biological diversity on Earth. Four of the most significant treaties are the Ramsar Convention, CITES, the Bonn Convention, and the CBD. These agreements regulate and protect various aspects of biodiversity, aiming to preserve ecosystems and species essential for human health and livelihoods.

### **6.1. The Ramsar Convention on Wetlands of International Importance**

The first habitat-based treaty, the Ramsar Convention, was adopted on 2 February 1971 in the Iranian city of Ramsar and entered into force on 21 December 1975. Currently, 172 states are Parties to this international treaty. The list of Parties includes, among others, Hungary, Poland, Czech Republic, Slovakia, Romania, Slovenia, Croatia, Montenegro, Albania, Bosnia and Herzegovina, Bulgaria, Ukraine, Moldova, and Georgia. The Ramsar Convention recognises the essential ecological functions of wetlands<sup>36</sup> as regulators of water regimes and as habitats supporting characteristic flora and fauna, especially waterfowl. It aims to protect these vital ecosystems and the many species they support. Wetlands are critical for maintaining ecological balance, providing habitats for diverse flora and fauna, and supplying resources for various needs within local communities.

The Ramsar Convention requires each Party to designate suitable wetlands within its territory for inclusion in the List of Wetlands of International Importance.<sup>37</sup> Wetlands are selected for this list based on their international significance in ecology, botany, zoology, limnology, or hydrology, with initial priority given to those essential for waterfowl during any season. Notably, inclusion of a wetland in the list does not affect the exclusive sovereign rights of the Party where the wetland is located.<sup>38</sup> The treaty requires any country seeking to become a Party to the Ramsar Convention to designate at least one wetland for inclusion in the List when signing or upon depositing its instrument of ratification or accession.<sup>39</sup> The Ramsar Convention highlights the principle of ‘wise use’, which promotes sustainable wetland management to maintain their ecological character. This principle requires aligning local community conservation concerns with economic development to ensure wetlands continue to provide essential functions and resources. In this way, the Convention balances protection and human use to maintain wetland health and viability in the long term.

The Wetlands Conservation Fund, established under the Ramsar Convention, is a financial mechanism that supports the conservation and sustainable use of wetlands

36 According to Article 1(1) of the Ramsar Convention, wetlands are defined as areas of marsh, fen, peatland, or water – whether natural or artificial, permanent or temporary – with static or flowing water that is fresh, brackish, or salt, including marine areas where the water depth at low tide does not exceed 6 m.

37 The Ramsar List is the world’s largest network of protected areas. There are over 2,400 Ramsar Sites on the territories of 172 the Ramsar Convention Contracting Parties across the world, covering more than 2.5 million square kilometres.

38 Ramsar Convention, Article 1(1)–(3).

39 Ramsar Convention, Article 2(4).

in developing countries and countries with economies in transition. The fund provides financial assistance for projects that promote the wise use of wetlands, enhance habitat restoration, strengthen Ramsar Convention implementation, and support community-based conservation initiatives. Through this support, the Wetlands Conservation Fund addresses challenges such as habitat degradation, biodiversity loss, and the adverse effects of climate change on wetland ecosystems, contributing to the long-term preservation and sustainable management of wetlands worldwide.

## ***6.2. The Convention on International Trade in Endangered Species of Wild Fauna and Flora***

CITES is a landmark international agreement designed to ensure that international trade in wild animals and plants does not threaten their survival. Adopted on 3 March 1973 in Washington, D.C., it entered into force on 1 July 1975 and currently has 184 Parties, including Hungary, Poland, Czech Republic, Slovakia, Romania, Slovenia, Serbia, Croatia, Montenegro, Albania, Bosnia and Herzegovina, North Macedonia, Bulgaria, Ukraine, Moldova, and Georgia.

Animal and plant species are classified into three appendices under CITES, according to the level of protection required. This three-tiered system enables different degrees of regulation, tailored to the specific conservation needs of each species group: (1) Appendix I includes species that are threatened with extinction, prohibiting their international trade except under exceptional circumstances;<sup>40</sup> (2) Appendix II lists species that are not currently threatened with extinction, but may become so if trade is not closely controlled;<sup>41</sup> (3) Appendix III covers species that are protected in at least one country, which has requested assistance from other CITES Parties to regulate trade.<sup>42</sup>

A core feature of CITES is its permitting system, which requires Parties to obtain permits for the export, re-export, import, and introduction from the sea of specimens covered by the treaty. This process ensures that international trade in listed species is legal, sustainable, and traceable. Permits are granted only if specific conditions are met, such as confirming that the trade will not threaten the species' survival. The system regulates trade in protected species and provides essential data for monitoring and conservation. Each Party to CITES must designate at least one Management Authority to grant permits or certificates on its behalf, and at least one Scientific Authority.<sup>43</sup>

Note that CITES provides sanctions for non-compliance. Although the non-compliance system is not detailed in a single article, it is primarily governed by Article XIII, which authorises the Secretariat to investigate issues such as illegal trade or permit misuse and to consult with the relevant Party. Cases of persistent non-compliance

40 See CITES, Article 3.

41 See CITES, Article 4.

42 See CITES, Article 5.

43 CITES, Article 9(1).

are referred to the Standing Committee, which may take measures such as providing technical assistance, issuing formal notifications, or recommending trade restrictions to encourage corrective action. This system prioritises cooperation and transparency, using trade suspensions only as a last resort to ensure adherence to CITES provisions.

### **6.3. Bonn Convention on Migratory Species**

Adopted on 23 June 1979 in Bonn, Germany, the Bonn Convention addresses the conservation of migratory species and their habitats across international borders, recognising that these wild animals require coordinated action by all States within whose jurisdictional boundaries they spend any part of their life cycle.<sup>44</sup> The Convention entered into force on 1 November 1983 and currently has 133 Parties, including many Central and Eastern European countries such as Hungary, Poland, Czech Republic, Slovakia, Romania, Slovenia, Serbia, Croatia, Montenegro, Albania, Bosnia and Herzegovina, North Macedonia, Bulgaria, Ukraine, Moldova, and Georgia.

Like many wildlife conservation instruments (e.g. CITES), the Bonn Convention uses a listing system; however, the appendices in this international treaty function differently and are not incompatible.<sup>45</sup> It has two appendices that list migratory species requiring conservation measures: (1) Appendix I lists species that are endangered and require strict protection. Parties are required to provide immediate protection for these species, including conserving and, where feasible and appropriate, restoring their habitats; preventing, removing, compensating for, or minimising adverse effects of activities or obstacles that seriously impede or prevent their migration; and preventing, reducing, or controlling factors that endanger or are likely to further endanger these species; (2) Appendix II lists species with an unfavourable conservation status that would benefit from international cooperation. Although these species are not governed by specific provisions of the Bonn Convention, they are intended to be included in future regional or international agreements.<sup>46</sup>

The Bonn Convention has developed into a comprehensive framework through the adoption of multiple agreements and memoranda of understanding on specific species, enabling targeted measures to address the varied threats to migratory species. This international treaty is now a key component of global biodiversity conservation efforts, complementing other treaties such as the CBD.

### **6.4. The Convention on Biological Diversity**

One of the main legally binding outcomes of the 1992 Earth Summit in Rio de Janeiro was the CBD. Developed in response to increasing recognition of biodiversity's essential role in ecological balance and human well-being, the treaty was adopted on 22 May 1992 and entered into force on 23 December 1993. It now includes 196 Parties,

44 Preamble to the Bonn Convention.

45 Wiersema, 2021, p. 562.

46 Bonn Convention, Article 4.

among them many Central and Eastern European countries, such as Hungary, Poland, Czech Republic, Slovakia, Romania, Slovenia, Serbia, Croatia, Montenegro, Albania, Bosnia and Herzegovina, North Macedonia, Bulgaria, Ukraine, Moldova, and Georgia. As one of the most comprehensive international agreements on biodiversity, the CBD establishes a global framework for protecting ecosystems, species, and genetic diversity, primarily through three key objectives: (1) The conservation of biological diversity. Article 6 of the CBD requires Parties to develop national strategies, plans, or programmes to promote the conservation and sustainable use of biological diversity. This provision emphasises the integration of biodiversity considerations into national planning and decision-making, ensuring that conservation is a core element of development policies; (2) The sustainable use of its components. Article 10 addresses the promotion of sustainable biodiversity use. It requires Parties to implement economically and socially viable measures that support conservation and meet human needs. This includes supporting customary practices and traditional knowledge relevant to the sustainable management of natural resources; (3) Access to Genetic Resources. Article 15 establishes the principle of Access and Benefit-Sharing, emphasising the fair and equitable distribution of benefits resulting from the use of genetic resources. This provision requires that benefits from genetic resources be shared with the countries providing them, especially with local and indigenous communities possessing traditional knowledge. Its objective is to prevent exploitation and encourage conservation efforts.

Overall, the CBD is central to international efforts to address the ongoing biodiversity crisis. By emphasising conservation, sustainable use, and equitable benefit-sharing, it offers a comprehensive approach to preserving global biological resources for future generations.

## **7. Protecting Human Rights Through Environmental Treaties: The Central and Eastern European Perspective**

The international treaties discussed in this chapter are fundamentally connected to human rights protection. These agreements aim to safeguard the right to a healthy environment, prevent harm to human health, and ensure the sustainable use of natural resources. For CEE countries, these treaties offer essential frameworks to address specific environmental challenges and promote regional cooperation in environmental protection, thereby directly supporting the human rights of their populations.

One of the most direct links between these treaties and human rights is the prevention of environmental harm. Conventions on nuclear safety and radioactive waste management, for example, play a crucial role in protecting the rights to health and life by reducing risks associated with nuclear energy. Implementation of these treaties in CEE countries, many with a history of nuclear power use, has significantly improved nuclear safety practices and radioactive waste management. These

measures minimise the potential for nuclear accidents, ensuring the safety of current and future generations from harmful radiation exposure. In this way, they fulfil the countries' obligations to protect the basic human rights of their citizens.

Similarly, CLRTAP addresses the right to clean air – a fundamental human right – by reducing the adverse effects of air pollution on human health and the environment. Air pollution is a transboundary issue that particularly affects CEE countries, which have experienced significant industrial pollution during their economic transitions. By participating as Parties to this international agreement, CEE countries have adopted measures to improve air quality, thereby directly enhancing citizens' well-being and upholding the right to a healthy environment.

Ozone layer protection, regulated by the Vienna Convention and the Montreal Protocol, is essential for reducing the harmful effects of UV radiation on human health. Ozone depletion increases UV exposure, which raises the risk of skin cancer and cataracts. By committing to phase out ozone-depleting substances, CEE countries have supported global efforts to restore the ozone layer. These measures protect the environment and directly uphold the right to health and a safe environment for individuals and communities. Furthermore, financial mechanisms established by these treaties, such as the Multilateral Fund, have supported CEE countries in transitioning away from harmful chemicals, illustrating how international cooperation enables states to fulfil their human rights obligations.

The Basel Convention is a key instrument for protecting human rights. Effective hazardous waste management and disposal are necessary to prevent environmental contamination and safeguard public health, ensuring communities have access to a clean and safe environment. Many CEE countries, with histories of industrial activity, have encountered challenges in managing hazardous waste. By adopting the Basel Convention, these countries have regulated the transboundary movement of hazardous wastes, reduced their generation, and promoted environmentally sound disposal. This commitment supports human rights principles by reducing environmental and health risks and advancing the right to a clean environment for all.

Treaties related to biological diversity, such as the Ramsar Convention, CITES, the Bonn Convention, and the CBD, link environmental conservation with the right to a favourable environment. Biodiversity is essential for ecosystem services, food security, and cultural heritage, directly affecting the rights to health, food, and cultural integrity. In CEE countries, where diverse ecosystems, forests, and wetlands are central to local livelihoods and traditions, these treaties preserve the natural heritage that sustains both human well-being and environmental health. The CBD's emphasis on Access and Benefit-Sharing ensures that local and indigenous communities receive fair compensation for their traditional knowledge and resources, supporting their cultural and economic rights while advancing conservation.

In summary, the international treaties discussed in this chapter collectively uphold human rights by addressing environmental protection, public health, and resource sustainability. For CEE countries, these agreements are especially relevant, guiding the region in managing environmental challenges while promoting citizens'

well-being and rights. By participating in these treaties, CEE countries affirm their commitment to global environmental efforts and work to fulfil their obligations to protect fundamental human rights related to a clean, safe, and sustainable environment.

**Table 1.** Abbreviations and their meanings

| <b>Abbreviation</b>                 | <b>Meaning</b>   |
|-------------------------------------|--|
| <b>Basel Convention</b>             | The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989) |
| <b>Bonn Convention</b>              | The Bonn Convention on Migratory Species (1979)  |
| <b>CBD</b>                          | The Convention on Biological Diversity (1992)  |
| <b>CEE</b>                          | Central and Eastern European Countries   |
| <b>CITES</b>                        | The Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973)                   |
| <b>Convention on Nuclear Safety</b> | The Convention on Nuclear Safety (1994)  |
| <b>CLRTAP</b>                       | The Convention on Long-Range Transboundary Air Pollution (1979)  |
| <b>EU</b>                           | European Union   |
| <b>IAEA</b>                         | International Atomic Energy Agency   |
| <b>Joint Convention</b>             | The Joint Convention on Spent Fuel and Radioactive Waste Management (1997)                                   |
| <b>Montreal Protocol</b>            | The Montreal Protocol on Substances that Deplete the Ozone Layer (1987)                                      |
| <b>Ramsar Convention</b>            | The Ramsar Convention on Wetlands of International Importance (1971)   |
| <b>UNEP</b>                         | United Nations Environment Programme   |
| <b>UV</b>                           | Ultraviolet  |
| <b>Vienna Convention</b>            | The Vienna Convention for the Protection of the Ozone Layer (1985)   |

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# The Aarhus Convention and the Espoo Convention

Monika Anna KRÓL

## ABSTRACT

More than three decades of the Espoo Convention and more than a quarter of a century of the Aarhus Convention provide a basis for assessing whether their instruments have been implemented effectively. The Conventions have not achieved a global scale, but on the European continent, they have undeniably become an expression of the implementation of the political and programmatic provisions of the Stockholm and Rio Declarations, of the principle of sustainable development and of the realisation of the human right to a clean, healthy and sustainable environment. Rather than primarily benefitting the environment and its components indirectly, the adoption of these conventions, which are fundamental to the established procedures, directly benefits human rights, participatory democracy, and civil society. The procedural foundations of these conventions have undoubtedly provided the basis for the greening of human rights, which has become a new paradigm in human rights approaches. It is also the basis for the identification of another general principle of environmental law, namely the principle of environmental socialisation. The aim of this study is to assess the effectiveness of the implementation of these two Conventions by the States Parties that ratified them and the impact of these standards on the development of environmental law in the European Union.

## KEYWORDS

public participation, civil society, participatory democracy, access to information, cross-border impact

## 1. Introduction

The link between human rights and the right to the environment was established in documents adopted at the international level in the second half of the 20th century, most notably Principle 1 of the 1972 Declaration of the United Nations Conference on the Human Environment<sup>1</sup> and Principle 1 of the 1992 Rio Declaration, as contained in the Final Document of the 1992 United Nations Conference on Environment and

1 UN, 1973, pp. 3–5.

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Development in Rio de Janeiro (Rio Declaration).<sup>2</sup> In addition, Principle 10 of the Rio Declaration established the right to environmental information, normatively detailed at the international level and explicitly linked to the human right to live in an environment adequate for his or her health and well-being in Article 1 of the 1998 Aarhus Convention.<sup>3</sup> The purpose of the right to environmental information is to contribute to the protection of the right of every person of present and future generations to live in an environment adequate for his or her well-being.

The development of environmental law resulted in the emergence of the first fundamental principles of this discipline, derived from the provisions of the indicated declarations, which became the basis for identifying the first rules relating to the management and use of environmental resources. These included typical principles of international law, such as the principle of good neighbourliness and the prohibition of the abuse of rights, as well as the detailed principles of the disposition and use of the environment (including the principle of rationality and equity in the use and sharing of benefits);<sup>4</sup> and above all, the principle of sustainable development. In the years that followed, these principles have been refined frequently and made more specific by the many international conventions adopted in their wake.<sup>5</sup>

One expression of the implementation of the principle of sustainable development set out in the Rio Declaration is public participation in solving environmental problems; meaning the involvement of the widest possible social groups in solving environmental problems. This instrument aims to ensure that the environment is given its rightful place in the decision-making process, by improving the quality of information for decision-makers, so that decisions impacting the environment can be made with particular attention to minimising their effects, improving action planning and protecting the environment. Public participation is also a concomitant element of environmental impact assessment procedures, as environmental policy instruments often include environmental impact assessment procedures designed to protect the impact of human activities on the environment. The practice of applying the law and the increasingly frequent conflicts arising from the negative impact of a project carried out in the territory of one state and affecting the territory of another state or the environment of areas outside the national jurisdiction of the state, have given rise to the need for regulation that provides information on the interrelationship between certain economic activities and their environmental consequences, particularly in a transboundary context.

The aim of this study is to assess the effectiveness of the implementation of the two Conventions by the States Parties that have ratified them and the impact of these standards on the development of environmental law in the European Union.

2 UN General Assembly, 1992, pp. 3–8.

3 'No. 37770. Multilateral Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus on 25 June 1998' in UN, 2004, p. 447.

4 Ciechanowicz-McLean, 2001, pp. 22–23.

5 De Sadeleer, 2002, p. 1.

## 2. The Concept of Participatory Democracy and Civil Society

An assessment of normative regulation made regarding the separation of the principle of socialisation in environmental law speaks to the broader concept of civil society and participatory democracy. As pointed out in the doctrine,<sup>6</sup> participatory democracy is a type of democracy in which citizens have the opportunity to make decisions, directly or indirectly, concerning the law and state affairs. Participatory democracy is closely related to direct democracy, but is a broader category, combining features of deliberative, direct and indirect democracy. It is a type of compromise between the institutions of direct democracy and representative democracy; and to a greater extent serves the community, especially local communities,<sup>7</sup> where the emphasis is on the real participation of citizens in the process of making public decisions, and therefore on the relevant formal instruments, including those associated with direct democracy.

As underlined by Izdebski,<sup>8</sup> the essence of deliberative democracy is the creation of opportunities for all those interested in a given public issue, particularly in a proposed public decision, to express their opinions and views. In a pluralistic society, this means the possibility of presenting various assessments and positions and should lead to dialogue and working out a solution acceptable to the majority of those interested. This democracy cannot function without ensuring that public authorities operate openly, including ensuring that all interested parties have access to information about the state of affairs and the intentions of the relevant public authorities. Participatory democracy goes further, as it implies the real participation of citizens in the process of making public decisions as a result of deliberation.<sup>9</sup> It aims to involve citizens in the decision-making process, especially at the local level, the effects of which will often be felt by them.<sup>10</sup> Public participation pursues the idea of strengthening democracy, requires the deconcentration of power, a change in the way conflicts are resolved and the empowerment of citizens.<sup>11</sup>

The involvement of the public in the affairs of a given community, which is a form of participatory democracy, is the basis for the creation of an informed civil society,<sup>12</sup> which today is the basis for the functioning of modern states and their societies and the solution to current problems, especially those related to environmental protection. Civil society is understood as a set of activities that are complementary to the

6 On the concept and origins of participatory democracy: Sartori, 1998, p. 148; Uziębło, 2009, pp. 13–36. On this topic also Niżnik-Dobosz, 2014, pp. 21–43; Izdebski, 2021, pp. 97–98.

7 Marczevska-Rytko, 2001, pp. 31–44; Konopielko, 2011, pp. 86–94.

8 Izdebski, 2021, p. 97. and the literature indicated therein.

9 *Ibid.*, p. 98.

10 Kwiatkowska, 2013, p. 36.

11 Unger, 1986, p. 30.

12 Augustyniak, 2023, pp. 71–92.

activities of political power and pursues goals, which power by its nature does not.<sup>13</sup> The origin of this concept can be traced back to ancient philosophical thought. In more modern terms, it appeared in the 18th century philosophical currents associated with the French Revolution and liberal philosophy.<sup>14</sup> Modern political doctrines assume a three-part model that distinguishes between the economy, civil society and the state, with society providing opportunities for citizens to organise themselves into narrower, more specialised associations, societies, communities and self-government. This concept implies public participation in matters of social life, the basis of which is citizen access to public information and the organisation of citizens in various forms of social organisations. These considerations have led to the full incorporation of the assumption of participatory democracy and civil society into environmental law, which has been developing for about fifty years, especially at the international level.

### **3. Evolution of Environmental Socialisation in International Law**

Public participation has been the subject of standardisation at the international level for many years. The Nordic Convention on Environmental Protection, concluded in Stockholm in 1974, was the first international agreement recognised in the doctrine as including provisions relating to public participation in environmental protection.<sup>15</sup> It introduced the right of any person exposed to hazardous activities to lodge a complaint with public authorities or a court of another state on the assessment of the permissibility of such activities. The Stockholm Declaration, adopted two years earlier, only partially addressed the issue of effective public participation in environmental protection.

In 1987, the World Commission on Environment and Development (WCED), in a published report entitled, 'Our Common Future', (also known as the 'Brundtland Report'),<sup>16</sup> identified community involvement as one of the key requirements for eco-development. The report emphasised that an equitable share of the resources needed to sustain socio-economic growth supports ensuring the effective participation of citizens in decision-making in political systems and through greater democracy in international decision-making (motive 28). Furthermore, the authors of the report noted that the law alone cannot enforce the common interest; it also needs the knowledge and support of the community, which requires greater public participation in decisions affecting the environment. The best way to achieve this is to decentralise the management of resources that local communities are responsible for, and give those communities effective influence over the use of those resources. As indicated,

13 Król, 1999, p. 106.

14 More extensively on this topic: Jeżyńska and Król, 2021, pp. 16–17.

15 Haładyj, 2013, p. 45.

16 WCED, no date.

this requires the promotion of citizen initiatives, empowerment and strengthening of local democracy (motive 77).

The reflection of participatory democracy in environmental matters as a standard can be found in the outcome documents of the 1992 United Nations Conference on Environment and Development in Rio de Janeiro. This is addressed in general terms in Principle 10 of the Declaration on Environment and Development,<sup>17</sup> stating that environmental issues are best addressed at every level with the participation of all concerned citizens. In contrast, specific solutions can be found in Agenda 21,<sup>18</sup> in which Chapter 8, titled 'Integrating environment and development in decision-making', identifies several objectives to be pursued by national authorities. One is to develop or improve mechanisms to facilitate the participation of affected individuals, groups and organisations in decision-making at all levels.

The above-mentioned documents have formed the basis for the adoption of norms for the socialisation of environmental protection in acts of international law. Among others, one can point to the 1994 United Nations Convention to Combat Desertification, which is the only legally binding international framework established to address the extremely topical contemporary problem of desertification and drought mitigation.<sup>19</sup> Art. 3(1)(a) indicates that States Parties to the Convention should ensure that decisions on the design and implementation of programmes to combat desertification and mitigate the effects of drought are made with the participation of the population and local society and that an enabling environment is created at higher levels to facilitate action at national and local levels.<sup>20</sup>

The political arrangements made at the Third Pan-European Conference in 1995 in Sofia<sup>21</sup> were the culmination of many years of effort, where the *Final Declaration*<sup>22</sup> in the chapter 'Public Participation', referring to principle 10 of the Rio de Janeiro Declaration, provided guidelines on access to information in environmental matters and public participation in environmental proceedings. This document called on States to ensure the effectiveness of their actions, including: adequate and effective mechanisms to ensure public access to environmental information; effective public participation as a basis for effective environmental policy; and effective public instruments for access to judicial and administrative remedies for environmental harm (recitals 41-43). The result was the adoption of the Aarhus Convention, which was the first major step towards introducing issues related to the functioning of so-called open democratic societies into the existing norms of international environmental law.<sup>23</sup>

17 UN, 1992a.

18 UN, 1992b.

19 United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly In Africa, drawn up in Paris of 17 June 1994. Ratified in Poland, Journal of Laws. 2002 No. 185 item 1538.

20 For other examples of solutions in which the indication of socialisation has been adopted at the international level, see Bukowski, 2007, p. 56.

21 UNECE, 1995b.

22 UNECE, 1995a.

23 UNECE, 2014, p. 15, 36; Jendroska, 2002, p. 4.

#### 4. The Espoo Convention

Ciechanowicz-McLean points out<sup>24</sup> that environmental impact assessments were first introduced in the 1970s in the United States of America. In the European Economic Community (EEC), the EEC Directive 85/337/EEC of 7 June 1985 on the assessment of the effects of certain public and private projects on the environment<sup>25</sup> introduced the obligation to carry out assessments in all Member States of the European Economic Community for the first time. The idea of a convention on environmental impact assessments in a transboundary context was first proposed in September 1987 at the Warsaw seminar of the European Economic Commission on environmental impact. Negotiations on the text of the convention continued until 1989, with the active participation of Polish experts in international law and environmental impact assessment.<sup>26</sup>

The Convention on Environmental Impact Assessment in a Transboundary Context, known as the Espoo Convention, is an international agreement that sets out the Signatory States' obligations to carry out environmental impact assessments of certain activities at an early stage of planning. It was drawn up in Espoo, Finland, on 25 February 1991. Poland, as a State Party to the Convention, signed it in 1991 but ratified it on 9 January 1997.<sup>27</sup>

The Convention is an international agreement of a regional nature,<sup>28</sup> covering European countries as well as two Asian countries and Canada. The European Union became a State Party, through Council Decision 2008/871/EC of 20 October 2008 on the approval of the Protocol on the Strategic Environmental Assessment to the 1991 UN/ECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context on behalf of the European Community.<sup>29</sup>

24 Ciechanowicz-McLean, 2001, p. 177.

25 Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment in the Official Journal of the European Union, 1985, 175, p. 40.

26 Ciechanowicz-McLean, 2001, p. 177.

27 Government declaration of 24 September 1999 on the ratification by the Republic of Poland of the Convention on Environmental Impact Assessment in a Transboundary Context, drawn up in Espoo on 25 February 1991, Journal of Laws, 1999, No. 96 poz. 1111; text of the Convention Journal of Law 1999, No. 96 item 1110.

28 The Convention has been signed and ratified by Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Greece, Spain, Ireland, Canada, Kazakhstan, Kyrgyzstan, Liechtenstein, Lithuania, Luxembourg, Latvia, Northern Macedonia, Malta, Montenegro, Germany, the Netherlands, Norway, Moldova, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Switzerland, Sweden, Ukraine, Hungary, Italy, the United Kingdom of Great Britain and Northern Ireland. The European Union is also a regional integration organisation member. Data from *Meetings of Parties to UNECE treaties stress role of environmental assessment to boost sustainable energy transition and SDGs*, 2023.

29 Official Journal of the European Union, 2008, 308, p. 33.

The 2001 amendment to the Convention, once ratified by all States that were Parties to the 2001 Kijev Convention,<sup>30</sup> allows accession by any Member State of the UN. Thus, making the Convention a global instrument for environmental impact assessment. In 2003, the Convention was complemented by the Strategic Environmental Assessment Protocol. Since coming into force in 2011, the Protocol has been helping to lay the foundations for sustainable development by ensuring that Parties integrate environmental considerations, including public health, and public concerns into their plans and programmes, and, as far as possible, into policies and legislation at an early stage.

The Convention is the first multilateral treaty to set out the procedural rights and obligations of Parties with respect to the transboundary impacts of the proposed activities. It also provides procedures in a transboundary context to consider the environmental impacts of decision-making. For the proposed activity, an environmental impact assessment procedure must be carried out by the Party that is likely to have a significant transboundary impact in an area under the jurisdiction of another Party.

The Espoo Convention contains explicit references to public participation (including Art. 2(2)) and, as emphasised by Bukowski,<sup>31</sup> to sustainable development in the context of defining the objective of international community action. The Convention contains three references to public participation. Article 2(6) and the provisions of Articles 3 and 4 indicate the specific stages of the environmental impact assessment procedure in which the public is entitled to participate. In addition, Article 3(8) requires that the Parties concerned ensure that the public is informed and given the opportunity to comment on and object to the proposed activity in areas likely to be affected by transboundary impacts, and that documents are submitted to the competent authority of the Party of origin. Furthermore, according to Article 4(2), the Parties concerned must ensure that the environmental impact assessment documentation is forwarded to the relevant authorities and the public. By contrast, the Convention makes no provision for public hearings, although several States Parties use them as a form of public participation.<sup>32</sup>

The Espoo Convention also contains many links to the Aarhus Convention, as their adoption was the result of a certain coincidence of events. The Espoo Convention was the first to emerge and influenced the provisions of the Aarhus Convention in many ways, particularly because of the fundamental link between environmental impact assessment and public participation in environmental decision-making. Environmental impact assessments are the main tools used by many countries in this regard. The Espoo Convention deals at its core with transboundary issues. However, its Art. 2(2) provides for Parties to establish a national environmental impact assessment procedure with certain requirements. Therefore, since the transboundary impact

30 Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context, Kyiv, 21 May 2003. Journal, Laws of 2011, No. 180, item 1074.

31 Bukowski, 2009, p. 113.

32 Schrage, 2008, pp. 41-42.

assessment procedure has to be implemented in the context of national legislation, it thus sets standards for environmental impact assessments at the national level. In this regard, Art. 6 of the Aarhus Convention appears to be an extension of the provisions of the Convention on the assessment of transboundary environmental impacts.<sup>33</sup>

## 5. The Aarhus Convention

In 1998, at the 4th Pan-European Conference of Ministers of the Environment in Aarhus, Denmark, the International Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters was signed as a regional convention of the United Nations Economic Commission for Europe (UNECE), called the Aarhus Convention.<sup>34</sup> It was the first convention to explicitly set out the specific rights of citizens in relation to the environment and public authorities.<sup>35</sup>

The amendment to the Aarhus Convention on ‘Public Participation in Decisions on the Intentional Release into the Environment and Placing on the Market of Genetically Modified Organisms’ was adopted at the Second Meeting of the Parties on 27 May 2005 in Almaty, Kazakhstan. As of October 2024, 32 countries have ratified this treaty, meaning that one more ratification is needed for it to enter into force.<sup>36</sup>

Legal action in the European Economic Community began in the early 1990s. The first Community act in this regard, adopted many years before the start of work on the Aarhus Convention, was the Council Directive of 7 June 1990 on freedom of access to environmental information.<sup>37</sup> At the beginning of the first decade of the 21st century, without waiting for the formal approval of the Aarhus Convention, the following Directives were adopted at the Community level: the Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC<sup>38</sup> and Directive 2003/35/EC of the European Parliament; and the Directive of the Council of 26 May 2003 providing for public participation in respect to the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.<sup>39</sup> These acts were the legal basis for the transposition into the law of the EU Member States.

33 *Ibid.*, p. 43.

34 As of 3 July 2023, there are 47 States Parties to the Convention, 38 Parties to the Protocol on Pollutant Release and Transfer Registers (PRTRs) and 32 Parties to the Amendment on Public Participation in Decisions on the Intentional Release into the Environment and Placing on the Market of Genetically Modified Organisms (GMOs).

35 Grabowska, 2000, p. 45.

36 *GMOs*, no date.

37 Official Journal of the European Union, 1990, 158, pp. 56–58.

38 Official Journal of the European Union, 2003, 41, pp. 26–32.

39 Official Journal of the European Union, 2003, 156, pp. 17–25.

The European Union formally approved the Aarhus Convention on 17 February 2005.<sup>40</sup> After one year, Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community Institutions and Bodies was adopted.<sup>41</sup>

The importance of the Aarhus Convention derives first and foremost from its objective, set out in Article 1, which is to contribute to the protection of the right of everyone, from present and future generations, to live in an environment adequate to his or her health and well-being. The Aarhus Convention was created to strengthen the role of citizens and civil society organisations in environmental matters and is based on the principles of participatory democracy.<sup>42</sup> It establishes a number of rights for individuals and civil society organisations in relation to the environment. At this point, the question may be raised whether the objectives indicated in the Convention have been achieved in legal acts directly implementing the provisions of the Convention or by transposing the legal solutions adopted in this area in EU law into national law, through the selection of appropriate forms, methods and legal instruments.

The foundations of the Aarhus Convention are based on three pillars.<sup>43</sup>

First, access to information: every citizen should have the right to full and easy access to environmental information. Public authorities must provide, collect and disseminate all necessary information in a timely and transparent manner. Exceptions can only be made in special situations, for example in relation to national defence.

Second, public participation in decision-making: the public must be informed about all relevant projects and have the opportunity to participate in decision-making and legislation. Decision-makers can benefit from people's knowledge and experience; this input is a powerful way to improve the quality of environmental decisions and outcomes and to ensure procedural legitimacy. This also reveals the importance of education in the field of sustainable development.<sup>44</sup> As emphasised by Jendroška and Radecki,<sup>45</sup> the instruments contained in this international agreement constitute one of the basic means of achieving sustainable development, especially its environmental pillar.

Third, access to justice: the public has the right to resort to judicial or administrative procedures in the event of a violation or non-compliance by a Party with environmental law and the principles of the Convention.

40 Council Decision 2005/370/EC in the Official Journal of the European Union, 2005, 124, p. 1.

41 Official Journal of the European Union, 2006, 264, p. 13.

42 Official website of the Convention. UNECE, 2014, p. 36.

43 More about this in Weaver, 2023, pp. 105–134.

44 Bukowski, 2009, p. 114.

45 Jendroška and Radecki, 1999, p. 12.

## 6. Territorial Scope of the Aarhus Convention

As emphasised by Bar and Jendroška,<sup>46</sup> thus far on a global scale, there is no such binding legal instrument of international law dedicated to the socialisation of environmental protection, since it is an international legal guarantee of the rights of societies in environmental protection. In addition, the Aarhus Convention set the highest international legal standard for the socialisation of environmental protection, to which the legal norms of the European Union (e.g. Regulation 1367/2006), the EU Member States (e.g. in Poland, the Czech Republic, Slovakia) and the United Kingdom and Northern Ireland, as well as the EU candidate countries (e.g. Albania, Bosnia-Herzegovina, Montenegro, Serbia, Ukraine) were adapted.

However, it should be noted that twenty-five years after the signing of the Aarhus Convention, it is still of a regional nature, mainly affecting European countries (EU and applicant countries) and a few Asian countries (e.g. Kazakhstan, Georgia). The biggest expansion of its impact occurred at the end of the first decade when it was ratified by the countries that emerged after the break-up of Yugoslavia, namely Croatia, Serbia, Montenegro, Bosnia and Herzegovina. Since then, the only new state to adopt the Convention has been the small African Republic of Guinea-Bissau, which acceded on 4 April 2023.

The likelihood of extending the geographical scope of the Aarhus Convention in North America is weak as the Federal Freedom of Information Act in force in the United States of America since 1967<sup>47</sup> and the Access to Information Act of 1985 in Canada<sup>48</sup> also address environmental issues (Art. 20(2-4)).

Significantly, on 4 March 2018 at Escazú in Costa Rica under the auspices of the United Nations, the Latin American and Caribbean region adopted *the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*.<sup>49</sup> The agreement is a landmark legal instrument for environmental protection in Latin American and Caribbean countries: 24 countries have signed the agreement, and 15 have ratified it, with the process ongoing.<sup>50</sup> It is also an important human rights act, and its main beneficiaries are the people of the region, particularly the most vulnerable groups and local communities. The purpose of the Escazú Agreement is to ensure that all people have the right: to access information in a timely and appropriate manner; to participate meaningfully in decisions

46 Bar and Jendroška, 2005, p. 212.

47 The Freedom of Information Act (FOIA) 80 Stat. 250; United States Statutes at Large, vol. 80, 89th Congress, 2nd Session. On this subject, see Bukowski, 2007, p. 45.

48 Access to Information Act (R.S.C., 1985, c. A-1, with amendment from 2019, c. 18, s. 41(E).

49 Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, LC/PUB.2018/8/Rev.1 hereinafter cited as: 'Escazú Agreement'.

50 Data collected from the official website of the ECLAC. The agreement has not been signed by Cuba, Venezuela or El Salvador.

that affect their lives and the environment; and to access justice when these rights are violated.

Although the Convention has attracted widespread interest worldwide, the predictions of doctrine expressed both at the beginning and end of the first decade of the twenty-first century<sup>51</sup> have not materialised, nor has the expected geographical expansion of its scope. Thus, there has been neither a significant expansion of the geographic scope of the Convention nor the creation of a global convention, but rather the development of a number of international agreements or national regulations with a regional scope. This does not detract from its importance as a fundamental step towards both environmental and democratic development.<sup>52</sup> For this reason, the Convention is often referred to as the most ambitious endeavour in the field of environmental democracy.<sup>53</sup>

## **7. The Principle of Socialisation in Environmental Law as an Instrument of the Subjective Right to the Environment**

The Aarhus Convention is not a typical environmental convention, and can be positioned more as a human rights Convention, as it introduces into both legal areas the principle of socialisation, realising the right to the environment, or as emphasised by the Human Rights Council on 8 October 2021 in resolution 49/13,<sup>54</sup> the right to a clean, healthy, sustainable environment. It has been emphasised in the doctrine that the concept of sustainable development and the human right to a healthy environment, should be the main objective of the concluded international conventions and agreements,<sup>55</sup> because only by doing so, can the realisation of the human right to the environment take place, with statutes at the international level.<sup>56</sup>

The States Parties to the Convention have recognised the need for: access to information, public participation in environmental protection and access to justice in environmental matters at the international level, guaranteeing every person, from present and future generations, the right to live in an environment adequate to his or her health and well-being, but also the possibility of enforcing their rights under legislation. The realisation of this triad of guarantees, often referred to as the three pillars,<sup>57</sup> for the socialisation of environmental protection is crucial for the realisation of sustainable development and is one of the instruments of the human right to

51 Jendroška, 2002, p. 5; Bar and Jendroška, 2005, p. 212.

52 UNECE, 2014, p. 21.

53 The term 'environmental democracy' is used repeatedly in the interpretative guidelines, *ibidem* and earlier on the ground of the first edition it was emphasised by Jendroška, 2002, p. 4.

54 HCR Resolution 48/13 The Human right to a clean, healthy and sustainable environment on 8 October 2021, A/HRC/RES/48/13.

55 Ciechanowicz-McLean and Nyka, 2016, pp. 34–36.

56 Król, 2023, p. 103.

57 Bar and Jendroška, 2005, p. 213.

the environment. Jendroška even stresses that the Convention is not a typical Convention in the field of environmental protection, as the emphasis is not as much on the protection of the environment itself as on the need to respect human rights to a clean environment.<sup>58</sup> However, Lipiński<sup>59</sup> points out that universal access to environmental information is an extension of one of the basic human rights, namely the right to information.

To implement the principle of socialisation, it is crucial to clarify the basic conceptual categories of the Convention, especially those defining the subject and object scope. These include the terms ‘everyone’, ‘public authority’ and ‘environment’ used in the Convention.

An instrument for the realisation of the socialisation of environmental protection is the adoption in Art. 1 of the Convention of the term ‘everyone’ to designate the widest possible range of subjects entitled to access to information, public participation in decision-making and access to justice. As Jendroška points out,<sup>60</sup> the term ‘everyone’ is equivalent to ‘the public’, defined in Art. 2(4) of the Convention, namely one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups. As indicated in the doctrine,<sup>61</sup> it has been accepted as a general principle that the rights guaranteed under the three pillars of the Convention will be enjoyed without discrimination on the basis of citizenship, nationality or place of residence. The public concerned, however, are those affected or likely to be affected, or those with an interest in environmental decisions. In accordance with the objectives of the Convention, it will be non-governmental organisations promoting environmental protection and meeting any requirements of national law that should be considered part of the ‘public concerned’.

It should also be stressed that the implementation of the principle of socialisation is also served by the instruments introduced in the norms of the Escazú Agreement. These recognise the rights of all persons, provide measures to facilitate their exercise and, most importantly, establish mechanisms to ensure their effectiveness. Furthermore, Art. 3 of the Covenant introduces a catalogue of principles applicable to the three pillars of entitlements, including the *pro personae principle* (also known as the *pro homine principle*), which is a basic instrument of international human rights law.<sup>62</sup> The purpose of the *pro personae principle* is to realise human rights to the fullest extent possible. This principle gives priority to the most favourable protection of the rights of individuals and implies an obligation to apply the most favourable interpretation for this protection.<sup>63</sup>

58 Jendroška, 2002, p. 4.

59 Lipiński, 2010, p. 40.

60 Jendroška, 2012, p. 61.

61 Śniadach and Adamczak-Retecka, 2018, p. 229.

62 de Oliveira Mazzuoli and Riberio, 2016; Rodiles, 2016, pp. 153–174.

63 Kowalska, 2021.

## 8. The Principle of Socialisation in Environmental Law as a Determinant of the Implementation of and Compliance with the Aarhus Convention

In environmental law, the set of general principles in this area of law has not been normatively catalogued; hence, depending on the position of the doctrine, we find a diverse catalogue of principles. The principle of the socialisation of environmental protection is rarely distinguished either in foreign or domestic literature. *Expressis verbis* it is indicated by Grabowska,<sup>64</sup> placing the discussed principle in the catalogue of principles of the EU environmental policy. In the author's opinion, the implementation of this set defines the broadest possible participation of society in the creation of the State's environmental policy and aims to establish mechanisms that ensure that local environmental decisions are made at the lowest and closest possible level to the citizen. The Community had Directive 90/313 for the process of socialisation of ecological policy, but only the Aarhus Convention was a genuine achievement in the implementation of the principle in question. This means increasing the participation of citizens in environmental activities, mainly through the democratisation of decision-making processes, and formulating a universal right to information about the state of the environment, the right to participate in decision-making, and access to administrative procedures and judicial complaints.

As pointed out in the doctrine,<sup>65</sup> the effectiveness of the implementation of and compliance with the Aarhus Convention is guaranteed by its introduction of three mechanisms: First, the mechanism of the Meeting of the Parties, provided for in Art. 10 of the Aarhus Convention, which allows Parties to make cyclical assessments of the degree of implementation of the Convention. Second, the mechanism of the non-compliance procedure, provided for in Art. 15, which allows for the establishment, by agreement of the Parties, of a voluntary mechanism of a non-contentious, non-judicial and advisory nature for the review of compliance with the provisions of the Convention. Third, the 'dispute settlement clause' in the introduction in Art. 16 of the Aarhus Convention stating that in the event of disputes between two or more Parties, negotiation, agreement, mediation, and conciliation shall be conducted in the first instance and if this mechanism proves unsuccessful, the matter shall be submitted to the International Court of Justice in the Hague (Art. 16 of the Aarhus Convention).

In implementing the provisions of the Aarhus Convention in the European Union, Art. 1 of Regulation 1367/2006<sup>66</sup> on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies

64 Grabowska, 2001, p. 210.

65 Fitzmaurice, 2009, pp. 213–219; Iwańska, 2013, pp. 368–370.

66 Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies in Official Journal of the European Union, 2006, 264, pp. 13–19.

defines the obligations incumbent on EU bodies and Member States in particular by the following: (1) Guaranteeing the right of access to environmental information received or produced by Community institutions or bodies and held by them, and by setting out the basic terms, conditions and practical arrangements for exercising that right; (2) Ensuring that environmental information is progressively made available and disseminated to the public with a view to achieving the widest possible systematic availability and dissemination. To this end, the use of, in particular, computer telecommunications or electronic technology, where available, shall be encouraged; (3) Ensuring public participation in relation to plans and programmes relating to the environment; (4) Providing access to justice in environmental matters at the Community level under the conditions laid down in legislation. The Community is also to endeavour to support and guide the public with regard to access to information, participation in decision-making and access to justice.

Instruments for achieving the requirements of the conventions in question are implemented not only in acts relating directly to access to information and public participation, but also broadly in other provisions of EU environmental law. One can therefore speak of the manifestations of the principle of socialisation implemented in other provisions of EU law. For example, one can point in this regard to the European Parliament (EP) and Council Directive 2010/75/EU of 24 November 2010 on industrial emissions,<sup>67</sup> which, in Art. 24, provided for integrated pollution prevention and control, access to information and public participation in the permit procedure and access to justice for members of the public concerned, in order to ensure access to a review procedure before a court of law or other independent and impartial body established by law (Art. 25). Furthermore, in accordance with the obligations under the Espoo Convention, where a Member State is aware that the operation of an installation is likely to have a significant effect on the environment of another Member State, or where a Member State which is likely to be significantly affected so requests, on a basis of equality, that all the information required must be made available as a basis for consultation within the framework of bilateral relations between Member States (Art. 26).

At the level of regulations adopted in individual EU Member States, legal solutions can be found both in general acts relating to the provision of environmental information and public participation and in the norms found in specific acts.

Poland ratified the Convention in 2003,<sup>68</sup> although the first legal solutions regarding access to information had already been introduced in the pre-accession period to the EU by the provisions of the Act of 9 November 2000 on Access to Information on the Environment and its Protection and on Environmental Impact Assessments.<sup>69</sup> The

67 Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control), Official Journal of the European Union, 2010, 334/17, p. 17.

68 In Poland, ratified Journal of Law, 2003, No. 78, item 706.

69 Journal of Law, No. 109, item 1157 as amended.

Act also regulated public participation in environmental protection proceedings (Art. 1(2) of the Act).

At present, instruments implementing the requirements of the Conventions in question and the provisions of European law reflecting their assumptions can be found in the Polish legal system, primarily in the Act of 2008 on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments.<sup>70</sup> Similarly, the General Act of 2001 Environmental Protection Law<sup>71</sup> provides for the possibility of public participation in, inter alia, proceedings whose subject matter is the drawing up of an environmental protection programme (Art. 17(4) P.o.ś.); or the possibility of public participation in proceedings whose subject matter is the drawing up of an air protection programme (Art. 91(9) P.o.ś.).

One can observe the implementation of the principle of socialisation and the requirements of access to information and public participation in only a few other legal acts in the field of environmental protection. For example, one can point to Art. 23(10) of the Environmental Protection Inspection Act,<sup>72</sup> establishing State environmental monitoring, supporting environmental protection activities through systematic information of the public and public administration bodies on the state of environmental elements and occurring changes in the state of environmental elements. In addition, under Art. 28(1) of the u.i.o.ś., the General Inspector of Environmental Protection ensures that the public is informed about the state of the environment and makes information available to public administration bodies free of charge.

Another example is the obligation to ensure public participation laid down in Article 14 of the 2001 Act on Microorganisms and Genetically Modified Organisms<sup>73</sup> for the issuing of a permit for the contained use of a genetically modified microorganism (GMM), the contained use of genetically modified organisms (GMOs) or the deliberate release of GMOs into the environment. Additionally, this includes the issuing of a permit to operate a genetic engineering facility, the marketing of a GMO product or the entry of a GMO crop in the Register of GMO Crops.

However, public participation, in accordance with the principles set out in Section III of the 2008 u.i.ś., was ensured by the Act of 11 August 2021 on alien species.<sup>74</sup> Art. 4 of the u.i.s. obliges the General Director of Environmental Protection to ensure public participation in the development of an action plan for the pathways of transmission of invasive alien species.

70 Act of 3 October 2008 on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments, i.e. Journal of Law 2024, p. 1112, hereinafter cited as: 'u.i.ś.'.

71 Act of 27 April 2001. Environmental Protection Law, i.e. Journal of Law, 2024, item 54 as amended, hereinafter cited as: 'P.o.ś.'.

72 Act of 20 July 1991 on the Environmental Protection Inspection, i.e. Journal of Law, 2024, item 425, hereinafter cited as: 'u.i.o.ś.'.

73 Act of 22 June 2001 on microorganisms and genetically modified organisms, i.e. Journal of Law, 2022, item 546 as amended.

74 Act of 11 August 2021 on alien species, Journal of Law, 2023, item 1589, hereinafter as: 'u.g.g'.

## 9. Summary

More than three decades of the Espoo Convention and more than a quarter of a century of the Aarhus Convention provide a basis for assessing the effectiveness of the implementation of their instruments. The Conventions have not achieved global scale, but on the scale of the European continent have undeniably become an expression of the implementation of the political and programmatic provisions of the Stockholm and Rio Declarations, of the principle of sustainable development and of the realisation of the human right to a clean, healthy and sustainable environment.

The adoption of these Conventions, which are fundamental to the established procedures, rather than primarily benefiting the environment and its components indirectly, directly benefits human rights, participatory democracy, civil society and social solidarity. The procedural foundations of the Conventions in question have undoubtedly provided the basis for the greening of human rights,<sup>75</sup> which has become a new paradigm in human rights concepts today.<sup>76</sup> It is also the basis for distinguishing another general principle of environmental law, the principle of environmental socialisation.

75 Król, 2023, p. 100.

76 This was pointed out by Secretary-General Knox in a report adopted by Resolution of the UN General Assembly on 19 July 2018, noting the interdependence of environmental protection and human rights and the universal recognition of a healthy environment as the basis for the full enjoyment of a wide range of human rights. UN General Assembly, 2018.

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**Part II**  
**The Protection of the Environment**  
**in Regional Human Rights Law**



# Introductory Reflections on the Protection of the Environment in Regional Jurisprudences

Anikó RAISZ – Enikő KRAJNYÁK

## ABSTRACT

This piece offers an introductory overview of the environmental jurisprudence of regional adjudicatory bodies, as elaborated in the forthcoming chapters of the present book. It positions the growing body of case law from the European Court of Human Rights (ECtHR), the European Committee of Social Rights (ECSR), the Court of Justice of the European Union (CJEU), the Inter-American Court of Human Rights (IACtHR), the Inter-American Commission on Human Rights (IACHR), the African Court of Human and Peoples' Rights (ACtHPR), and the African Commission on Human and Peoples' Rights (ACHPR) within the broader development of the protection of the environment in international human rights law. The study further examines the recognition of the right to a healthy environment across the different regional systems, as one of the key points of normative divergences. Rather than offering an exhaustive analysis, these introductory reflections lay the conceptual framework and identify key issues that will be examined in greater depth in the subsequent chapters.

## KEYWORDS

environment, human rights, jurisprudence, regional courts

## 1. Introduction

Environmental protection has increasingly become a central concern for human rights adjudication, as courts across regional systems are called upon to address environmental harms threatening the rights of individuals and communities. While international environmental law provides an overarching normative framework, it often lacks direct enforcement mechanisms for individuals. Regional human rights adjudicatory bodies – courts and related commissions, where prevalent – have stepped into this space, integrating substantive and procedural environmental standards into human rights guarantees while providing an avenue for individual complaints.

This chapter aims to provide a conceptual overview for understanding the environmental jurisprudence of regional human rights courts addressed in the

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forthcoming chapters. It begins by examining the role of regional human rights courts and adjudicatory bodies in addressing environmental issues (Section 2). It is followed by a comparison of the recognition of the right to a healthy environment across regional human rights regimes, which constitutes a primary analytical focal point in these jurisprudences (Section 3). The chapter concludes by identifying key divergences and convergences, setting the stage for a deeper thematic and analytical examination of environmental human rights jurisprudence in the chapters that follow (Section 4).

## 2. The Role of Regional Courts in Developing Human Rights-Based Environmental Jurisprudence

International environmental law is a dynamic field, incorporating concepts non-traditional to public international law, such as the blurring distinction between legally binding and non-binding norms, public and private standards, and international and domestic law.<sup>1</sup> In addition, international environmental law is strongly fragmented, as it has not been codified by a comprehensive treaty or set of treaties, and there is no dedicated international dispute settlement body to establish coherence in the system.<sup>2</sup> The International Court of Justice (ICJ) has occasionally adjudicated disputes with an environmental dimension, such as in the *Gabčíkovo–Nagymaros Project* (Hungary/Slovakia),<sup>3</sup> *Pulp Mills* (Argentina/Uruguay),<sup>4</sup> *Whaling in the Arctic* (Australia/Japan),<sup>5</sup> or *Certain Activities* (Costa Rica/Nicaragua),<sup>6</sup> or offered advisory opinions relevant to the protection of the environment, for instance, the *Legality of the Threat or Use of Nuclear Weapons*<sup>7</sup> and the *Obligations of States in Respect of Climate Change*.<sup>8</sup> Specialised bodies, such as the International Tribunal for the Law of the Sea (ITLOS), handled environmental aspects in the context of maritime disputes,<sup>9</sup> and the World Trade

1 Bodansky et al., 2012, p. 24.

2 Shelton, 2004, pp. 2–4; Sands et al., 2018, p. 14. For a detailed overview of the environmental jurisprudence of international courts and tribunals, see: Sobenes et al., 2022.

3 *Gabčíkovo–Nagymaros Project* (Hungary/Slovakia) [1997] ICJ Rep 7.

4 *Pulp Mills on the River Uruguay* (Argentina v Uruguay) [2010] ICJ Rep 14.

5 *Whaling in the Antarctic* (Australia v Japan: New Zealand intervening) [2014] ICJ Rep 226.

6 *Certain Activities carried out by Nicaragua in the Border Area* (Costa Rica v Nicaragua) [2015] ICJ Rep 665.

7 *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion [1996] ICJ Rep 226.

8 *Obligations of States in respect of Climate Change*, Advisory Opinion [2025] ICJ Rep (forthcoming).

9 See, for instance, *Southern Bluefin Tuna Cases* (New Zealand v Japan; Australia v Japan) (*Request for Provisional Measures*) [1999] ITLOS Rep 280; *The MOX Plant Case* (Ireland v United Kingdom) (*Request for Provisional Measures*) [2001] ITLOS Rep 89; *Land Reclamation by Singapore in and around the Straits of Johor* (Malaysia v Singapore) (*Request for Provisional Measures*) [2003] ITLOS Rep 10; *Responsibilities and Obligations of States Sponsoring Persons and Entities with respect to Activities in the Area* (Advisory Opinion) [2011] ITLOS Rep 10; *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Advisory Opinion) [2024] ITLOS Rep (forthcoming).

Organization's Dispute Settlement Body has addressed environmental regulations that intersect with international trade rules.<sup>10</sup>

At the regional level, courts have also increasingly been called upon to adjudicate cases with an environmental dimension. Here, environmental claims are interpreted through the lens of human rights, thus demonstrating how international environmental law is strongly interlinked with other regimes. Yet international human rights law itself is also fragmented: different regional systems recognise varying rights, apply distinct procedural rules, and develop divergent standards for protection. In Europe, the situation is further complicated by the existence of two courts dealing with human rights issues, the European Court of Human Rights (ECtHR), a court entirely dedicated to the interpretation of the European Convention on Human Rights (ECHR),<sup>11</sup> and the Court of Justice of the European Union (CJEU), which primarily interprets the law of the European Union (EU), *inter alia*, the Charter of Fundamental Rights of the EU.<sup>12</sup>

Human rights jurisdictions may also be differentiated according to the binding nature of their decisions. United Nations (UN) treaty bodies' decisions in individual complaint procedures are non-binding, similar to the decisions of regional human rights committees and commissions, such as the European Committee for Social Rights (ECSR), the Inter-American Commission on Human Rights (IACHR), and the Commission on Human and Peoples' Rights (ACHPR). On the other hand, courts, namely, the aforementioned ECtHR and CJEU, as well as the Inter-American Court of Human Rights (IACtHR) and the African Court of Human and Peoples' Rights (ACtHPR). The latter two may also adopt advisory opinions, which are non-binding by nature, even if they may have a significant impact on the development of the given courts' further jurisprudence and even outside their scope.

Regional forums, including human rights courts and commissions, play a particular role in shaping international standards regarding the protection of the environment. Unlike other international tribunals, such as the ICJ, human rights adjudicatory bodies are directly accessible to individuals and groups of individuals, thus giving voice to those most directly affected by environmental degradation. The interrelation of human rights and the environment has been on the agenda of international policy-makers since at least 1972, the Stockholm Conference on the Human Environment, which produced the so-called Stockholm Declaration, the first international document explicitly recognising the human rights dimension of the environment by providing that

10 See, for instance, *United States – Import Prohibition of Certain Shrimp and Shrimp Products* (DS58) [1998 / 2001] WTO DSR 3; *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products* (DS135) [2001] WTO DSR 25; *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products* (DS381) [2008] WTO DSR 98.

11 Council of Europe, *European Convention on Human Rights*, 4 November 1950, ETS 5.

12 European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, OJ C 326/391.

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.<sup>13</sup>

The further development of international environmental law, marked by the Rio Conference on Environment and Development in 1992, reinforced the interrelation of the two regimes. The Rio Declaration, for instance, significantly built on human rights, when declaring in Principle 3 that ‘[t]he right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations’, and in Principle 10 that

‘[...] each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. [...] Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.’<sup>14</sup>

In parallel, the doctrinal framework for the interrelation of human rights and the environment was developed. Dinah Shelton identified four principal and complementary approaches to characterise the relationship between the two fields, namely: (I) international environmental law incorporates and utilises human rights guarantees necessary to ensure effective environmental protection, (II) human rights law interprets internationally guaranteed human rights including an environmental dimension, (III) international environmental law and international human rights law elaborate a new right to a healthy environment, and (IV) international environmental law articulates ethical and legal duties of individuals that include environmental and human rights considerations.<sup>15</sup>

The first two approaches highlight the viability of using human rights law to address the protection of the environment, primarily through the procedures offered by UN human rights treaty bodies and regional human rights courts. However, human rights adjudicatory bodies are bound by the respective human rights treaty and may not directly interpret other sources, i.e., those of international environmental law. Nonetheless, the development of the environmental jurisprudence of human rights adjudicatory bodies can be observed in parallel with the development of international environmental law. The ECtHR adopted its first environment-related judgments in the 1990s, marked by *López Ostra v. Spain* (1994), establishing that severe environmental

13 United Nations, *Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration)*, UN Doc A/CONF.48/14/Rev.1 (1973), Principle 1.

14 United Nations, *Rio Declaration on Environment and Development*, UN Doc A/CONF.151/26 (Vol. I) (1992), Principle 10.

15 Shelton, 2006, p. 130.

pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health,<sup>16</sup> thus recognising the negative impact of environmental degradation on the right to private and family life (Article 8 of the ECHR), which has been confirmed since then on many occasions,<sup>17</sup> and extended this approach to other substantive rights, in particular, the right to life (Article 2).<sup>18</sup> The ECtHR developed its environmental jurisprudence by applying the evolutive interpretative approach, allowing the Court to interpret the Convention in light of changing societal conditions and present-day circumstances, rather than being strictly limited to the text of the Convention and its intended meaning at the time of its drafting in 1950. As noted above, the interrelation of human rights and the protection of the environment had not yet been recognised at that time; therefore, reference to the environment cannot be found in the major human rights treaties adopted in the 1950s and 1960s, such as the ECHR at the regional level, or in the Universal Declaration of Human Rights (UDHR),<sup>19</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>20</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>21</sup> at the universal level. Nonetheless, as elaborated in the forthcoming chapters, the ECtHR has continued to keep pace with the developments in international environmental law by considering the Convention as a 'living instrument'. The ECtHR's responsiveness to current challenges of international environmental law, marked by the triple planetary crisis,<sup>22</sup> culminated in the adoption of the judgement in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* in April 2024, recognising the link between the negative effects of climate change and the violation of the right to respect for private and family life for the first time and as the first regional human rights court to do so.<sup>23</sup>

Compared with the ECHR, the Charter of Fundamental Rights of the EU was drafted and adopted in the 2000s, by the time the interrelation of human rights and the environment was already recognised at the international and regional levels, as noted below. The impact of the international legal framework and jurisprudence clearly had an impact on the drafters of the Charter, as Article 37 provides that a high

16 *López Ostra v. Spain*, 1994, para. 51.

17 See, for instance, *Taskin and Others v. Turkey*, 2004; *Fadeyeva v. Russia*, 2005; *Tatar v. Romania*, 2009.

18 See, for instance, *Öneryildiz v. Turkey*, 2004; *Budayeva and Others v. Russia*, 2000; *Özel and Others v. Turkey*, 2015.

19 United Nations, *Universal Declaration of Human Rights*, 10 December 1948, UN Doc A/RES/217(III).

20 United Nations, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

21 United Nations, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

22 United Nations Framework Convention on Climate Change (UNFCCC), What is the Triple Planetary Crisis?.

23 *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 2024, para. 519.

level of environmental protection shall be integrated in the policies of the Union,<sup>24</sup> although it does not imply the recognition of environmental rights either.<sup>25</sup>

The Inter-American Court of Human Rights has also progressively developed its environmental jurisprudence in parallel with the evolution of international environmental standards, culminating in the judgements of *Lhaka Honhat v. Argentina*<sup>26</sup> and *La Oroya v. Peru*,<sup>27</sup> both establishing the violation of the right to a healthy environment under Article 26 of the American Convention on Human Rights (ACHR).<sup>28</sup> The Convention, adopted in 1969, integrated economic, social and cultural rights into Article 26 ('progressive development'), which was further elaborated in the Protocol of San Salvador, adopted in 1988.<sup>29</sup> In line with the strengthened international legal framework of the protection of the environment, the Protocol recognised the right to a healthy environment in Article 11. Similarly, the African Charter of Human and Peoples' Rights (ACHPR), adopted in 1981, enshrines the right of all peoples to a general satisfactory environment favourable to their development, and thus opened the door for environmental claims before the African Commission and the ACtHPR.

In light of the above, the following conclusions can be drawn. First, the development of international environmental law has profoundly shaped the evolution of human rights jurisprudence. Early instruments, such as the Stockholm Declaration of 1972, established the first conceptual link between environmental protection and human well-being, which was reflected in the human rights treaties adopted afterwards, namely the African Charter and the Protocol of San Salvador. By the 1990s, the consolidation of key principles in the Rio Declaration provided a normative framework that resonated strongly with the mandates of regional human rights courts, which began to develop their environmental jurisprudence during this decade. More recently, climate litigation<sup>30</sup> has further deepened this cross-fertilisation, with courts drawing upon the Paris Agreement of 2015<sup>31</sup> and related climate norms to ground obligations under human rights treaties.

Furthermore, regional human rights instruments have become pivotal in bridging the gap between international environmental law and enforceable rights. By providing accessible fora for individual petitions, courts have transformed abstract

24 Charter of Fundamental Rights of the European Union, *ibid.*, Article 37.

25 Quirico, 2021, p. 41.

26 *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, 2020.

27 *La Oroya Population v. Peru*, 2023.

28 Organization of American States (OAS), 1969, American Convention on Human Rights (Pact of San José, Costa Rica).

29 Organization of American States (OAS), 1988, Protocol of San Salvador: Protocol to the American Convention on Human Rights on Economic, Social and Cultural Rights.

30 Climate change litigation is defined as cases brought before judicial and quasi-judicial bodies that involve material issues of climate change science, policy or law. A sub-category of climate change litigation is human rights-based litigation, comprising cases argued on human rights grounds before human rights adjudicatory bodies. See: Setzer and Higham, 2025, p. 8; Savaresi and Auz, 2019, p. 246.

31 United Nations, 2015, Paris Agreement. Adopted 12 December 2015, entered into force 4 November 2016. United Nations Treaty Series, vol. 3156, p. 3.

environmental principles into tangible standards of States' obligations. The jurisprudence, as elaborated in the forthcoming chapters, demonstrates how classic human rights guarantees – such as the rights to life, private and family life, property, culture – can be interpreted in light of environmental challenges, thereby reinforcing the normative force of international environmental law. Although fragmentation remains a challenge, the jurisprudence of regional human rights bodies has consolidated environmental protection within the international human rights framework.

### **3. The Right to a Healthy Environment in a Comparative Perspective**

The recognition of the right to a healthy environment significantly varies across regional human rights systems, reflecting both historical and socio-cultural differences. While some systems explicitly enshrine this right within their treaties or charters, others rely on an implicit understanding, interpreting civil and political rights in light of the developing international environmental standards. Examining these differences is crucial not only for understanding the current landscape of environmental human rights protection but also for identifying trends toward convergence and cross-fertilisation among regional jurisdictions. In this section, the focus will be on the European, Inter-American, and African systems, with an outlook towards other regional frameworks, highlighting how each has approached the right to a healthy environment and the implications for both normative and practical adjudication.

#### ***3.1. Right to a Healthy Environment in European Frameworks***

As noted above, the principal human rights treaty in Europe, the ECHR, was adopted in 1950, prior to the emergence of a coherent international environmental legal framework. Consequently, the Convention does not contain an explicit reference to the protection of the environment or the right to a healthy environment itself. Nevertheless, as analysed in the forthcoming chapters, the ECtHR has gradually addressed environmental issues by interpreting existing rights, such as the right to life (Article 2), the right to respect for private and family life (Article 8), the right to property (Article 1 of Protocol 1), the right to a fair trial (Article 6), or the right to an effective remedy (Article 13).<sup>32</sup>

In parallel with the development of the ECtHR's environmental jurisprudence, proposals for the recognition of the right to a healthy environment have been on the agenda in the Parliamentary Assembly of the Council of Europe since the end of the 1990s. Remarkably, in its Recommendation 1431 (1999), titled 'Future action to be taken by the Council of Europe in the field of environment protection', the Parliamentary Assembly recommended that the Committee of Ministers instruct the appropriate bodies within the Council of Europe to examine the feasibility of

32 Raisz and Krajnyák, 2022, pp. 79–114.

- a. developing, possibly through a European charter for the environment, general obligations of states to apply the precautionary principle and promote sustainable development, protect the environment and prevent transfrontier pollution;
- b. drafting an amendment or an additional protocol to the European Convention on Human Rights concerning the right of individuals to a healthy and viable environment;

and to examine the possibilities of developing a European charter for the environment.<sup>33</sup>

Furthermore, in Recommendation 1614 (2003), titled ‘Environment and human rights’, the Assembly explicitly called the Committee to draw up an additional protocol to the ECHR recognising individual procedural rights intended to enhance environmental protection based on the Aarhus Convention.<sup>34</sup> In addition, the Assembly also addressed the governments of member states, calling for the recognition of the ‘human right to a healthy, viable and decent environment’, including States’ obligation to protect the environment in national laws, preferably at the constitutional level.<sup>35</sup> Although the two recommendations were adopted a few years apart, a slightly different approach can be observed in the latter. Namely, it emphasised the procedural aspect of the right to a healthy environment, while also calling on member states to recognise the right in their domestic laws. In addition, the concept of an additional protocol on the right was integrated in the title of the recommendation, which certainly holds symbolic importance as a potential avenue for incorporating the right into the ECHR. On the other hand, it seemingly set aside the idea of developing a European charter for the environment and dedicated more attention to the procedural aspects, which could be explained by the entry into force of the Aarhus Convention in 2001.<sup>36</sup>

Recommendation 1885 (2009), titled ‘Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment’ recalled the previous two recommendations, and embraced the significant development of the ECtHR’s environmental case law in the recent period. Furthermore, the Assembly explicitly reaffirmed its commitment to the recognition of the right to a healthy environment, not only as a fundamental right but also as a duty of society as a whole and each individual in particular to pass on a healthy and viable environment to future generations. In light of this, it recommended the Committee of Ministers draw up an additional protocol to the ECHR, recognising the right to a healthy and viable environment.<sup>37</sup> Although Recommendation 1885 (2009) did not bring a novel

33 Parliamentary Assembly of the Council of Europe, Recommendation 1431 (1999), para. 11.2.

34 UNECE, 1998, Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention).

35 Parliamentary Assembly of the Council of Europe, Recommendation 1614 (2003), para. 9.2.

36 The Aarhus Convention entered into force on 30 October 2001.

37 Parliamentary Assembly of the Council of Europe, Recommendation 1885 (2009), para. 10.1.

approach, as its recommendations have already been proposed in 1999, it demonstrates the Assembly's strong commitment to keep the issue on the agenda.

The current stage in the progress of the recognition of the right to a healthy environment in the Council of Europe is marked by Resolution 2396 (2021) and Recommendation 2211 (2021). The former document, titled 'Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe', is noteworthy in proposing a comprehensive approach to integrate environmental rights into the treaty system. First, the Assembly proposed to build and consolidate a legal framework to anchor the right to a safe, clean, healthy and sustainable environment, based on the UN guidance regarding the issue. This proposal was implicitly based on United Nations' studies and resolutions, principally on the Framework Principles on Human Rights and the Environment, elaborated by the UN Special Rapporteur John H. Knox and embraced by the Human Rights Council in 2018, which addressed the human right to a safe, clean, healthy and sustainable environment.<sup>38</sup> Furthermore, it is significant that the Human Rights Council adopted Resolution 48/13 on the human rights to a clean, healthy and sustainable environment on 8 October 2021, a few weeks after the Parliamentary Assembly's Resolution 2396 (2021), adopted on 29 September 2021, thus, the latter resolution was certainly timely and reflected the tendencies of its time.

Second, the Assembly proposed that the member states support multilateral efforts concerning the explicit recognition and protection of the right to a safe, clean, healthy and sustainable environment through international and European law. This proposal is strongly intertwined with the third recommendation, namely to participate in a political process under the aegis of the Council of Europe, aiming to prepare legally binding and enforceable instruments, an additional protocol to the ECHR, and an additional protocol to the European Social Charter (ESC).<sup>39</sup> In addition to the ECHR, the Charter is a major human rights treaty in the Council of Europe, in the field of economic, social and cultural rights.<sup>40</sup> Adopted in 1961 and revised in 1996, the Charter also enshrines rights related to the protection of the environment, such as Article 11 (right to protection of health), but not explicit environmental rights. The novel proposal of the Assembly to adopt an additional protocol to the ESC as well, would primarily complement the complaint mechanisms available in the Council of Europe, as it would enable non-governmental organizations to lodge collective complaints on environmental issues, which is relatively limited in the ECtHR's mechanism

38 United Nations Human Rights Council, A/HRC/37/59.

39 Parliamentary Assembly of the Council of Europe, Resolution 2396 (2021), para. 14.3.

40 Council of Europe, 1961, European Social Charter. See also: Council of Europe, 1996, European Social Charter (Revised).

that is open for individuals, groups of individuals or non-governmental organizations claiming to be the victim of a violation.<sup>41</sup>

The idea of the adoption of two separate protocols was also embraced in Recommendation 2211 (2021), holding the same title as Resolution 2396 (2021). Recommendation 2211 (2021) went one step further by providing the proposed text for an additional protocol to the ECHR on the right to a safe, clean, healthy and sustainable environment.<sup>42</sup> Considering that the draft additional protocol has not been adopted at the time of the conclusion of the present chapter, the next paragraphs will be dedicated to a brief analysis of the proposal as the only source of the recognition of environmental rights in the Council of Europe.

The Preamble builds on Principle 1 of the Stockholm Declaration recognising the interrelation between human rights and the environment; embraces the ecocentric aspect of environmental rights by taking into account the intrinsic value of nature; and integrates intergenerational equity, referring to the duties and obligations of present and future generations. Article 1 provides the definition for the right to a safe, clean, healthy and sustainable environment, which relates to ‘the right of present and future generations to live in a non-degraded, viable and decent environment that is conducive to their health, development and well-being.’<sup>43</sup> The definition is remarkable, as the right is not explicitly defined in the major instruments enshrining it, such as the United Nations General Assembly (UNGA) Resolution 76/300,<sup>44</sup> the ACtHPR, or the Protocol of San Salvador.

Furthermore, the draft protocol sets out the key principles in Articles 2–4, such as the principle of transgenerational responsibility, equity and solidarity; the principle of environmental non-discrimination on account of belonging to a particular generation, also with a view on the vulnerable people; and the principles of prevention, precaution, non-regression and *in dubio pro natura*.<sup>45</sup>

The draft protocol further distinguishes between the substantive right to a safe, clean, healthy and sustainable environment (Article 5), and procedural rights, such as access to information, participation in the decision-making process, the right of access to justice, and the right to an effective remedy (Article 6) – essentially the procedural rights established in Principle 10 of the Rio Declaration and the Aarhus Convention. The draft protocol also provides the inherent limitations of the rights set forth therein, such as legality, necessity, national security, territorial integrity, public

41 See: Article 34 of the ECHR: ‘The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.’

42 Parliamentary Assembly of the Council of Europe, Recommendation 2211 (2021), Appendix – The proposed text for an additional protocol to the European Convention on Human Rights, concerning the right to a safe, clean, healthy and sustainable environment.

43 Recommendation 2211 (2021), *ibid.*, Art. 1.

44 United Nations General Assembly, 2022, A/RES/76/300.

45 Recommendation 2211 (2021), *ibid.*, Arts. 2–4.

safety, the prevention of disorder or crime, the protection of health, or the protection of the rights and freedoms of others (Article 7). In addition, the text provides no possibility for derogation from the provisions under Article 15 of the ECHR (Article 8), and reservation under Article 57 of the ECHR (Article 9), both with the exception of Article 6.b (the right to be consulted in advance in order to be heard by the decision-making bodies regarding the authorisation and development of a specific project, programme or policy). Thus, the draft protocol clearly sets high standards of environmental protection through the guarantees of non-derogability and non-reservability, as well as through the environmental standards integrated therein, such as intergenerationality and ecocentrism.

The legal status of the recommendation is currently non-binding, as it has not been adopted in the form of an additional protocol.<sup>46</sup> Nonetheless, it may serve as a source of inspiration for the Court when considering the relevant sources of international or European law. For instance, in the recent *Verein KlimaSeniorinnen* judgement referred to above, the Court undertook an extensive examination of the legal framework concerning climate change and human rights, noting in particular Recommendation 2211 (2021) and Resolution 2396 (2021), as evidence of the growing consensus within the Council of Europe on the need to integrate human rights obligations into states' responses to climate change.<sup>47</sup> In addition, in the concurring opinion to *Pavlov and Others v. Russia*, Judge Serghides addressed the ongoing discussion on the recognition of the right in the ECHR, arguing for the need to adopt an additional protocol on a substantive right to a healthy, clean, safe and sustainable environment, which, according to the Judge, would provide broader and more complete Convention protection of the potential right secured by the Court. The Judge also noted that the lack of a formal legal basis had led the Court to reject several applications seeking a general protection of the environment.<sup>48</sup>

Thus, it can be argued that the adoption of an additional protocol to the ECHR would be a crucial step in consolidating the emerging consensus and providing a stronger normative foundation for addressing the protection of the environment through human rights law in Europe, particularly given that the European human rights regime remains the only regional human rights system without a formal legal basis for environmental rights. In this regard, EU law is no exception, as it does not enshrine environmental rights either, as elaborated above. Nevertheless, the adoption of an additional protocol would certainly impact adjudication before the CJEU, as the Charter itself recognises that the rights enshrined therein result from the constitutional traditions and international obligations common to the Member States, and the ECHR, as well as the case law of the CJEU and the ECtHR.<sup>49</sup> Furthermore, the Treaty on European Union, which recognises that the Charter has the same legal

46 For a detailed analysis on the adoption of the additional protocol on the right to environmental rights and the current guarantees of the ECtHR, see: Kobylarz, 2023; Alasgarova, 2024.

47 *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 2024, paras. 189–191.

48 *Pavlov and Others v. Russia*, 2022, Concurring opinion of Judge Serghides, paras. 18–22.

49 Charter of Fundamental Rights of the European Union, *ibid.*, Preamble.

force as the EU treaties, provides that the Union shall accede to the ECHR (Article 6.2), and that fundamental rights, as guaranteed by the ECHR, shall constitute general principles of the Union's law (Article 6.3).<sup>50</sup> While the EU accession to the ECHR was halted by Opinion 2/13 of the CJEU, and is further complicated by diverging jurisdictions in the field of environmental protection as well,<sup>51</sup> the adoption of an additional protocol would nonetheless exert an indirect impact on EU law, as it would shape the interpretative framework applied by the ECtHR and thereby influence the development of fundamental rights standards within the EU.

### ***3.2. The Right to a Healthy Environment in the Inter-American and African Human Rights Frameworks***

As noted above, the Inter-American and the African human rights frameworks both recognise the right to a healthy environment, although in a different form. The Inter-American system did not provide for the right in the first human rights treaty, the ACHR, but it was included in the treaty system in 1988 with the adoption of an additional protocol to the Convention, the Protocol of San Salvador. The Protocol enshrines economic, social and cultural rights, such as the right to work and related rights (Articles 6–9), the right to health (Article 10), the right to a healthy environment (Article 11), the right to food (Article 12), the right to education (Article 13), the right to the benefits of culture (Article 14), the right to the formation and the protection of families (Article 15), the rights of vulnerable groups, such as children (Article 16), the elderly (Article 17), and the handicapped (Article 18).<sup>52</sup>

The structure of human rights treaties within the Organization of American States (OAS) is comparable to that of the Council of Europe, as both systems codify civil and political rights and economic, social and cultural rights in separate, although related treaties. However, certain differences can be drawn between the two systems in this regard. First, the form of the two treaties is different, as economic, social and cultural rights are enshrined in a protocol to the ACHR in the OAS, thus they are integrated into the Convention, whereas the European Social Charter is not a protocol or other instrument supplementing the ECHR. Consequently, there are two separate complaint mechanisms in the European framework, that of the ECtHR and that of the ESCR. On the other hand, given that the Protocol of San Salvador amends the ACHR, it may be interpreted by the Inter-American Court, thanks to the progressive interpretation of Article 26 of the ACHR. Namely, Article 19(6) of the Protocol provides the justiciability of two rights established therein, the right to education and the right

50 European Union, Treaty on European Union, 7 February 1992, OJ C 191/1 (as amended by the Treaty of Lisbon 13 December 2007, OJ C 306/1), Art. 6.

51 See, for instance, the diverging standards on the locus standi of non-governmental organizations in the *Carvalho* (CJEU) and *Verein KlimaSeniorinnen* (ECtHR) cases. Krajnyák, 2024. See also: *Armando Carvalho and Others v. European Parliament and Council of the European Union*, 2021; *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, *ibid.*

52 Protocol of San Salvador: Protocol to the American Convention on Human Rights on Economic, Social and Cultural Rights, *ibid.*

of workers to organise trade unions and join the union of their choice.<sup>53</sup> However, given that it does not explicitly exclude the justiciability of the other rights, the Court established the justiciability of economic, social and cultural rights through Article 26 of the Convention in *Lagos del Campo v. Peru*, building on the interdependence and indivisibility of the civil and political rights, and the economic, social and cultural rights.<sup>54</sup> This approach was extended to the right to a healthy environment as well, and confirmed in the abovementioned *Lhaka Honhat* and *La Oroya* judgements.<sup>55</sup>

The right to a healthy environment was extensively interpreted by the IACtHR in *Advisory Opinion OC-23/17*. In the opinion, the Court pronounced that the right, as enshrined in Article 11 of the Protocol, is included among the economic, social and cultural rights protected by Article 26 of the ACHR.<sup>56</sup> Furthermore, the Court recognised that the right to a healthy environment has both individual and collective aspects, and it embraces a universal value that is owed to both present and future generations.<sup>57</sup> Furthermore, the Court summarised States' obligations under the right, namely: (a) guaranteeing everyone, without any discrimination, a healthy environment in which to live; (b) guaranteeing everyone, without any discrimination, basic public services; (c) promoting environmental protection; (d) promoting environmental conservation, and (e) promoting improvement of the environment.<sup>58</sup> The Court also noted that the right to a healthy environment as an autonomous right differs from the environmental content of other rights, such as the rights to life, personal integrity, private life, health, water, food, housing, participation in cultural life, property, and the right not to be forcibly displaced.<sup>59</sup> In addition, the Court considered the vulnerability aspect of the right to a healthy environment, thus that the effect of environmental degradation may be felt with greater intensity by certain groups in vulnerable situations, such as indigenous peoples, children, people living in extreme poverty, minorities, and people with disabilities.<sup>60</sup>

Consequently, in light of the above, it can be concluded that, in comparison with the European framework, where the Court has never provided a comprehensive understanding of the protection of the environment in the European human rights regime, the Inter-American Court has developed a coherent doctrine on integrating environmental protection into the human rights framework. However, once adopted,

53 Article 19(6) reads as follows: 'Any instance in which the rights established in paragraph a) of Article 8 and in Article 13 are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Art. 44 through 51 and 61 through 69 of the American Convention on Human Rights.'

54 *Lagos del Campo v. Peru*, 2017, paras. 141–154.

55 Estrada Vargas, 2024.

56 *Advisory Opinion OC-23/17, The Environment and Human Rights*, 2017, para. 57.

57 *Advisory Opinion OC-23/17*, *ibid.*, para. 59.

58 *Advisory Opinion OC-23/17*, *ibid.*, para. 60.

59 *Advisory Opinion OC-23/17*, *ibid.*, paras. 63–66.

60 *Advisory Opinion OC-23/17*, *ibid.*, para. 67.

the additional protocol to the ECHR will be comparable with the Inter-American standards, as the draft protocol also embraces a complex approach to the right to a healthy environment, by emphasising the individual and collective dimension of the right, intergenerational equity, and vulnerability.

The African human rights system also recognises the right to a healthy environment in Article 24 of the ACHPR, as the first and so far, only binding and enforceable regional human rights treaty that explicitly enshrines this right. The specificity of the ACHPR (also known as the Banjul Charter) is that it guarantees human rights in a comprehensive way, equally providing individual rights (Articles 1–14), as well as group rights (Articles 15–24) in the treaty text.<sup>61</sup> Furthermore, one of the protocols to the Banjul Charter, the so-called Maputo Protocol on the Rights of Women in Africa, adopted in 2003, also protects the right to a healthy and sustainable environment, providing that States Parties shall take appropriate measures to ensure greater participation of women in the protection of the environment and the sustainable use of natural resources; promote research and investment in new and renewable energy sources and appropriate technologies, and facilitate women’s access to, and participation in their control; protect and enable the development of women’s indigenous knowledge systems; regulate the management of domestic waste; and ensure that proper standards are followed for the storage, transportation and disposal of toxic waste.<sup>62</sup>

The African Court had a limited opportunity to provide a comprehensive interpretation of the right to a healthy environment; nevertheless, the request for an advisory opinion submitted in May 2025 will certainly allow the Court to elaborate on its understanding of the environmental standards of the African human rights regime.<sup>63</sup> Based on the above, one can conclude that the African human rights regime provides a solid normative framework for the protection of the environment in human rights law, which explicitly recognises the collective dimension of the right to a healthy environment, as well as the vulnerability aspect of women, as enshrined in the Maputo Protocol.

### ***3.3. The Right to a Healthy Environment in Other Regional Human Rights Systems***

In addition to the ECHR, the ACHR, and the ACHPR, human rights instruments have also been adopted in other regions of the world. However, a key difference between the above analysed three systems and the ones presented in this subchapter is that in the latter case, these instruments may not be binding or may not be enforceable in procedures before human rights adjudicatory bodies. Nonetheless, given that they guarantee the rights of millions of people throughout the Middle East and Southeast Asia, these human rights instruments are also worth a brief summary.

61 See: Evans and Murray, 2008, pp. 171–288.

62 African Union, 2003, Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, Art. XVIII.

63 See: Request for an advisory opinion on the human rights obligations of African states in addressing the climate crisis. See also: Suedi, 2025.

The Arab Charter on Human Rights, adopted in 2004 under the aegis of the League of Arab States, is the major human rights treaty for Arab states. The Charter includes provisions for civil and political rights, as well as economic, social and cultural rights. Among the rights belonging to the second group, Article 38 provides the right of every person to an adequate standard of living for himself and his family, which ensures well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment. The provision further sets out that States Parties shall take the necessary measures commensurate with their resources to guarantee these rights.<sup>64</sup> This provision demonstrates the progressive approach of the treaty drafters, as they included the right to a healthy environment, as well as other related guarantees, building on the then-recent general comments of the Committee on Economic, Social and Cultural Rights (CESCR) on the right to an adequate standard of living, including adequate food and water, and the right to the enjoyment of the highest attainable standard of physical and mental health.<sup>65</sup> On the other hand, the provision also embraces certain values of the Islam, as referred to in the Preamble,<sup>66</sup> such as the collective obligation for public welfare and the responsibility for future generations.<sup>67</sup> However, despite the high standards guaranteed in the Charter, the treaty does not provide for an enforcement mechanism of individual petitions; thus, its provisions are not interpreted in detail either.

Furthermore, the ASEAN Human Rights Declaration, adopted as a soft law document in 2012 within the framework of the Association of Southeast Asian Nations (ASEAN), also integrates the right of every person to a safe, clean and sustainable environment under the right to an adequate standard of living for himself or herself and his or her family, along with the right to adequate and affordable food, freedom from hunger and access to safe and nutritious food; the right to clothing; the right to adequate and affordable housing; the right to medical care and necessary social services; the right to safe drinking water and sanitation (Article 28). In addition, Article 35 enshrines the right to development, which integrates the concept of sustainable development by providing that '[t]he right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations.'<sup>68</sup>

This definition clearly drew inspiration from the Brundtland Commission's report titled 'Our Common Future', which established the definition of sustainable development, as provided above.<sup>69</sup> The ASEAN Human Rights Declaration is, therefore,

64 League of Arab States, 2004, Arab Charter on Human Rights, Art. 38.

65 CESCR, E/C.12/1999/5, 1999; CESCR, E/C.12/2000/4., 2000; CESCR, E/C.12/2002/11, 2002.

66 Arab Charter on Human Rights, *ibid.*, Preamble.

67 Said, 1979, pp. 65–68.

68 See: Association of Southeast Asian Nations, 2012, ASEAN Human Rights Declaration, Arts. 28 and 35.

69 Report of the World Commission on Environment and Development: Our Common Future, 1987, para. 27. The Report defines sustainable development as a development that 'meets the needs of the present without compromising the ability of future generations to meet their own needs'.

the only human rights instrument – from the scope of either universal or regional documents – explicitly embracing the concept of sustainable development, and thus integrating intergenerational equity and vulnerability. The ASEAN Declaration is a soft law document, which, similar to the Arab Charter, lacks an enforcement mechanism. Nevertheless, it has a certain normative value for the Southeast Asian nations, as the only comprehensive human rights document in the region.

Notwithstanding the legal status of the Arab Charter and the ASEAN Declaration, they bring relevant contributions to the development of the concept of the right to a healthy environment. Both instruments reflect a progressive approach by demonstrating openness to cross-regime influence, allowing them to embody a comprehensive understanding of the protection of the environment in human rights law. The environmental provisions of these instruments imply that there is an emerging consensus across different regional human rights regimes on the interrelation of human rights and the protection of the environment, and the recognition of the right to a healthy environment as well.

#### **4. Concluding Remarks**

This chapter has addressed the role of regional human rights courts in incorporating environmental protection into human rights jurisprudence. We examined how adjudicatory bodies respond to current environmental challenges and how they integrate substantive and procedural environmental standards into existing human rights frameworks. The chapter has also compared the recognition of the right to a healthy environment across regional systems and the specificities of the concept in the different regimes. By providing this conceptual overview, the chapter provides the foundation for the following chapters, which will explore thematic developments and cross-regime influences in the jurisprudence of regional courts. Ultimately, the analysis underscores the evolving and increasingly central role of regional human rights jurisprudence at the intersection of human rights and environmental law.

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# Environmental Rights and Article 2 of the ECHR: A Focus on Central and Eastern European Jurisprudence

Maia BITADZE

## ABSTRACT

Living in the 21st century means living in an era filled with new opportunities and novel challenges. This era has brought humanity economic development, industrial growth, and technological progress, resulting in overall improved well-being. However, this same progress is closely linked to harmful impacts on the human environment, such as daily exposure to harmful anthropogenic influences, soil and air pollution, water contamination and scarcity, resource depletion, deforestation, loss of biodiversity, and other natural and human-made risks exacerbated by climate change and industrial expansion. People are particularly vulnerable in urban and industrial zones, where the living environment becomes unnatural and unsuitable for humans as biological beings. While the right to life as a fundamental principle in human rights law was traditionally understood as protection against arbitrary deprivation of life, in the contemporary context, this right has evolved and encompasses not only the protection of existence in a physical sense but also the quality under which life is lived. Therefore, it is crucial that each state, at both the national and international levels, creates legislative and enforcement systems that allow individuals to benefit from the economic advancements of the 21st century while also being protected from the various factors contributing to environmental pollution and degradation. As such, environmental protection must be viewed as a critical aspect of ensuring the right to life, necessitating proactive and sustained efforts at all levels of governance. The effective administration of justice is of paramount importance in this context, particularly regarding the jurisprudence of the European Court of Human Rights (ECtHR). Through the application of the “*par ricochet*” principle, the ECtHR has firmly established that a contaminated environment adversely affects human health, poses a significant risk to life, and consequently constitutes a violation of Article 2 of the European Convention on Human Rights – the right to life.

## KEYWORDS

right to life, human environment, anthropogenic, climate change, biodiversity loss

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## 1. Introduction

The 1945 Charter of the United Nations<sup>1</sup> (The UN Charter) marked the beginning of modern international human rights law. Only decades later was the international framework established, within which international human rights law was used to address environmental issues. The development of international human rights laws pre-dates international environmental law and provides a rich source of comparative experience.<sup>2</sup> Nowadays, many international instruments explicitly or implicitly recognise the link between environmental degradation and individuals' ability to enjoy their fundamental human rights. A 1968 United Nations General Assembly resolution stated that the deteriorating state of the human environment affects 'physical, mental, and social well-being, dignity, and the ability to enjoy fundamental rights.'<sup>3</sup> The name of the 1972 Stockholm Conference – "On the Human Environment" – directly indicates that the primary goal of international cooperation in the field of environmental protection is the protection of humans themselves.<sup>4</sup> The first principle of the 1992 Rio Declaration establishes that individuals have the right to be at the centre of sustainable development and that 'They are entitled to a healthy and productive life in harmony with nature'.<sup>5</sup>

The European Convention on Human Rights (ECHR)<sup>6</sup> entered into force in 1953 with the aim of protecting human rights and fundamental freedoms throughout Europe, marking a significant advancement in the evolution of international law. It created a supranational body, the European Court of Human Rights (ECtHR), to oversee member states' compliance with their obligations under the Convention. While the ECHR does not contain explicit articles specifically addressing environmental rights, individuals may appeal to the ECtHR if they believe that their rights – including those implicitly related to a healthy environment – have been violated by a member state.

Although all these documents emphasise the close relationship between human health, well-being, and the environment, they do not directly reference the right to live in a healthy environment. However, the right to a clean, healthy, and sustainable environment was directly and universally recognized by the UN General Assembly in July 2022.

The strong connection between human rights and environmental protection is clear: a healthy environment is a prerequisite for the enjoyment of human rights, while environmental pollution has the potential to negatively affect these rights. Environmental pollution influences both individual and collective rights and can lead

1 United Nations, 1945.

2 Sands et al., 2012, p. 776.

3 United Nations General Assembly, 1968.

4 United Nations, 1972.

5 United Nations, 1992.

6 Council of Europe, 1950.

to violations of civil, political, economic, and social rights. Linking environmental protection with human rights aims to protect individuals from the negative impacts of the environment to the extent that this protection safeguards human rights. Global environmental challenges, such as pollution, climate change, global warming, rising sea levels, natural disasters, wildfires, earthquakes, and floods, can lead to violations of human rights, including the rights to life, health, respect for private and family life, and property. On 9 April 2024, the ECtHR announced a historic decision by connecting environmental rights and climate change. In the case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, for the first time, the Court ruled that the negative impact of climate change on life, health, and prosperity violated the ECHR.<sup>7</sup>

As of today, the main causes of environmental degradation are population growth, increasing urbanisation, and new technologies. These factors themselves are not inherently negative; rather, associated factors such as the need for more food production, increased consumption of natural resources, and greater use of natural spaces often result in negative outcomes. Thus, human environmental problems are divided into two main pillars. In the first, the focus is on direct changes in the natural environment and the deterioration of its elements (e.g., air and water pollution, soil degradation, etc.), while in the second, the primary concern is the physical and mental health of humans, as well as their living and working conditions. In the early stages of the formation of international environmental law, technological development was viewed as a contributing, and, consequently, a negative factor in significant changes to the natural environment caused by increasing industrialisation. However, special emphasis was also placed on the potential of technology to benefit the environment. While rapid industrialisation and the use of technologies, primarily in high-income countries, have significantly damaged both developed and developing nations, the problem was not the existence of new technologies but rather in their incorrect and uncontrolled use. Today, the development of environmentally friendly technologies has become a prerequisite for sustainable development.

As it currently stands, on one side of the scale is the human being and their prosperity, which requires advancements in urban, industrial, and transportation sectors, as well as increased productivity in forestry, agriculture, and fishing; on the other side of the scale is the natural environment, which is under increasing pressure from these human activities. The future of both humanity and the planet depends on our ability to find sustainable solutions that address the needs of both. However, when environmental interests are considered and proper planning is carried out in the process of economic development, population growth, increasing urbanisation, and technological development do not pose a threat to the natural environment and human lives.

Considering the main challenges to the natural environment and human health, it is crucial to understand in depth the reasons for and the nature of a transformative

<sup>7</sup> *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, No. 53600/20, Judgement of 9 April, 2024.

world. Environmental challenges such as pollution, toxic exposure, climate change, biodiversity loss, lack of ecosystem services, industrial accidents, and natural disasters pose constant threats in daily life. Despite the emergence of other global crises, including wars, COVID-19, financial instability, energy shortages, and refugee crises, environmental protection and climate change remain pressing concerns worldwide. Law and jurisprudence alone cannot safeguard individuals from the consequences of environmental degradation; however, the development of justice, adequate legal frameworks, and efficient enforcement – focusing on vulnerable groups and cross-border cooperation in the field of environmental protection – can further develop a strong legal baseline.

The interrelation between human rights and environmental protection is a critical area of concern in contemporary international law. The connection between the idea that adequate protection of the environment is essential to the enjoyment of basic human rights and that every person has the right to live in a healthy environment has increasing practical applications each year. As environmental degradation and climate change pose increasing threats to human health, the need for a legal framework that addresses these issues is more significant than ever. Additionally, the United Nations and the Council of Europe also meaningfully contribute to strengthening the right to live in a healthy environment. The ECtHR, within the framework of the ECHR, has recognised the right to live in a healthy environment in many cases. Even though the Convention itself does not explicitly cover specific environmental rights, the Court has developed an indirect way of protection (*par ricochet*)<sup>8</sup> in its case law to address environmental matters.

This article examines the role of Article 2 of the ECHR – which guarantees the right to life – in addressing environmental issues, with a particular focus on European case law. Through an analysis of key cases, it explores how the ECtHR has developed the conceptual relationship between environmental protection and the individual or collective right to life.

## **2. Development of Judicial Practice of the European Court of Human Rights in the Field of Environmental Protection and Article 2**

Legal doctrine traditionally classifies human rights and freedoms according to their time of origin, identifying three generations of human rights. The idea of the three generations of human rights was first expressed by French scholar Karel Vasak.<sup>9</sup> The first generation includes civil and political rights, which originated from bourgeois revolutions; the second generation consists of socioeconomic rights, rooted in

8 *Par ricochet* principle is not explicitly stated in the ECHR; it is a coherent addition of the broader principles governing state responsibility and the protection of human environmental rights. The Court of Human Rights has recognized this principle in multiple cases, imposing environmental liability on states for the consequences of their actions or omissions.

9 Vašák, 1977.

socialist ideologies; and the third generation, the so-called collective rights, reflects the demands raised by developing countries. In recent years, the view that so-called collective or solidarity rights belong to peoples and nations – and should be considered their inherent rights – has gained increasing recognition. Several approaches have emerged in the development of human environmental rights, concerning the methods for interpreting and classifying environmental rights within specific groups. Scholars suggest that environmental rights may be interpreted either as civil and political rights or as economic, cultural, and social rights. Civil and political rights, by their nature, also regulate environmental policy. Exercising rights such as the right to association, freedom of expression, personal liberty, equality, and the right to fair compensation for damage directly enables individuals or groups to take appropriate action to prevent environmental harm. Rights such as the right to life and property, access to fair justice, and freedom of information also play a significant role in the realisation of environmental rights, as they define the social framework in which environmental issues may arise. While civil and political rights directly ensure public participation in environmental protection processes, second-generation rights – economic, social, and cultural rights – essentially require environmental protection to secure human well-being. Many international treaties contain provisions that ensure the protection of rights such as the right to life, health, and a healthy working and living environment. All of these rights are directly linked to environmental protection, which should manifest in the maintenance of safe conditions for human well-being.

In the realm of fundamental rights, the ECtHR initially did not consider claims related to violations of environmental rights, as it believed that the Convention lacked provisions for their protection. However, the Court later recognised that a polluted environment negatively affects human health and poses a threat to life, thereby constituting a violation of fundamental human rights. Considering this, the Court gradually changed its position and began to deliberate applications related to the protection of environmental rights as admissible. Global economic and industrial developments have significantly impacted the evolution of European Court case law. In the early years of the Court's activity, it did not even admit substantive consideration of cases related to the protection of environmental rights. However, in later periods, the Court addressed such rights through the application of the so-called *par ricochet* principle. Relying on the broad interpretation and clarification of the articles of the ECHR, the Court managed to indirectly protect the right to benefit from a healthy environment – a matter of increasing importance in the development of democracy. By upholding the principle of balancing public and individual interests, the European Court successfully navigated the fine line between potential and actual environmental threats and the construction of a democratic society.

Alongside the development of judicial practice (case law), economic progress, and the recognition of environmental awareness in international society, it became clear that the interpretation of the Convention's provisions, including environmental aspects, is possible. As such, it became evident that the Convention

as a “living instrument” must be interpreted more broadly to ensure its effective implementation.

In its most basic form, the right to environment could be equated with the existence of an environment fit to sustain human life, that is, a “viable” environment in the most literal sense.<sup>10</sup> As previously mentioned, neither the Convention nor its additional protocols directly guarantee the protection of human environmental rights. However, the possibility of a teleological interpretation of the rights protected by the Convention may be invoked in cases concerning the protection of environmental rights within ECtHR judicial practice. In parallel with the elaboration of meaningful jurisprudence and legislation by EU institutions to protect humans from the risk of a dangerous environment, the ECtHR has developed significant case law to safeguard individuals and their interests, including home, well-being, and privacy, from a hazardous living environment.

As the Court has developed an indirect recognition of environmental rights, it has observed that a variety of ecological factors can threaten and affect humans and their rights under the Convention. Considering international instruments for the protection of the environment (e.g., EU Acquis (“Aquis Communautaire”),<sup>11</sup> the Aarhus Convention,<sup>12</sup> the Lugano Convention,<sup>13</sup> the Rio Declaration<sup>14</sup>, etc.), the ECtHR built on its case law to address environmental issues in both procedural and substantive rights, namely Article 2 (“right to life”), Article 6 (“right to a fair trial”), Article 8 (“right to respect for private and family life”), Article 10 (“freedom of expression”), and Article 13 (“right to an effective remedy”), as well as Article 1 of the Convention Protocol No. 1 (“right to property”). Consequently, the Court has delivered landmark decisions, such as *Oneryildiz v. Turkey*,<sup>15</sup> *Anna Maria Guerra and Others v. Italy*,<sup>16</sup> and *López Ostra v. Spain*.<sup>17</sup>

Thus, it is vital to analyse the case law and understand in depth the first indirect method of protecting environmental rights under the Convention. It is also important to examine the main challenges to environmental rights arising from hazardous activities, particularly those that threaten human lives. Recognising the link between the right to life and environmental protection provides an advantage in addressing these challenges and ensuring a safer and healthier environment for everyone. Analysing ECtHR practices concerning Article 2 of the Convention is crucial, especially in European countries, where historical, political, and social factors have shaped how states behave and protect human rights. This is an area where the precedents set by

10 Dejeant-Pons and Pallemarts, 2002, p. 19.

11 The Aquis Communautaire is the framework of European Union law, comprising all legally binding acts promulgated by the Union’s institutions, including treaties, regulations, directives, decisions, and other secondary legislation.

12 United Nations Economic Commission for Europe, 1998.

13 The Council of Europe, 1993.

14 United Nations Conference on Environment, 1992.

15 *Oneryildiz v. Turkey*, No. 48939/99, Judgement of 30 November 2004.

16 *Anna Maria Guerra and Others v. Italy*, No. 116/1996/735/932, Judgement of 19 February 1998.

17 *López Ostra v. Spain and others*, No. 16798/90, Judgement of 09 December 1994.

the ECtHR have a fundamental role to play.<sup>18</sup> Conversely, the protection of the right to life is also essential for the protection of all other human rights safeguarded under the Convention.

### **3. The Impact of Article 2 of the ECtHR on Environmental Law: A Comparative Analysis of European Cases**

Within the concept of human rights, the right to life is one of the fundamental and absolute rights. It means that every person has an inherent right to life. This right can be considered more important than all others. It is protected by law, and no one's life may be arbitrarily deprived. The right to life begins at the moment of birth and ends at the moment of death. It belongs to the category of natural rights. It is non-derogable and may not be subject to reservations or exceptions, except as permitted under international law. The right to life imposes both negative and positive obligations on the state. On the one hand, it prohibits the state from arbitrarily interfering with an individual's life (negative obligation); on the other hand, it requires the state to take active measures to protect life (positive obligation).

Article 2 of the Convention enshrines and guarantees one of the most fundamental human rights, stating that: (1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally, save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law; (2) Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force that is no more than absolutely necessary: (a) In defense of any person from unlawful violence; (b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) In action lawfully taken for the purpose of quelling a riot or insurrection.

In the hierarchy of human rights, the right to life stands above all others, and as the supreme right, serves as a protective umbrella for safeguarding other rights. All other rights guaranteed under international law can be said to complement and enhance the right to life to some degree. Additionally, it is noteworthy that modern international law imposes certain obligations on states to fulfil their positive duty and establish effective mechanisms to ensure the protection of the right to life within their jurisdiction. Article 2 of the Convention does not solely pertain to actions by state bodies that may result in the deprivation of life. As evident from judicial practice, court decisions largely focus on the failure of states to fulfil their positive obligations or the improper execution of those obligations, including the effective use of preventive measures in relation to activities that pose foreseeable dangers. The consideration of Article 2 in the context of environmental rights is also noteworthy, given that environmental rights under modern international law are interpreted as

18 Dejeant-Pons and Pallemarts, 2002, p. 46.

rights with collective characteristics. This makes the application of Article 2 in an environmental context particularly significant.

When discussing environmental protection and the maintenance of healthy and safe environmental conditions, it must first be considered that pollution of air, water, soil, climate change, and other factors cannot affect only one person's rights, nor can it be limited to the territory of a single state. In any case, whether the Court considers Article 2 in relation to environmental rights as a collective or individual right, it is interesting that, in the context of states fulfilling their positive obligations, court decisions rely on the extension of these obligations to activities considered inherently dangerous. Moreover, it does not matter whether such activities are carried out directly by the state or by other individuals within the territory of that state.

Thus, in the interest of effectively protecting the right to life, the Convention not only requires states to refrain from unlawfully taking life but also envisions the state's obligations to actively protect the right to life. Effective protection of life entails that the state implements appropriate measures to safeguard this right from potentially dangerous threats. In addition to enforcement, these appropriate measures also include management and regulatory mechanisms that every state must possess at the level of national legislation, such as relevant licences, permits, legal restrictions, and prohibitions that minimise the negative impact on human life. Furthermore, it is noteworthy that the Court pays special attention to the right to freedom of information as an additional means of ensuring that the right to life is adequately guaranteed in an environmental context.

Therefore, the ECtHR has interpreted Article 2 as imposing both negative and positive obligations on states. Under the Convention, states must refrain from unlawful deprivation of life, ensuring that any use of force is strictly necessary and proportionate. Positively, states are required to take proactive measures to protect the lives of individuals. Nowadays, this positive obligation is interpreted in a wider context, encompassing environmental risks that pose a significant threat to human life. The Court has developed case law and recognised that environmental degradation, pollution, and natural disasters can constitute violations of the right to life when states fail to take relevant measures to prevent or mitigate environmental threats. The ECtHR has acknowledged that environmental hazards can pose a risk to the right to life as enshrined under Article 2. This acknowledgement is based on the understanding that a safe, clean, and healthy environment is crucial for the enjoyment of fundamental human rights. The Court has developed a complex approach to environmental rights, emphasising that states are obliged to establish a legal framework that effectively addresses environmental hazards. By establishing a regulatory framework, states must ensure the adoption of laws and the setting of standards that will protect human life and prevent or mitigate environmental harm. This includes various environmental management tools and procedural safeguards, such as implementing early warning systems, conducting environmental impact assessments, maintaining infrastructure to resist environmental threats, enhancing public participation, improving

access to information, and facilitating access to justice to provide effective remedies for affected individuals.

As noted, the connection between Article 2 of the ECHR and environmental law is now evident and reinforced by judicial practice. This is particularly notable when it comes to the protection of human life. The effectiveness of applying Article 2 has also been demonstrated in cases where states fail to protect an individual's life and health from harmful environmental factors. The development of case law has clarified that, under Article 2, states are obliged to take appropriate regulatory and executive measures to protect human life and health in situations involving environmental risks, such as environmental pollution and its constituent elements, and natural or anthropogenic disasters. Hence, it can be firmly stated that Article 2 is a vital legal instrument for safeguarding the right to live in a healthy environment. The application of this article in an environmental context is particularly significant in European countries, where complaints brought before the ECtHR have been submitted for different reasons and the Court's practice varies accordingly.

Article 2 of the Convention establishes the right to life, which now includes the positive obligation of states to take appropriate measures to protect human life and the negative obligation of states to refrain from violating the right to life. It is also noteworthy that, according to judicial practice, Article 2 is frequently applied in cases involving the early assessment of threats to human life caused by environmental pollution or degradation, as well as the obligation to inform citizens.

When reviewing ECtHR practices across European countries, it becomes clear that the Court primarily focuses on determining the compatibility of environmental regulations with European human rights standards. It must also be emphasised that Western European countries have higher national environmental protection standards and more developed legal and enforcement mechanisms. Appeals based on Article 2 are relatively frequent in cases brought from Western European countries, in contrast to Central and Eastern European nations, and the Court's decisions are largely based on effective and stringent environmental standards and preventive measures. Despite widespread industrial pollution, environmental degradation, and climate-related vulnerabilities in Central and Eastern Europe, the lack of Article 2-based environmental case law can be attributed to several factors: strategic preference for Article 8 claims, procedural and evidentiary hurdles, a limited tradition of rights-based environmental litigation, and weak institutional support for judicial redress. In these countries, special governmental bodies have long been responsible for environmental protection, and citizen enforcement is a new phenomenon in the judicial system. The public is not familiar with the concept of suing either the government or enterprises.<sup>19</sup> It is also worth noting that, unfortunately, addressing environmental problems is not a high priority on the political agendas of most newly independent nations in Eastern Europe as their primary concern is the development

19 Kravchenko, 2004, p. 491.

of a stable economy.<sup>20</sup> Furthermore, sociopolitical sensitivities and the ECtHR's cautious approach to expanding Article 2's jurisprudence in environmental matters have contributed to this lacuna. These challenges underline the need for greater awareness, legal mobilisation, and institutional reform to bring life-threatening environmental harm within the scope of human rights protection under Article 2. In another legal context, the ECtHR – which makes no reference to environmental protection or the right to be free from environmental harm – is applied by the Court to establish the right to challenge acts or omissions of public authorities that have caused environmental harm.<sup>21</sup> It is important to note that this right is applied only where such acts or omissions are not in conformity with domestic law.<sup>22</sup>

Although the ECtHR has well-established case law on the application of Article 2 in cases related to environmental rights, it is noteworthy that there are few cases in which the Court has found a violation of Article 2. Such cases primarily involve applicants who have suffered harm due to hazardous activities or natural disasters. It is interesting to note that, in practice, the application of Article 2 by the Court is limited and directly linked to serious threats, harm, and the failure of states to fulfil their preventive obligations. However, when seeking redress in environmental cases before the Court, applicants often turn to Article 8 instead of Article 2. This tendency results from the strict and demanding threshold imposed by Article 2, rather than from any diminished significance of the right to life. Most environmental harms are often diffuse, cumulative, and not immediately life-threatening, making it difficult to establish a violation under Article 2. To do so, applicants must demonstrate a real and immediate risk to life and a causal link between the risk and the authorities' failure to take appropriate preventive measures. Even when there is no immediate threat to life, the Court may consider a broader range of environmental harms, such as prolonged exposure to pollutants or disruptions to private and family life. This is evident in the case of *Fadeyeva v. Russia*,<sup>23</sup> where the Court determined that extended exposure to industrial pollution violated Article 8, even though the applicant's life was not in danger. Similarly, the Court decided in favour of the applicant in *López Ostra v. Spain*,<sup>24</sup> because waste treatment operations seriously interfered with her home and well-being. These issues are clearly covered by Article 8's protections, although they may not satisfy the stringent requirements of Article 2. Additionally, a more nuanced judicial investigation into the balance between individual rights and the public interest is enabled by the proportionality analysis inherent in Article 8, which is not available under the more absolute and binary framework of Article 2. In other words, Article 8 provides applicants with a more practical and efficient route to relief in most environmental cases where the harm is severe but not immediately fatal, whereas Article 2 offers robust protection in cases involving death or foreseeable

20 Misuraca, 1994, p. 399.

21 See, e.g. *López Ostra v. Spain and Others*, No. 16798/90, Judgement of 09 December 1994.

22 Bogojevic, 2020, p. 194.

23 *Fadeyeva v. Russia*, No. 55723/00, Judgement of 09 June 2005.

24 *López Ostra v. Spain and others*, No. 16798/90, Judgement of 09 December 1994.

lethal hazards. Because of its practical flexibility and lower burden of proof, Article 8 has emerged as the preferred vehicle for environmental human rights litigation.

Moreover, Article 2 is frequently applied in conjunction with Articles 8 and 10. For a comprehensive analysis, it would be useful to review complaints submitted under Article 2 by applicants from Western European countries as well as those from Central and Eastern Europe. Analysing case law helps to understand how the right to life is interpreted and applied, ensuring that states uphold their obligations to protect life. As mentioned above, there are only a few cases in which the Court has found a violation of Article 2 in the context of environmental issues, namely where applicants have been exposed to dangerous activities or natural disasters. Strasbourg case law has contributed to the development of certain “environmental obligations” incumbent upon state parties by virtue of the Convention. These include the positive obligation to regulate industrial or technological activities that might adversely affect the sphere of protected rights, such as the right to life.<sup>25</sup>

### 3.1. Admitted Cases

#### 3.1.1. Violation of Article 2 of ECHR

*Öneriyıldız v. Turkey*<sup>26</sup> marks the starting point for recognising the link between the environment and the right to life. In this case, the applicant’s home located near a dumpsite was destroyed due to a methane explosion in April 1993, resulting in the deaths of nine family members. The applicant argued that the relevant authorities had not taken any precautionary action to avoid the foreseeable risk of explosions, despite expert reports that showed that preventive measures were needed.

The ECtHR ruled that there had been a violation of Article 2 of the Convention, under both its substantive and procedural limbs. The substantive violation concerned the failure to take adequate measures to prevent the accidental deaths of the applicant’s family members. The Court found that the Turkish Government failed to warn residents of the risks arising from the dumpsite and had not taken the necessary practical measures to avoid those risks. The procedural violation concerned an inadequate legal system and a deficient regulatory framework, which failed to ensure an effective supervisory system regulating the dumpsite’s opening and operational processes. Similarly, town planning policies were weak and clearly contributed to the events that led to the accident. In the Court’s assessment of the factual circumstances of the case, it was stated that:

‘Firstly, the regulatory framework proved defective in that the Ümraniye municipal waste-collection site was opened and operated despite not conforming to the relevant technical standards and there was no coherent supervisory system to encourage those responsible to take steps to ensure

<sup>25</sup> Francioni, 2010, p. 49.

<sup>26</sup> *Öneriyıldız v. Turkey*, No. 48939/99, Judgement of 30 November 2004.

adequate protection of the public and coordination and cooperation between the various administrative authorities so that the risks brought to their attention did not become so serious as to endanger human lives. That situation, exacerbated by a general policy which proved powerless in dealing with general town-planning issues and created uncertainty as to the application of statutory measures, undoubtedly played a part in the sequence of events leading to the tragic accident of 28 April 1993, which ultimately claimed the lives of inhabitants of the Ümraniye slums, because the State officials and authorities did not do everything within their power to protect them from the immediate and known risks to which they were exposed.<sup>27</sup>

In addition to the violation of Article 2, the Court also found a violation of Article 1 (protection of property) of Protocol No. 1 to the Convention, as well as a violation of Article 13 (right to an effective remedy).

This position of the Court was reaffirmed in *Budayeva and Others v. Russia*,<sup>28</sup> where a breach of Article 2 was recognised. In July 2000, the applicant's spouse and eight other inhabitants died in a devastating mudslide in the city of Tyrnauz, Russia. Those who survived suffered physical injuries and the destruction of their homes. It was alleged that the Russian Government failed to take adequate preventive or post-catastrophe mitigation measures to address the disaster and its outcomes. In addition, the authorities did not initiate an official enquiry to determine what had happened. This was the cornerstone of the serious violation of Article 2 of the Convention. The Court concluded that the Russian authorities had failed to enforce protective measures for the inhabitants to protect them from mudslides. The authorities had not enacted the necessary land-planning and emergency relief measures, despite acknowledging the risk. Furthermore, Russia did not investigate the causes of the accident through either judicial or administrative procedures. In its decision, upon careful consideration of the factual circumstances, the ECtHR concluded that:

‘...there was no justification for the authorities’ omissions in the implementation of the land-planning and emergency relief policies in the hazardous area of Tyrnauz regarding the foreseeable exposure of residents, including all applicants, to mortal risk. Moreover, it finds that there was a causal link between the serious administrative flaws that impeded their implementation and the death of Vladimir Budayev and the injuries sustained by the first and the second applicants and the members of their families.’<sup>29</sup>

27 Ibid.

28 *Budayeva and Others v. Russia*, Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, Judgement of 20 March 2008.

29 Ibid.

Hence, due to the lack of investigation into the incident, the Court found a procedural violation of Article 2.

In *Özel and Others v. Turkey*,<sup>30</sup> the Court confirmed another breach of Article 2. The relatives of the applicants lost their lives during one of Turkey's largest earthquakes on 17 August 1999. People were buried beneath collapsed buildings in a "high-risk" area of the city of Çınarcık. The Turkish authorities took a long time to investigate who was responsible for the collapse of the buildings to determine the causes of the deaths. The ECtHR held that the Turkish authorities had been reluctant to investigate the responsibilities and circumstances surrounding the collapse of the buildings that caused the deaths, and therefore had violated Article 2 of the Convention in its procedural limb. The Court specifically emphasised in its decision that:

'Even in the presence of obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law ... In the present case, the Court can only note that the length of the proceedings at issue breaches the requirement of a prompt examination of the case, without any unnecessary delays.'<sup>31</sup>

In *Kolyadenko and Others v. Russia*,<sup>32</sup> the Court's decision also found a violation of Article 2. The applicants, who resided near the Pionerskaya River and a water reservoir, suffered a devastating flood in 2001. In the application, it was mentioned that the government's failure to properly maintain the river channel and its release of water without warning had put their lives in danger. They further submitted that they did not have an effective remedy at the national level to address their complaints regarding the substantial damage to their homes and property. It was concluded that the Russian Government had neglected its positive obligation to protect the applicant's life. Hence, the ECtHR concluded that there had been a violation of Article 2. Additionally, the procedural limb of Article 2 was also breached, as the justice system's assessment of the events did not ensure full accountability of the responsible individuals or authorities. The Court also concluded that there was a violation of Article 8 (right to respect for private and family life) and Article 1 (protection of property) of Protocol No. 1 to the Convention, finding that the responsible officials and authorities had failed to do everything within their power to protect the applicant's rights under these provisions.

By linking environmental risks, the right to life, and access to information, the Court also found a violation of Article 2 in *Brincat and Others v. Malta*.<sup>33</sup> The appli-

30 *Özel and Others v. Turkey*, Nos. 14350/05; 15245/05 and 16051/05, Judgement of 02 May 2016.

31 *Ibid.*

32 *Kolyadenko and Others v. Russia*, Nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05, Judgement of 09 July 2012.

33 *Brincat and Others v. Malta*, Nos. 60908/11, 62110/11, 62129/11, 62312/11, and 62338/11, Judgement of 24 October 2014.

cants were shipyard repair workers who suffered from respiratory diseases due to continuous exposure to asbestos over several decades. In the application, it was stated that the authorities did not take sufficient measures to protect workers from foreseeable and detrimental consequences to their health.

Given the serious danger posed by asbestos, the Court held that the Maltese Government failed to meet its positive obligations under the Convention. Despite having certain flexibility in managing the risk (“margin of appreciation”), it was expressly stated in the decision that:

‘The above considerations lead the Court to conclude that in view of the seriousness of the threat at issue, despite the State’s margin of appreciation as to the choice of means, the Government have failed to satisfy their positive obligations, to legislate or take other practical measures, under Articles 2 and 8 in the circumstances of the present case.’<sup>34</sup>

The Maltese Government did not use legislative or other practical measures to adequately protect or inform the applicants about the impending risks to their health and lives. Therefore, the ECtHR decided that there had been a violation of Article 2 (right to life) with respect to the applicants whose relatives had died, and a violation of Article 8 (right to respect for private and family life) in relation to the other applicants.

The analysis of these cases highlights the crucial connection between environmental risks and the right to life. The Court has consistently ruled against states that fail to implement precautionary measures, resulting in tragic losses. Inadequate responses to natural disasters and weaknesses in regulatory frameworks further demonstrate how such failures can violate the right to life. The Court’s findings emphasise the need for effective government action to prevent future tragedies. Overall, these rulings reflect an evolving understanding of state responsibilities in ensuring environmental safety.

### 3.1.2. *Applications Where No Breach of Article 2 Was Found and Inadmissible Applications*

Although it is not possible to provide an exhaustive list of situations in which the link between environmental issues and the right to life is clear, it must be stressed that cases in which issues under Article 2 have arisen are remarkable. It is also interesting to analyse cases where the Court has considered Article 2 in relation to environmental issues but found no breach, or cases that were declared inadmissible. One of the earliest cases is *L.C.B. v. the United Kingdom*.<sup>35</sup> In this case, the applicant complained that she was diagnosed with leukaemia at the age of four due to the negligence of the UK authorities. Before her birth, her father had served as a catering assistant in the Royal Air Force on Christmas Island, where he had been exposed to nuclear radiation. In

34 Ibid.

35 *L.C.B. v. the United Kingdom*, No. 14/1997/798/1001, Judgment of 9 June 1998.

the application, she argued that the failure of responsible institutions to warn her parents about the potential health risks, or to monitor her health prior to her diagnosis, constitutes a breach of Article 2. The Court highlighted in its decision that:

‘The Court notes that the applicant’s father was serving as a catering assistant on Christmas Island at the time of the United Kingdom’s nuclear tests there .... In the absence of individual dose measurements, it cannot be known with any certainty whether, in the course of his duties, he was exposed to dangerous levels of radiation. However, the Court observes that it has not been provided with any evidence to prove that he ever reported any symptoms indicative of the fact that he had been exposed to above-average levels of radiation.’<sup>36</sup>

The Court found no violation of Article 2 (right to life) of the Convention. Given the information available to the British authorities at the relevant time concerning her father’s participation in nuclear tests, they could not have been expected to warn her parents or take any special measures for her. The applicant did not sufficiently prove that the UK Government knew her father was exposed to dangerous levels of radiation or that it was a risk to her health.

In the case of *Viviani and Others v. Italy*,<sup>37</sup> the applicants submitted a claim highlighting that the Italian Government had failed to establish an appropriate administrative and regulatory framework to protect the right to life of individuals residing in the immediate vicinity of Mount Vesuvius. It was also submitted that the lack of awareness about possible hazards resulting from a potential volcanic eruption exposed the applicants to real and immediate risks, infringing their right enshrined in Article 8 of the Convention, concerning respect for private and family life. Applying Article 35, paragraph 1 (admissibility criteria) of the Convention, the Court declared the application inadmissible because the applicants failed to exhaust all available domestic remedies. The Court noted that, although the applicants had several domestic remedies available, such as lodging complaints with the courts or administrative authorities, they failed to use all available measures and instead merely asserted that those remedies were ineffective.

In the case of *Murillo Saldias and Others v. Spain*,<sup>38</sup> the applicants were victims of the August 1996 Biescas camping catastrophe in the Spanish Pyrenees, where 87 people lost their lives as a result of severe floods and heavy rain. The first applicant’s parents and siblings died in the accident, and all other applicants suffered serious injuries. They stated that the Spanish government did not implement any precautions to protect the campers’ right to life, as the authorities, recognising the inherent risks, allowed the area to be used for camping activities. The application was declared inadmissible. The Court noted that the first applicant had received compensation through

36 Ibid.

37 *Viviani and Others v. Italy*, No. 9713/13, Decision of 16 April 2015.

38 *Murillo Saldias and Others v. Spain*, No. 76973/01, Decision of 28 November 2006.

the national court, the amount of which was deemed appropriate. Therefore, he could no longer complain under Article 34 (right of individual petition). In the cases of the other applicants, the Court ruled that the application was inadmissible because domestic remedies had not been exhausted, in accordance with Article 35, paragraph 1 (admissibility criteria).

The case of *Smaltini v. Italy*,<sup>39</sup> which is related to industrial emissions, was also found inadmissible by the Court. The application concerned the damaging effect of industrial emissions on the health of the first applicant, who died of leukaemia. The applicant's surviving spouse argued that there was a causal link between the steelworks emissions and the development of her disease. The ECtHR declared the application inadmissible as manifestly ill-founded. Assessing the procedural aspect of Article 2, the Court observed that the first applicant had had access to adversarial proceedings, particularly investigations conducted at her request. The Court concluded that the applicant failed to prove a breach of the procedural limb of her right to life.

Despite the case being found inadmissible by the Court, it is worth noting that *Careme v. France*<sup>40</sup> is one of the most recent and interesting cases relating to climate change, greenhouse gas (GHG) emissions, and the right to life. The applicant complained that the measures taken by the French authorities were insufficient to achieve a 40% GHG emission reduction under the Paris Agreement. The French court rejected the individual application of a former mayor, concluding that he did not have sufficient personal interest. The applicant claimed that his expulsion breached his rights under the Convention, particularly Articles 2 (right to life) and 8 (right to respect for private and family life). The Court invoked the case *Duarte Agostinho and Others v. Portugal* and ruled that the application was inadmissible because the applicant did not live in France and therefore could not claim victim status under Article 34 (individual applications) of the Convention.

In the case of *Duarte Agostinho and Others v. Portugal and 32 Other States*,<sup>41</sup> the applicants (Portuguese nationals, ranging from 10 to 23 years of age) complained that Portugal and other EU Member States had infringed on their fundamental rights through deficient measures taken against climate change. The applicants argued that GHG emissions from these states were causing global warming, heatwaves, and other damaging climate effects that adversely affected their living conditions and health. They alleged that the states breached their positive obligations under Articles 2 (right to life) and 8 (right to respect for private and family life) of the ECHR, together with obligations arising from the Paris Agreement on climate change. Furthermore, they claimed that global warming and its effects fall disproportionately on their

39 *Smaltini v. Italy*, No. 43961/09, Decision of 16 April 2015.

40 *Careme v. France*, No. 7189/21, Decision of 09 April 2024.

41 *Duarte Agostinho and Others v. Portugal and 32 Other States*, No. 39371/20, Decision of 09 April 2024.

generation, which is protected under Article 14 (prohibition of discrimination). The ECtHR delivered a judgement declaring the application inadmissible.

Regarding the extraterritorial jurisdiction of the respondent states, namely those other than Portugal, the Court decided that there was no basis in the ECHR to extend their jurisdiction by judicial interpretation, as the applicants had requested. Particularly, in the ruling, it was stressed that:

‘As regards the respondent States other than Portugal, the Court has found that the present complaints are inadmissible because the applicants are not within the jurisdiction of those States. Therefore, the issue of exhaustion of domestic remedies only remains to be determined in respect of Portugal, as the sole respondent State having jurisdiction concerning the applicants’ complaints (see paragraph 214 above). The Court will therefore examine specifically whether there were effective remedies in Portugal concerning the applicants’ complaints, which the applicants were required to use (see paragraphs 217-227 below).<sup>42</sup>

Therefore, complaints against the respondent states were not admissible because they did not meet the requirements of Article 35, paragraphs 3 and 4 of the Convention. Additionally, the Court held that the applicant had not exhausted domestic remedies, which must be completed before lodging an application against Portugal:

‘It is uncontested that the applicants did not pursue any legal avenue in Portugal concerning their complaints. They argued that the mere existence of a broad constitutional provision (as was, according to them, the case in Portugal and some other States) could not provide for an effective and sufficiently certain remedy. They also challenged the effectiveness of the use of any possible domestic remedies (see paragraph 131 above).<sup>43</sup>

‘The Court cannot accept these arguments having regard to the remedies available in the Portuguese legal system.<sup>44</sup>

Given the remedies available within the Portuguese legal system, the Court’s conclusion that the applicants failed to exhaust domestic remedies was undeniably justified.

The analysis of these cases shows a complex relationship between legal principles and practical realities. While some cases acknowledge environmental threats, many applications are dismissed due to procedural issues, such as failure to exhaust

42 *Duarte Agostinho and Others v. Portugal and 32 Other States*, No. 39371/20, Decision of 09 April 2024.

43 *Ibid.*

44 *Ibid.*

domestic remedies or insufficient evidence. These rulings highlight the evolving connection between environmental protection and human rights, underscoring the need for strong national legal frameworks and proactive measures.

### 3.1.3. Pending Cases Related to Environmental Issues and Article 2

The ECtHR is currently considering several cases that could have a profound impact on the development of environmental rights jurisprudence. A notable example is *Di Caprio and Others v. Italy*,<sup>45</sup> which concerns the “*Terra dei Fuochi*” phenomenon (illegal dumping and burning of toxic waste), particularly in the Campania region in the provinces of Naples and Caserta. According to the applicants, the disposal of waste released harmful pollutants into the air, contaminated the soil and groundwater, and caused widespread health problems among local residents. According to the ECtHR, these applications have been brought to the Italian Government’s attention, and the Court has also posed questions to the parties concerning the presumed violations of Article 2 (right to life), Article 8 (right to respect for private and family life), and the criteria for admissibility under Article 35. Another relevant case is *Greenpeace Nordic and Others v. Norway*,<sup>46</sup> in which the applicants argued that the Norwegian Government’s decision to issue new licences for fossil fuel exploration on the continental shelf would exacerbate the harmful consequences of climate change for future generations. They claimed that the government’s decision was a violation of their conventional rights protected under Articles 2 (right to life), 8 (right to respect for private and family life and the home), 13 (right to an effective remedy), and 14 (prohibition of discrimination) of the Convention. These cases are still pending before the ECtHR and have the potential to significantly shape the jurisprudence on environmental rights. Their outcomes could establish important precedents for future cases and clarify the scope of the state’s obligations under Article 2 and other relevant provisions.

## 4. Deliberations for Defining Article 2 Violations

In summary, the preceding section has established that the human rights dimension of environmental protection goes beyond what is thought to be a matter of basic environmental conditions affecting human health. This review highlights the developing legal framework in the ECtHR concerning environmental protection and its interconnection with the right to life under Article 2 of the Convention. Evolving case law clearly shows that the Court distinguishes the impact of environmental conditions on human health and quality of life, and even finds that the embarrassment resulting from a lack of preventive information might constitute a violation of the rights under the Convention, including Article 2. The growing awareness of environmental

45 *Di Caprio and Others v. Italy*, Nos. 39742/14, 51567/14, 74208/14, 21215/15, Communicated Case of 05 February 2019.

46 *Greenpeace Nordic and Others v. Norway*, No. 34068/21, Communicated Case of 15 June 2021.

degradation, pollution, and climate change as basic threats to human life has led to the interpretation of Article 2 in light of current global challenges. Although environmental rights are not explicitly expressed in the ECHR, the Court has developed an evolving body of jurisprudence linking environmental degradation to violations of the right to life. This is particularly evident in the application of the *par ricochet* principle, which allows the indirect protection of environmental rights by focusing on their impact within a well-established human rights system, including the right to life.

Since the late 20th century, the ECtHR's case law regarding Article 2 has undergone a significant transformation. In the early years, the Court was reluctant to recognise the interrelationship between environmental harm and human rights, as the Convention and its additional protocols do not provide for environmental rights or interests related to environmental matters. However, the Court's approach has changed over the years and with the development of international environmental law. In landmark cases such as *Öneryıldız v. Turkey*<sup>47</sup> and *Budayeva v. Russia*,<sup>48</sup> the Court set precedents acknowledging that failure to take necessary precautions against environmental hazards can lead to a violation of the right to life. These decisions underline the positive obligations of states to take preventive measures to safeguard individuals from environmental hazards, especially where those hazards are foreseeable and represent a serious threat to human life. The Court has held that the right to life, enshrined in Article 2, imposes an obligation on the state not only to prevent the deprivation of life but also to take proactive measures to protect human lives from threats arising from environmental degradation and hazards. In its interpretation of Article 2, the ECtHR has developed a broad approach as regards state accountability for any environmental harm that would lead to human death. This includes the obligation for states to establish regulatory frameworks that are effective in preventing or mitigating environmental risks and to ensure proper enforcement of existing environmental regulations. The cases of *Öneryıldız v. Turkey* and *Budayeva v. Russia* illustrate the Court's expectation that states must take appropriate steps to prevent disasters and protect citizens from predictable risks, such as methane explosions or mudslides. Moreover, the Court has emphasised the importance of procedural responsibilities, requiring states to conduct investigations, assessments, and examinations following environmental disasters, ensure public access to relevant information, and guarantee effective remedies for those affected.

Therefore, a key strand in the ECtHR's jurisprudence concerns state accountability for failing to fulfil these obligations. The Court's general conclusions in judgements such as *Kolyadenko v. Russia*<sup>49</sup> and *Özel and Others v. Turkey*<sup>50</sup> reflect the increasing

47 *Öneryıldız v. Turkey*, No. 48939/99, Judgement of 30 November 2004.

48 *Budayeva and Others v. Russia*, Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02 Judgement of 20 March 2008.

49 *Kolyadenko and Others v. Russia*, Nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05, Judgement of 09 July 2012.

50 *Özel and Others v. Turkey*, Nos. 14350/05; 15245/05 and 16051/05, Judgement of 02 May 2016.

importance of preventive measures and the duty of the state to take action to avert environmental risks likely to pose harm or endanger human life. In these cases, the Court ruled that states had failed to adopt the necessary precautionary steps to protect citizens from natural disasters, such as floods and earthquakes, resulting in Article 2 violations. These decisions have established that the state's responsibility extends beyond emergency response efforts to include long-term planning and risk management measures aimed at preventing the loss of life in environmental crises.

At the same time, the application of Article 2 to environmental matters is not without challenges. In many cases, the Court has faced significant hardships in establishing a clear and direct causal relationship between environmental damage and the violation of the right to life, particularly in cases where the connection is less immediate. Examples include *Viviani v. Italy*<sup>51</sup> and *Smaltini v. Italy*.<sup>52</sup> In these cases, the Court held that there was insufficient evidence provided by the applicants to prove that the state's actions or omissions directly caused environmental damage that interfered with their right to life. In *Smaltini v. Italy*, the Court was not convinced that industrial emissions caused the applicant's leukaemia, while emphasising the difficulty of proving causation in cases where harm to the environment and health effects may be long-term and complex. These cases illustrate the procedural and evidentiary hurdles that applicants face when seeking to hold states accountable for environmental degradation under Article 2.

Recent developments in the Court's jurisprudence, particularly regarding climate change, indicate an important shift in how environmental rights are viewed within the context of Article 2. The *Verein KlimaSeniorinnen Schweiz v. Switzerland*<sup>53</sup> case represents a significant step forward in recognising the observable and direct impacts of climate change on the right to life. In this case, the Court found that climate change effects, such as rising temperatures and extreme weather conditions, posed real risks to the life, health, and well-being of individuals and that Switzerland had failed to take sufficient measures to address those risks. This decision represents a determining moment in the development of human rights law, as it connects the broader global issue of climate change with the specific legally protected right to life under the Convention. This ruling has the potential to open the door to further evolution of human rights law by strengthening the connection between environmental protection and the safeguarding of human rights.

The integration of climate change into Article 2 jurisprudence indicates a broader trend in international law, in which environmental matters are increasingly viewed through the lens of human rights protection. However, while the UN General Assembly's recent acknowledgment of the right to live in a clean, healthy, and sustainable environment represents a significant development in international law, the ECtHR's

51 *Viviani and Others v. Italy*, No. 9713/13, Decision of 16 April 2015.

52 *Smaltini v. Italy*, No. 43961/09, Decision of 16 April 2015.

53 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, No. 53600/20, Judgement of 9 April 2024.

role in interpreting and enforcing human rights in Europe adds critical legal weight to these emerging norms. Although environmental degradation and climate change may make global challenges worse, the ECtHR is likely to face more cases that involve balancing economic development and industrial progress while ensuring environmental sustainability and safeguarding human life.

The Court's approach to Article 2 in environmental contexts not only emphasises the importance of state responsibility but also imposes a positive obligation on states to develop and maintain a comprehensive framework for effective environmental governance aimed at protecting the right to life from environmental risks. Such a framework might include laws and policies protecting environmental rights, preventive regulatory systems, sustainable land-use planning, and disaster readiness, as well as legal systems to provide public access to environmental information and judicial oversight. Overall, the scope of environmental protection afforded by the European Convention has been conditioned on the existence of a direct link between environmental degradation and serious impairment of an individual right, which must be assessed on a case-by-case basis.<sup>54</sup>

## 5. Conclusion

In conclusion, Article 2 of the ECHR serves as a powerful legal tool for addressing the growing threats posed by environmental degradation and climate change. The ECtHR's jurisprudence has evolved to recognise the right to life as encompassing not only protection from arbitrary deprivation of life but also the need to safeguard individuals from foreseeable environmental risks. The development of this jurisprudence provides an important route to environmental sustainability within the larger framework of protecting human rights. The ECtHR's legal rulings on Article 2 have not only helped protect the environment but have also raised public awareness and encouraged discussions about environmental issues. As states face increasing pressure to address climate change, pollution, and other environmental hazards and risks, the Court's role in enforcing Article 2 obligations will continue to be critical in ensuring that human life is protected in an increasingly hazardous natural world.

54 Dupuy and Vinuales, 2018, p. 370.

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# The Intersection of the Right to Private and Family Life and Environmental Protection: A Comparative Analysis of Key Cases in Central and Eastern Europe

Lana OFAK – Valentina GRUBEŠIĆ ČRNELČ

## ABSTRACT

The European Convention on Human Rights does not explicitly guarantee the right to a healthy environment. However, the European Court of Human Rights (ECtHR) has recognised in numerous cases that adverse environmental conditions can significantly affect individuals' well-being. Article 8, which protects the right to respect for private and family life, has been the primary provision the ECtHR has used to address environmental issues. Protection under Article 8 is invoked when individuals are significantly and directly affected by environmental nuisances, demonstrating a direct effect on their quality of life.

This chapter examines the intersection of environmental protection and the right to private and family life, analysing their relationship as reflected in ECtHR case law (Section 2). It demonstrates that Article 8 is relevant in environmental cases when the State either directly causes pollution or fails to regulate private sector activities adequately (Section 3). The chapter also discusses emerging climate change case law (Section 4) and emphasises the challenges of environmental protection in Central and Eastern European countries (Section 5).

This analysis highlights the changing role of Article 8 in protecting individual rights from environmental harm, reflecting the ECtHR's broader approach to human rights protection regarding environmental issues.

## KEYWORDS

private life, family life, home, environment, climate change

## 1. Introduction

Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: European Convention or Convention) guarantees the right to respect for private and family life as follows:

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1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 8 protects private life, family life, home, and correspondence. Although each right has distinct significance, these four domains of personal autonomy may sometimes overlap. For example, interference in family life can affect an individual's private life, and the reverse is also true.<sup>1</sup> The scope of Article 8 is broad, covering many rights even when they are not explicitly stated.<sup>2</sup>

Unlike the right to life (Article 2), which is an absolutely protected derogable right, and the right not to be tortured (Article 3), which is an absolutely protected non-derogable right, the right to respect for private and family life (Article 8) is a qualified Convention right.<sup>3</sup> As Omejec explains, qualified Convention rights may be subject to intervention under specific conditions.<sup>4</sup> First, the right is recognised, typically in the first paragraph. Then, limitations may be imposed if they are prescribed by domestic law and considered necessary to achieve the objectives set out in the Convention, usually specified in the second paragraph. These objectives generally relate to broad public interests defined by legal terms such as national security, public safety, and the protection of morals.<sup>5</sup> These rights are often linked to a State's margin of appreciation, which allows national authorities a degree of discretion in addressing complex legal, economic, financial, social, ethical, and other societal challenges.<sup>6</sup> In this context, domestic courts must balance the competing interests of individuals and the community, and sometimes those of private individuals, to achieve a fair balance between individual and collective interests.<sup>7</sup>

Determining a universal definition of the right to private life is challenging because legal, political, and cultural differences among nations make the issue complex.<sup>8</sup> The term is broad, covering physical and psychological integrity, mental health, information about an individual's health, and information about health risks.<sup>9</sup> The same applies to the concept of the 'right to family life'. Perry notes that, because

1 Omejec, 2014, p. 931.

2 For the scope of Article 8 see *Guide on Article 8 of the European Convention on Human Rights*, 2024.

3 Omejec, 2014, p. 930.

4 *Ibid.*, p. 852.

5 *Ibid.*

6 *Ibid.*, pp. 1267–1270.

7 *Ibid.*, p. 852.

8 Jonsson Cornell, 2017, para. 1.

9 *Guide on Article 8*, 2024, pp. 26–82.

‘the family’ is shaped by cultural traditions and concepts, this right is especially important in debates on universalism versus cultural relativism in human rights.<sup>10</sup>

A fundamental aspect of family life is the right to live together, which supports the development of familial relationships and enables family members to enjoy each other’s company.<sup>11</sup> The concept of family life is autonomous, with its existence determined by actual and close connections between individuals.<sup>12</sup> Although the scope of family life is not precisely defined, ECtHR case law indicates that it covers couples, parents, children, other family relationships, immigration and expulsion, material interests, and testimonial privilege.<sup>13</sup> The notion of ‘home’ protected by Article 8 is also autonomous and does not rely on domestic legal definitions; whether a habitation qualifies as a home depends on the presence of sufficient and strong connections to that location.<sup>14</sup>

Although the Convention does not explicitly guarantee a right to a healthy environment, the ECtHR has ruled in numerous cases concerning environmental issues, recognising that adverse environmental conditions can affect individuals’ well-being.<sup>15</sup> Article 8 has been the primary<sup>16</sup> and most significant provision used by the ECtHR to protect individual rights infringed by adverse environmental interventions, and it remains central in this context.<sup>17</sup> However, Article 8 protection applies only when individuals are significantly and directly affected by the nuisance and can demonstrate a direct effect on their quality of life.<sup>18</sup> This chapter aims to examine the intersection of environmental protection and the right to privacy and family life, providing a detailed analysis of their relationship as reflected in ECtHR case law (Section 2). This chapter will show that Article 8 may be relevant in environmental cases, whether the State directly causes pollution or is responsible due to insufficient regulation of private sector activities (Section 3). It will also present emerging climate change case law (Section 4). The perspective of Central and Eastern European countries will receive particular attention, with a focus on the challenges of environmental protection in this region (Section 5). In cases involving hazardous activities, the ECtHR recognised that the obligations under Article 2 of the Convention (right to life) largely align with those in Article 8.<sup>19</sup> Therefore, the principles established in the Court’s case law on environmental issues affecting private life and home can also apply to the protection of the right to life.<sup>20</sup> Determining whether a case before

10 Perry, 2019, p. 1.

11 *Ibid.*, p. 82.

12 *Ibid.*

13 *Ibid.*, pp. 82–112.

14 *Ibid.*, pp. 113–115.

15 See Thematic Factsheet ‘Environment and the European Convention on Human Rights’ compiled by the Press Unit of the ECtHR (April 2024).

16 See *Powell and Rayner v. the United Kingdom* and *López Ostra v. Spain*.

17 Omejec, 2015, p. 71.

18 *Guide on Article 8*, 2024, p. 50.

19 Raisz and Krajnyák, 2022, p. 97.

20 *Budayeva and Others v. Russia*, p. 133.

the ECtHR should be categorised under Article 2 or Article 8 may be difficult.<sup>21</sup> This chapter will address only the relevant aspects of Article 8 in environmental issues, as Article 2 will be discussed in a separate chapter.

## 2. General Framework for Environmental Protection Within the Scope of Private and Family Life

According to established ECtHR case law, three concepts are relevant for safeguarding Convention rights related to the environment and protecting the right to private and family life: the margin of appreciation doctrine, positive obligations, and the horizontal effect of Convention rights.<sup>22</sup>

States have a wide margin of appreciation when implementing measures to protect private and family life, as well as the home, in relation to environmental interventions.<sup>23</sup> The margin of appreciation doctrine determines the extent of self-restraint exercised by the ECtHR, whereas the principle of evolutive interpretation allows for some judicial activism.<sup>24</sup> The concept of positive obligations requires that States not only avoid interfering with individuals' rights under their jurisdiction but also have a positive duty to protect those rights through effective measures.<sup>25</sup> Adverse environmental interventions may be conducted by State and public authorities, as well as private individuals. However, the Convention protects individuals only from State interventions. Omejec states that if the State fails to fulfil its positive obligation to ensure adequate environmental conditions or to prevent and address harmful environmental activities by private individuals, this may constitute a violation of Convention rights.<sup>26</sup> This is known as the horizontal effect of the Convention, which the ECtHR addressed in *Oluić v. Croatia*, where the applicant experienced nighttime disturbance due to noise from a bar operating in the same building:

48. The present case does not concern interference by public authorities with the right to respect for the home, but their alleged failure to take action to put a stop to third-party breaches of the right relied on by the applicant.

Article 8, like other Convention rights, contains both substantive and procedural elements related to States' specific positive obligations.<sup>27</sup> In cases where State decisions affect environmental issues, the ECtHR identifies two aspects of its analysis. First, the Court may assess the substantive merits of the government's decision to determine

21 Raisz and Krajnyák, 2022, p. 100.

22 See Omejec, 2015, p. 48.

23 Raisz and Krajnyák, 2022, p. 97.

24 Omejec, 2015, p. 48.

25 Ibid. See also Raisz and Krajnyák, 2022, p. 95.

26 Ibid.

27 Ibid., p. 49.

its compatibility with Article 8. Second, it may review the decision-making process to ensure that the individual's interests have been appropriately considered.<sup>28</sup>

As previously noted, the Court determined that the State should have a broad margin of appreciation regarding substantive matters. However, when government policy affects particularly intimate aspects of an individual's private life, such as the ability to sleep, the State's margin of appreciation should be narrower. The ECtHR concluded that this divergence concerning the margin of appreciation can only be addressed by considering the specific context of each case.<sup>29</sup> For the procedural limb of the Court's review of environmental cases, the ECtHR must consider all procedural aspects, including the nature of the policy or decision, the extent to which individuals' views were considered during the decision-making process, and the available procedural safeguards.<sup>30</sup>

It is important to note that the assessment of Article 8's applicability to environmental cases has relied on a 'severity test'.<sup>31</sup> The severity threshold has been explicitly examined in relation to Article 8. In environmental cases, a claim under Article 8 may be valid when an environmental threat reaches a level of seriousness that significantly impairs an individual's ability to enjoy their home or private and family life. The Court has found that the evaluation of this minimum threshold is relative and depends on factors such as the intensity and duration of the disturbance, and its effect on the individual's physical and mental well-being.<sup>32</sup>

It is also necessary to restate the fundamental premise that the Convention is not specifically intended to ensure general environmental protection. Furthermore, current national laws remain largely grounded in an anthropocentric value system that prioritises humans over the inherent rights of nature.<sup>33</sup> The European Court expressed this anthropocentric perspective in *Kyrtatos v. Greece*:

Yet the crucial element which must be present in determining whether, in the circumstances of a case, environmental pollution has adversely affected one of the rights safeguarded by paragraph 1 of Article 8 is the existence of a harmful effect on a person's private or family sphere and not simply the general deterioration of the environment. Neither Article 8 nor any of the other Articles of the Convention are specifically designed to provide general protection of the environment as such; to that effect, other international instruments and domestic legislation are more pertinent in dealing with this particular aspect.<sup>34</sup>

28 *Hatton and Others v. the United Kingdom*, p. 99; *Flamenbaum and Others v. France*, pp. 136, 137.

29 *Ibid.*, pp. 100–103.

30 *Ibid.*, p. 104.

31 *Guide on Article 8*, 2024, p. 50.

32 *Denisov v. Ukraine*, p. 111.

33 Omejec, 2015, p. 46. Regarding the anthropocentric approach in international law, see Raisz and Krajnyák, 2022, p. 100.

34 *Kyrtatos v. Greece*, p. 52.

Finally, note that States retain discretion in addressing environmental issues and are not obligated to implement specific measures requested by individuals. Given the complexity of the issue, Article 8 does not require national authorities to ensure that every individual has housing meeting particular environmental standards.<sup>35</sup>

### 3. Environmental Degradation and Its Impact on the Right to Private and Family Life: Selection of Major ECtHR Judgments

Despite the challenges in addressing cases involving negative environmental conditions, as discussed in the previous section, the ECtHR ruled in several cases that Article 8 had been breached. The most significant judgments are shown in Table 1.

| JUDGMENT                       | DATE             | SUBJECT MATTER  |
|--------------------------------|------------------|---|
| Lopez Ostra v. Spain           | 9 December 1994  | Industrial pollution (nuisance caused by a waste-treatment plant)                             |
| Guerra and Others v. Italy     | 19 February 1998 | Environmental risks and access to information (residing near a chemical factory)              |
| Taşkın and Others v. Turkey    | 10 November 2004 | Industrial pollution (residing near a goldmine using the cyanidation process)                 |
| Moreno Gómez v. Spain          | 16 November 2004 | Noise pollution (neighbouring noise)  |
| Fadeyeva v. Russia             | 9 June 2005      | Industrial pollution (residing near a steel plant)  |
| Roche v. the United Kingdom    | 19 October 2005  | Environmental risks and access to information (exposure to nerve and chemical warfare agents) |
| Öçkan and Others v. Turkey     | 28 March 2006    | Industrial pollution (residing near a goldmine using the cyanidation process)                 |
| Ledyayeva and Others v. Russia | 26 October 2006  | Industrial pollution (residing near a steel plant)  |
| Giacomelli v. Italy            | 2 November 2006  | Industrial pollution (residing near a hazardous waste treatment plant)                        |
| Lemke v. Turkey                | 5 June 2007      | Industrial pollution (residing near a goldmine using the cyanidation process)                 |
| Tătar v. Romania               | 27 January 2009  | Industrial pollution (residing near a goldmine using the cyanidation process)                 |
| Brânduse v. Romania            | 7 April 2009     | Waste collection, management, treatment and disposal (residing near a tip)                    |
| Băcilă v. Romania              | 30 March 2010    | Industrial pollution (residing near a lead and zinc plant)                                    |
| Oluić v. Croatia               | 20 May 2010      | Noise pollution (neighbouring noise)  |

<sup>35</sup> *Grimkovskaya v. Ukraine*, p. 65.

| JUDGMENT                                   | DATE             | SUBJECT MATTER  |
|--|------------------|---|
| Deés v. Hungary                            | 9 November 2010  | Noise pollution (Road traffic noise)  |
| Mileva and Others v. Bulgaria              | 25 November 2010 | Noise pollution (neighbouring noise)  |
| Dubetska and Others v. Ukraine             | 10 February 2011 | Industrial pollution (residing near a coal mine)                                |
| Apanasewicz v. Poland                      | 3 May 2011       | Industrial pollution (residing near a concrete production plant)                |
| Grimkovskaya v. Ukraine                    | 21 July 2011     | Noise pollution (road traffic noise)  |
| Di Sarno and Others v. Italy               | 10 January 2012  | Waste collection, management, treatment and disposal (Campania region)          |
| Bor v. Hungary                             | 18 June 2013     | Noise pollution (rail traffic)  |
| Vilnes and Others v. Norway                | 5 December 2013  | Environmental risks and access to information (deep sea and test diving)        |
| Brincat and Others v. Malta                | 24 July 2014     | Environmental risks and access to information (exposure to asbestos)            |
| Dzemyuk v. Ukraine                         | 4 September 2014 | Soil and water contamination  |
| Cuenca Zarzoso v. Spain                    | 16 January 2018  | Noise pollution (neighbouring noise)  |
| Cordella and Others v. Italy <sup>36</sup> | 24 January 2019  | Industrial pollution (residing near a steel plant)                              |
| Yevgeniy Dmitriyev v. Russia               | 1 December 2020  | Noise pollution (neighbouring noise)  |
| Kapa and Others v. Poland                  | 14 October 2021  | Noise pollution (road traffic noise)  |
| Solyanik v. Russia                         | 10 May 2022      | Soil and water contamination  |
| Kotov and Others v. Russia                 | 11 October 2022  | Waste collection, management, treatment and disposal (residing near a landfill) |
| Locascia and Others v. Italy               | 19 October 2023  | Waste collection, management, treatment and disposal (Campania region)          |

As shown in Table 1, environmental cases involving violations of respect for private and family life, as well as the home, included issues such as environmental risks and access to information, industrial pollution, noise pollution, soil and water contamination, and waste collection, management, treatment, and disposal.<sup>37</sup> According to the previously mentioned severity test, the Court must assess whether a causal link exists between the activity and the harm to the individual, and whether the negative effects have reached a certain level of severity.<sup>38</sup> The minimum threshold is determined by

36 See also: *A.A. and Others v. Italy*, *Perelli and Others v. Italy*, *Ardimento and Others v. Italy*, and *Briganti and Others v. Italy*.

37 For a comprehensive analysis of ECtHR case law on the right to respect for private and family life and its environmental implications, see Raisz and Krajnyák, 2022, pp. 97–107; see also *Manual on Human Rights and the Environment*, 2022, pp. 33–50.

38 *Manual on Human Rights and the Environment*, 2022, p. 35.

the specific circumstances of each case. In its case law, the ECtHR found that severe pollution from sources such as an airport producing excessive noise, a waste treatment plant emitting fumes and odours, and a factory releasing toxic emissions can disrupt the peaceful enjoyment of one's home, even if the pollution does not present a major health risk:

Specifically, Article 8 of the Convention applies to severe environmental pollution which may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, even without seriously endangering their health.<sup>39</sup>

On the other hand, the Court emphasised that Article 8 cannot be invoked unless the alleged harm exceeds the usual environmental risks found in urban life:

The Court refers to its well-established case-law that neither Article 8 nor any other provision of the Convention guarantees the right to preservation of the natural environment as such (see *Kyrtatos v. Greece*, no. 41666/98, § 52, ECHR 2003-VI). Likewise, no issue will arise if the detriment complained of is negligible in comparison to the environmental hazards inherent in life in every modern city.<sup>40</sup>

In *Tătar v. Romania*, the Court emphasised the importance of the precautionary principle, first established in the Rio Declaration.<sup>41</sup> The Court's case law states that States must apply the precautionary principle when there is credible evidence of a potential risk to human health that could cause serious harm.<sup>42</sup> However, the precautionary principle does not extend to all possible harms.<sup>43</sup> In *Luginbühl v. Switzerland*, the applicant claimed that emissions from a mobile phone antenna could harm her health and violate Article 8 of the Convention. The Court observed that Swiss authorities had published a study on mobile phone effects, but no scientific evidence of harm was found. Therefore, the Court requires scientifically valid evidence to support claims of environmental or health risks.<sup>44</sup>

If potential environmental damage is severe enough to likely affect individuals' well-being and enjoyment of their homes, the Court does not conduct a detailed analysis of the pollution's connection to the negative effect on the individual.<sup>45</sup> In this context, in *Di Sarno and Others v. Italy*, the Court interpreted the individual harm

39 *Marchiş and Others v. Romania*, p. 28.

40 *Dubetska and Others v. Ukraine*, p. 105.

41 *Tătar v. Romania*, p. 120.

42 *Manual on Human Rights and the Environment*, 2022, p. 116.

43 *Ibid.*, p. 38.

44 *Ibid.*

45 *Ibid.*

criteria flexibly.<sup>46</sup> The case concerned 13 individuals residing in, and five employed in, Somma Vesuviana (in Campania), which was experiencing a waste management crisis. Because a causal link between exposure to waste and increased disease risk was not established, the Court found that the case did not concern direct interference with the right to private and family life,<sup>47</sup> but rather the authorities' negligence in ensuring effective waste collection and disposal.<sup>48</sup> The Court held that waste collection, treatment, and disposal are dangerous activities, which require the State to protect individuals' rights to a safe and healthy environment. The prolonged failure of the Italian authorities to manage waste services violated the applicants' rights to respect for their homes and private lives under Article 8 of the Convention.

In contrast to *Di Sarno and Others*, in *Locascia and Others v. Italy*,<sup>49</sup> the applicants were not required to provide evidence of medical conditions related to waste exposure. The Court accepted multiple studies submitted by the applicants, which showed that pollution from the waste management crisis harmed health and increased vulnerability to illness.<sup>50</sup> The Court based its reasoning on these scientific studies and found a violation of Article 8 of the Convention for the period from 11 February 1994 to 31 December 2009. However, the ECtHR reached a different conclusion for the period after the state of emergency, noting that the applicants did not demonstrate how the shortcomings in waste management directly affected their home and private lives, and therefore found no violation of Article 8 during this time. The Court stated that, although the large quantities of ecobales indicated ongoing environmental degradation in Campania, this alone did not establish that the situation specifically affected the residents.<sup>51</sup>

In another significant case, *Cordella and Others v. Italy*,<sup>52</sup> the Court found that, of 180 applicants who complained about the effects of toxic emissions from the Ilva steel plant, 161 resided in areas previously classified as high environmental risk.<sup>53</sup> All applicants in these areas had admissible claims because scientific evidence demonstrated that pollution increased disease vulnerability in high-risk areas, establishing a causal link between the pollution and each affected individual.<sup>54</sup>

When public authorities make decisions affecting the environment that interfere with private or family life, they must comply with Article 8, paragraph 2. Such

46 *Ibid.*, pp. 38–39.

47 In a case concerning the waste crisis in the Campania region, the European Court of Justice reached a different conclusion from the ECtHR, stating that the large quantities of waste left on the streets posed a clear danger to citizens' health, violating Article 4(1) of Directive 2006/12 (C-297/08 *European Commission v. Italian Republic*, p. 111).

48 *Di Sarno and Others v. Italy*, p. 109. See also Raisz and Krajnyák, 2022, p. 107.

49 The judgment in this case was issued 13 years after the application was submitted (23 June 2010 to 13 October 2023). For an analysis of the case, see Iurascu, 2023.

50 *Locascia and Others v. Italy*, p. 127.

51 *Ibid.*, 136.

52 See Longo, 2019.

53 Raisz and Krajnyák, 2022, p. 101.

54 *Manual on Human Rights and the Environment*, 2022, pp. 40–41.

decisions must be based on law, pursue a legitimate aim (such as economic well-being or protecting others' rights), and be proportionate to that aim. Authorities have a wide margin of appreciation in balancing individual and community interests; however, the Court may review whether they acted with due diligence and considered all competing interests.<sup>55</sup> In most environmental cases where a violation of Article 8 was found, the breach resulted not from the absence of environmental protection laws, but from authorities' failure to uphold and enforce existing legislation.<sup>56</sup>

To assess the proportionality of the measures taken, the Court determines whether a fair balance has been achieved between community interests and the rights of the individuals involved. As previously explained, States have a 'margin of appreciation' in selecting measures to address harmful environmental factors, and the Court considers this margin when reviewing whether a fair balance has been achieved between competing interests.<sup>57</sup> For instance, Raisz and Krajnyák note that claims related to heavy road traffic and railway noise pollution are often successful under Article 8.<sup>58</sup> In contrast, in cases involving air traffic and aircraft noise, the Court usually prioritises public (economic) interests because airports contribute significantly to a country's economy.<sup>59</sup> The Court has also held that when a heavy burden is placed on individuals for community welfare, the State must provide strong evidence to justify interference with individual rights for the benefit of the general public.<sup>60</sup>

Lastly, note that, according to ECtHR case law, environmental conservation – particularly through planning policies – may justify certain limitations on an individual's right to privacy and home life. For instance, in *Chapman v. the United Kingdom*, the Court held that the authorities' refusal to permit a member of the Roma community to live in her caravan on her land, because of environmental preservation policies, constituted a legitimate and proportionate aim and did not violate Article 8 of the Convention.<sup>61</sup>

#### 4. Emerging Trends in Climate Litigation Before the ECtHR

The consequences of climate change have increased awareness of environmental protection. In the current context, judicial proceedings at the intersection of human rights and climate change are highly significant. Climate change cases have appeared

55 Ibid., p. 46.

56 Ibid. For instance, in *López Ostra v. Spain*, the waste-treatment plant operated without the required licence. Similarly, in *Taskin v. Turkey* and *Fadeyeva v. Russia*, the Court found violations because of illegal industrial activities or breaches of national environmental standards.

57 *Manual on Human Rights and the Environment*, 2022, p. 47.

58 Raisz and Krajnyák, 2022, p. 106.

59 Ibid.

60 *Dubetska and others v. Ukraine*, p. 128; *Manual on Human Rights and the Environment*, 2022, p. 50.

61 *Chapman v. the United Kingdom*, pp. 90–91.

before human rights bodies, including the ECtHR.<sup>62</sup> On 9 April 2024, the Grand Chamber of the ECtHR issued three separate rulings on climate change cases (see Table 2). The case *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* concerned four women and a Swiss association of older women concerned about the effects of global warming on their health and living conditions. They argued that Switzerland is not taking sufficient action to address the effects of climate change. In this case, the Court found that Switzerland violated the right to respect for private and family life (Article 8) and the right of access to court (Article 6 paragraph 1) of the European Convention by failing to implement adequate measures to address climate change. However, in two other climate change-related cases (*Duarte Agostinho and Others v. Portugal and 32 Others* and *Carême v. France*), the Court declared the applications inadmissible. The European Court of Human Rights has adjourned several other cases (see pending cases in Table 2), delaying examination until the Grand Chamber issued rulings on the above climate change cases on 9 April 2024.

**Table 2** – ECtHR’s Climate Change Case Law (Article 8)<sup>63</sup>

| JUDGMENT  | DATE         | COURT’S FINDINGS   |
|---|--------------|--|
| <i>Verein KlimaSeniorinnen Schweiz and Others v. Switzerland</i>              | 9 April 2024 | Violation of Article 8 and violation of Article 6 § 1 with respect to the association Verein KlimaSeniorinnen Schweiz, and inadmissible with respect to four individual applicants |
| <i>Carême v. France</i> (decision)  | 9 April 2024 | Inadmissible   |
| <i>Duarte Agostinho and Others v. Portugal and 32 Other States</i> (decision) | 9 April 2024 | Inadmissible   |
| <i>Uricchiov v. Italy and 31 Other States</i>                                 | Pending      |  |
| <i>De Conto v. Italy and 32 Other States</i>                                  | Pending      |  |
| <i>Müllner v. Austria</i>   | Pending      |  |
| <i>Greenpeace Nordic and Others v. Norway</i>                                 | Pending      |  |
| <i>The Norwegian Grandparents’ Climate Campaign and Others v. Norway</i>      | Pending      |  |

62 Raisz and Krajnyák, 2022, pp. 85–94. The topic of climate change and human rights has been widely covered in literature. See, for instance, Sindico and Mbengue, 2021; Kobylarz and Grant, 2022; Rodríguez-Garavito, 2022; Hartmann and Willers, 2022; Rocha and Sampaio, 2023; Hefti, 2024.

63 See Thematic Factsheet ‘Climate Change’ compiled by the Press Unit of the ECtHR (April 2024).

| JUDGMENT  | DATE            | COURT'S FINDINGS |
|---|-----------------|------------------|
| Soubeste and four other applications v. Austria and 11 Other States | Pending         |                  |
| Engels v. Germany   | Pending         |                  |
| Humane Being and Others v. the United Kingdom (decision)            | 1 December 2022 | Inadmissible     |
| Plan B. Earth and Others v. the United Kingdom                      | 1 December 2022 | Inadmissible     |
| Asociacion Instituto Metabody v. Spain                              | 5 October 2023  | Inadmissible     |

The case *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* is significant in several respects. First, it clarified the conditions under which individuals and associations may submit applications to the Court alleging a State's failure to implement adequate measures to protect individuals from the adverse effects of climate change on human life and health. The Court established three conditions that an association must meet:

(a) lawfully established in the jurisdiction concerned or have standing to act there; (b) able to demonstrate that it pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members or other affected individuals within the jurisdiction concerned, whether limited to or including collective action for the protection of those rights against the threats arising from climate change; and (c) able to demonstrate that it can be regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention.<sup>64</sup>

At the same time, the Court recognised that meeting the criteria for individuals in the context of climate change is particularly challenging, as the applicant must be subject to '(a) high intensity of exposure of the applicant to the adverse effects of climate change; and (b) a pressing need to ensure the applicant's individual protection'.<sup>65</sup> The Court found that none of the four individual applicants met these criteria; however, it granted standing to the association *Verein KlimaSeniorinnen Schweiz*.

The Court determined that Article 8 grants individuals the right to effective protection by State authorities against the serious adverse effects of climate change on their life, health, well-being, and quality of life. It also requires States to fulfil their obligation to provide such protection. From this perspective, the State's primary

<sup>64</sup> *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, p. 502.

<sup>65</sup> *Ibid.*, p. 527.

responsibility is to establish and enforce laws and policies that reduce the current and future effects of climate change.<sup>66</sup> Regarding the margin of appreciation, the Court found that States have a limited margin concerning their commitment to addressing the need to combat climate change and its adverse effects, as well as in setting the necessary aims and objectives. However, States have a broad margin of appreciation in choosing the means to achieve these objectives, including the operational choices and policies adopted to meet internationally established targets and commitments, considering their priorities and resources.<sup>67</sup>

In the context of positive obligations, the Court concluded that effective respect for human rights, particularly the right to private and family life and home under Article 8 of the Convention, requires each Contracting State to implement measures that substantially and progressively reduce greenhouse gas emissions, with the goal of achieving net neutrality within the next 30 years. Immediate action and the establishment of intermediate reduction targets are necessary to ensure feasibility and to avoid placing an undue burden on future generations. These measures should be incorporated into a binding national regulatory framework and properly implemented. The relevant targets and timelines must be included in the domestic regulatory framework, forming the basis for general and sectoral mitigation measures.<sup>68</sup>

The Court further outlined the requirements that must be met by all branches of Government as follows:

550. When assessing whether a State has remained within its margin of appreciation (see paragraph 543 above), the Court will examine whether the competent domestic authorities, be it at the legislative, executive or judicial level, have had due regard to the need to:

(a) adopt general measures specifying a target timeline for achieving carbon neutrality and the overall remaining carbon budget for the same time frame, or another equivalent method of quantification of future GHG emissions, in line with the overarching goal for national and/or global climate-change mitigation commitments;

(b) set out intermediate GHG emissions reduction targets and pathways (by sector or other relevant methodologies) that are deemed capable, in principle, of meeting the overall national GHG reduction goals within the relevant time frames undertaken in national policies;

€ provide evidence showing whether they have duly complied, or are in the process of complying, with the relevant GHG reduction targets (see subparagraphs (a)-(b) above);

66 Ibid., p. 519, pp. 544–545.

67 Ibid., pp. 541–543; *Guide to the case-law of the European Court of Human Rights – Environment*, 2024, p. 68.

68 *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, pp. 545–549.

(d) keep the relevant GHG reduction targets updated with due diligence, and based on the best available evidence; and  
 € act in good time and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures.

551. The Court's assessment of whether the above requirements have been met will, in principle, be of an overall nature, meaning that a shortcoming in one particular respect alone will not necessarily entail that the State would be considered to have overstepped its relevant margin of appreciation.<sup>69</sup>

Moreover, the Court held that States should adopt adaptation measures to address the most severe or immediate effects of climate change. These measures should be implemented and enforced using the most reliable evidence and in accordance with each State's overall obligations in this area.<sup>70</sup>

Regarding the decision-making process, the Court stated that public authorities must provide information essential for formulating and implementing climate change regulations and measures, particularly to those who may be affected. Procedural safeguards should ensure public access to relevant study findings, enabling risk assessment. Additionally, mechanisms must allow for the inclusion of public views, especially those of affected individuals, in the decision-making process.

Finally, regarding the State's decision-making process in the context of climate change, the Court stated the following procedural safeguards that must be considered:

(a) The information held by public authorities of importance for setting out and implementing the relevant regulations and measures to tackle climate change must be made available to the public, and in particular to those persons who may be affected by the regulations and measures in question or the absence thereof. In this connection, procedural safeguards must be available to ensure that the public can have access to the conclusions of the relevant studies, allowing them to assess the risk to which they are exposed.

(b) Procedures must be available through which the views of the public, and in particular the interests of those affected or at risk of being affected by the relevant regulations and measures or the absence thereof, can be taken into account in the decision-making process.<sup>71</sup>

Two other climate cases, namely *Duarte Agostinho and Others v. Portugal and 32 Others* and *Carême v. France*, were ruled inadmissible by the Court on 9 April 2024. In the *Carême v. France* case, the Court ruled that the applicant could not be considered a

69 Ibid., pp. 550–551.

70 Ibid., p. 552; *Guide to the case-law of the European Court of Human Rights – Environment*, 2024, p. 69.

71 *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, p. 554.

victim because he no longer lived in the affected geographical area.<sup>72</sup> In the *Duarte Agostinho and others v. Portugal and 32 Other States*, the Court emphasized the failure to exhaust domestic legal remedies.<sup>73</sup> Additionally, the Court noted the absence of a legal foundation to justify expanding the extraterritorial jurisdiction of the other 32 respondent States.<sup>74</sup>

As Tzevelekos and Dzehtsiarou note, in climate change cases, the EctHR is being asked to adapt its system – originally designed in a different era – into a mechanism for safeguarding against a global threat that exceeds the current international legal order’s capacity.<sup>75</sup> With the inclusion of climate change issues, EctHR case law could help establish clearer, more specific standards for environmental protection regarding certain aspects of climate change.<sup>76</sup> However, as Tzevelekos and Dzehtsiarou observe, it is unlikely that the EctHR will become a comprehensive climate change court,<sup>77</sup> particularly because of its strict rules on individual victim status and its lack of extraterritorial jurisdiction, as shown in adjudicated climate cases.

## 5. Comparative Analysis of Key Cases in Central and Eastern Europe

As shown in the previous section, from the 1990s to the present, the EctHR has issued numerous judgments concerning the protection of the right to respect for private and family life in relation to the environment. Analysis of the EctHR’s case law regarding Central and Eastern European countries indicates many relevant judgments and decisions (see Table 3).

**Table 3** – ECtHR’s Environmental Case Law: Central and Eastern European countries

| JUDGMENT              | DATE              | COURT’S FINDINGS       | SUBJECT MATTER  |
|-----------------------|-------------------|------------------------|---|
| Bor v. Hungary        | 18 September 2013 | Violation of Article 8 | Noise disturbance caused by the operation of the railway station  |
| Deés v. Hungary       | 9 November 2010   | Violation of Article 8 | Noise, vibration, pollution and odour disturbance caused by the heavy traffic                             |
| Apanasewicz v. Poland | 3 May 2011        | Violation of Article 8 | Nuisance (including pollution, various health problems and inedible crops) from concrete production plant |
| Borysiewicz v. Poland | 1 July 2008       | Inadmissible           | Nuisance arising from the operation of the workshop   |

72 *Carême v. France*, p. 83.

73 *Duarte Agostinho and others v. Portugal and 32 Other States*, pp. 226–227.

74 *Ibid.*, p. 214.

75 Tzevelekos and Dzehtsiarou, 2022, p. 6.

76 *Ibid.*

77 *Ibid.*

| JUDGMENT  | DATE              | COURT'S FINDINGS          | SUBJECT MATTER  |
|---|-------------------|---------------------------|---|
| Leon and Agnieszka Kania v. Poland                    | 21 October 2009   | Inadmissible              | Noise and pollution from craftsmen's cooperative  |
| Frankowski v. Poland (decision)                       | 20 September 2011 | Inadmissible              | Nuisances of increased road traffic   |
| Furlepa v. Poland (decision)                          | 18 March 2008     | Inadmissible              | Nuisance arising from activities of illegally constructed car repair garage   |
| Gronuś v. Poland (decision)                           | 2 December 1999   | Inadmissible              | Pollution related to adjacent chimney of a heating plant  |
| Kapa and others v. Poland                             | 14 October 2021   | Violation of Article 8    | Nuisance and noise (exceeding domestic and international norms, vibrations and exhaust fumes) from motorway traffic |
| Płachta and Others v. Poland (decision)               | 25 November 2014  | Inadmissible              | Noise disturbance from air base   |
| Wałkuska v. Poland (decision)                         | 29 April 2008     | Inadmissible              | Environmental harm and nuisance from pig farm   |
| Folkman and Others v. Czech Republic (decision)       | 10 July 2006      | Inadmissible              | Nuclear power plant   |
| Sdružení Jihočeské Matky v. Czech Republic (decision) | 10 July 2006      | Inadmissible              | Nuclear power plant   |
| Zapletal v. Czech Republic (decision)                 | 30 November 2010  | Inadmissible              | Noise disturbance from factory  |
| Bacila v. Romania                                     | 30 March 2010     | Violation of Article 8    | Pollution caused by city's factories  |
| Brândușe v. Romania                                   | 7 July 2009       | Violation of Article 8    | Nuisance from former household waste dump   |
| Fieroiu and Others v. Romania (decision)              | 23 May 2017       | Inadmissible              | Construction of regional center for temporary storage of waste  |
| Marchiș and Others v. Romania (decision)              | 28 June 2011      | Inadmissible              | Noxious smells and residues released by the distillery  |
| Tătar v. Romania                                      | 6 July 2009       | Violation of Article 8    | Pollution caused by an environmental accident   |
| Podelean v. Romania (decision)                        | 26 February 2019  | Inadmissible              | Noise disturbance generated by the industrial activity  |
| Hudorovič and others v. Slovenia                      | 10 March 2020     | No violation of Article 8 | Access to drinking water and sanitation   |

| JUDGMENT  | DATE              | COURT'S FINDINGS          | SUBJECT MATTER   |
|---|-------------------|---------------------------|--|
| Mastelica and Others v. Serbia (decision)             | 17 November 2020  | Inadmissible              | Living near a high-voltage (400 kV) power line   |
| Oluić v. Croatia                                      | 20 May 2010       | Violation of Article 8    | Excessive noise from the bar   |
| Tolić and others v. Croatia (decision)                | 4 June 2019       | Inadmissible              | Greasy water with specific odour in a new residential building   |
| Udovičić v. Croatia                                   | 24 July 2014      | Violation of Article 8    | Nuisance from a bar  |
| Kožul and Others v. Bosnia and Herzegovina            | 22 October 2019   | Inadmissible              | Noise and dust disturbance   |
| Dimitar Yordanov v. Bulgaria                          | 6 December 2018   | Inadmissible              | Expropriation because of creation of opencast coalmine   |
| Galev and Others v. Bulgaria (decision)               | 29 September 2009 | Inadmissible              | Noise disturbance and smell from dentist's surgery   |
| Ivan Atanasov v. Bulgaria                             | 11 April 2011     | No violation of Article 8 | Pollution from tailings pond   |
| Mileva and Others v. Bulgaria                         | 25 February 2011  | Violation of Article 8    | Nuisances from the computer club   |
| Dubetska and Others v. Ukraine                        | 10 February 2011  | Violation of Article 8    | Environmental effects, including flooding, polluted ground water and air and soil subsidence because of coalmining basin |
| Dzemyuk v. Ukraine                                    | 4 September 2014  | Violation of Article 8    | Contamination of the groundwater reservoir   |
| Grimkovskaya v. Ukraine                               | 21 July 2011      | Violation of Article 8    | Vibration and noise disturbance caused by traffic  |
| Calancea and Others v. Republic of Moldova (decision) | 6 February 2018   | Inadmissible              | Living in an exceeded electric field   |
| Otgon v. Republic of Moldova                          | 25 October 2016   | Violation of Article 8    | Contaminated water   |
| Jugheli and Others v. Georgia                         | 13 October 2017   | Violation of Article 8    | Nuisances from thermal power plant such as air, noise and electromagnetic pollution and water leakage                    |

Graph 1 shows that most cases originated in Poland and Romania. Four countries – Albania, Montenegro, North Macedonia, and Slovakia – have not recorded cases

related to violations of Article 8 concerning environmental protection before the ECtHR. However, this does not indicate that these countries are not subject to proceedings before courts or other bodies. For example, in Albania in December 2016, three environmental organisations and 38 residents of Kutë village, which faced disappearance due to flooding, filed a lawsuit against the construction of the Poçem hydropower plant on the Vjosë river. This was the first environmental case heard by the Albanian Court, which concluded with the Court of Appeal dismissing the appeal and upholding the decision in favour of the plaintiffs.<sup>78</sup> In 2020, the Supreme Court of Montenegro rejected the revision as unfounded and upheld the Court of Appeal judgment in Podgorica. In this case, the plaintiff alleged exposure to excessive noise and requested the court to prohibit the organisation and holding of concerts in a stadium opposite her apartment. The claim was deemed inadmissible because the organisers had permission to hold concerts, and it was determined that noise levels did not exceed permitted limits.<sup>79</sup>

Special mention should be given to the Compliance Committee of the Aarhus Convention, which considers compliance issues submitted by a Party to the Convention, the secretariat, members of the public, or on its own initiative. The Aarhus Convention requires Parties to ensure access to information, public participation in decision-making, and access to justice in environmental matters to protect the environment for current and future generations. From 2005 to the present, there have been three recommendations for Slovakia, one for Albania, and one for North Macedonia. For Slovakia, recommendations addressed the lack of public participation in the decision-making process for an additional construction permit for the Mochovce Nuclear Power Plant,<sup>80</sup> the absence of decision-making regarding the extension of reactors 3 and 4 at the same facility,<sup>81</sup> and the failure to ensure public participation in the 2013 amendment of forestry legislation, as well as inadequate access to justice for enforcing regulations on public participation in drafting such legislation.<sup>82</sup> Albania received recommendations in 2007 regarding public access to information and participation in decision-making for the construction of an industrial park and a thermal electric

78 Administrative Court of Appeal in Tirana, case no.: 31103-040003-86-2017, 27 June 2024; *The Court of Appeals confirms the verdict for the cancellation of Poçem Hydropower plant in Vjosa river*, 2024.

79 Supreme Court of Montenegro, Rev 436/2020, 15 July 2020.

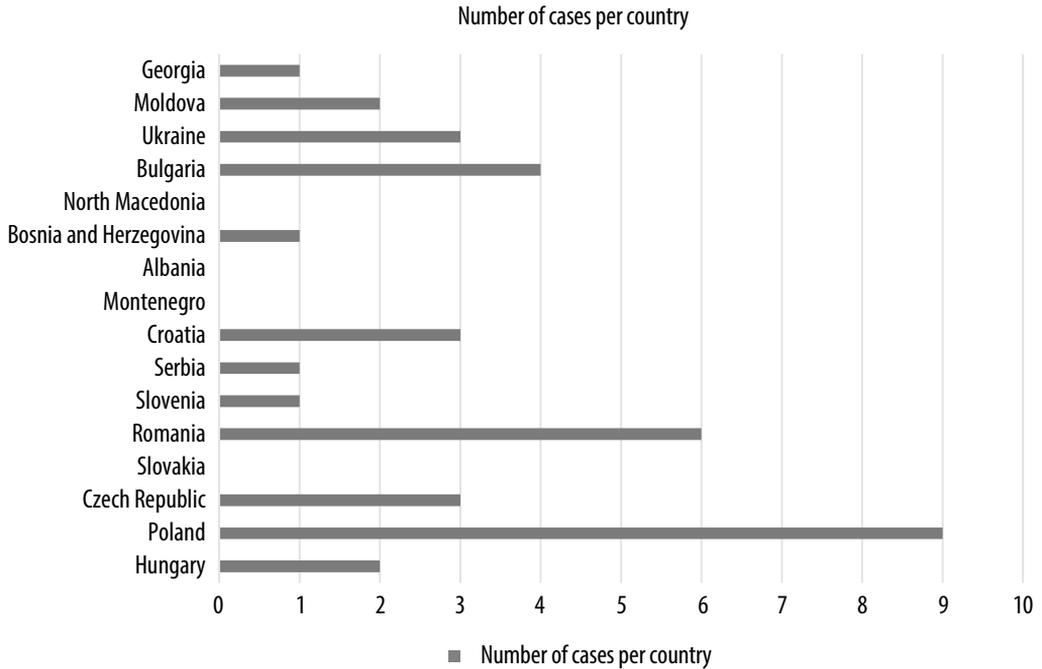
80 Compilation of findings of the Aarhus Convention Compliance Committee adopted 18 February 2005 to date (Version 14 August 2023), see: Findings and recommendations with regard to communication ACCC/C/2009/41 concerning compliance by Slovakia (adopted by the Compliance Committee on 17 December 2010).

81 *Ibid.*, see: Findings and recommendations with regard to communication ACCC/C/2013/89 concerning compliance by Slovakia, adopted by the Compliance Committee on 19 June 2017.

82 *Ibid.*, see: Findings and recommendations with regard to communication ACCC/C/2014/120 concerning compliance by Slovakia, adopted by the Compliance Committee on 24 July 2021.

power station.<sup>83</sup> North Macedonia was recommended to improve the timeliness of its national implementation reports, which are required to be submitted regularly.<sup>84</sup>

**Graph 1** – Number of ECtHR Cases per Central and Eastern European Country

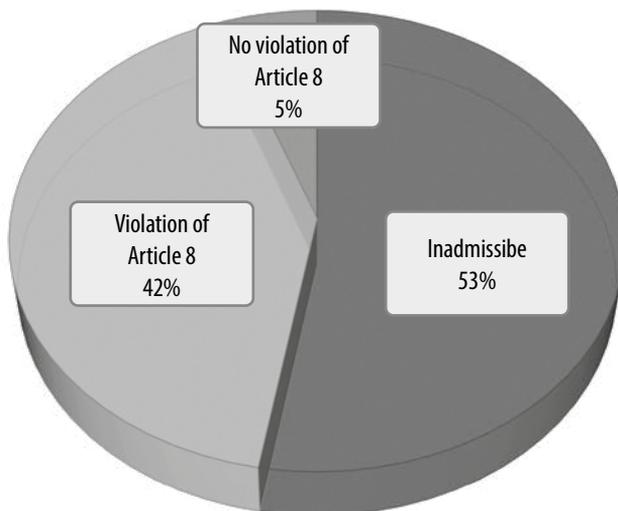


Out of 36 judgments or decisions, 15 were ruled with a violation of Article 8, 19 were ruled as inadmissible, and 2 were ruled with no violation of Article 8 (Graph 2).

83 Ibid., see: Findings and recommendations with regard to communication ACCC/C/2005/12 concerning compliance by Albania, adopted by the Compliance Committee on its sixteenth meeting (13–15 June 2007).

84 Ibid., see: Findings and recommendations with regard to request ACCC/M/2014/1 concerning compliance by the former Yugoslav Republic of Macedonia, adopted by the Compliance Committee on 4 May 2017.

**Graph 2** – Judgments and Decisions of the ECtHR with Respect to Central and Eastern European Countries



### **5.1. Established Violations of Article 8**

Case law in which Article 8 was found to have been violated involved issues such as noise disturbance, nuisance from industrial activities, pollution, and residence near nuclear or thermal power plants or high-voltage lines. The ECtHR considered excessive noise from bars, clubs, and traffic, as well as nuisance from factories, to constitute serious harm to the peaceful enjoyment of the right to private and family life. The following sections review relevant cases concerning environmental nuisance.

#### *5.1.1. Excessive Noise*

##### *a) Oluić v. Croatia*

In *Oluić v. Croatia*, the applicant experienced noise disturbance over several years. She and her family lived in a house where a bar operated in another section. Noise measurements taken on multiple occasions indicated that levels from the bar exceeded permitted limits. The applicant also provided medical documentation confirming health problems resulting from prolonged exposure to excessive noise. The ECtHR compared this case to others involving noise from nightclubs and found them similar. The ECtHR established general principles regarding excessive noise as follows:

44. Article 8 of the Convention protects the individual's right to respect for his private and family life, his home and his correspondence. A home will usually be a place, a physically defined area, where private and family life develops. The individual has a right to respect for his home, meaning not just the right to the actual physical area, but also to the quiet enjoyment of that area. Breaches of the right to respect of the home are not confined to concrete or physical

breaches, such as unauthorized entry into a person's home, but also include those that are not concrete or physical, such as noise, emissions, smells or other forms of interference. A serious breach may result in the breach of a person's right to respect for his home if it prevents him from enjoying the amenities of his home.

The ECtHR emphasised that when an individual is directly and seriously affected by nuisance, an issue may arise under Article 8. From the perspective of the State's positive obligations to protect the applicant's rights under Article 8, it was established that the State failed to implement adequate protective measures for the applicant and her family over an eight-year period. The measures taken, such as orders to reduce noise and to add sound insulation to the walls and inter-floor construction, were insufficient. Consequently, the violation of the applicants' rights was found unanimously.

b) *Bor v. Hungary*

In *Bor v. Hungary*, the ECtHR considered the claim of an applicant whose house was located across the street from the Railway Station, where noise from diesel engines disrupted his life. The ECtHR highlighted the need to maintain a fair balance between individual interests and the public interest, which in this case was the provision of rail transport.<sup>85</sup>

It took approximately 16 years for domestic courts to issue an enforceable decision protecting the applicant from serious nuisance, which had prevented him from enjoying his home. This led the ECtHR to conclude that the State failed to fulfil its positive obligations to strike a fair balance. Article 8 was interpreted to require public authorities not only to protect individuals from arbitrary interference, but also to implement positive measures to preserve protected rights, such as the right to live in a quiet environment.<sup>86</sup> In addition, 'the existence of a sanction system is not enough if it is not applied in a timely and effective manner'.<sup>87</sup> Similar cases have also experienced delays in proceedings before national courts.

c) *Deés v. Hungary*

In *Deés v. Hungary*,<sup>88</sup> increased traffic on the applicant's street resulted from trucks avoiding a motorway toll. This led to higher levels of noise, vibrations, odour, and pollution affecting the applicant. He also alleged that the vibrations damaged his house's walls, collectively violating his right to respect for private life. Unlike *Bor v. Hungary*, the State, considering its positive obligations under Article 8, implemented measures to reduce and divert traffic. However, the ECtHR found these measures inadequately enforced and insufficient, which exposed the applicant to excessive nuisance.

85 *Bor v. Hungary*, pp. 24–25. See also Raisz and Krajnyák, 2022, p. 104.

86 *Manual on Human Rights and the Environment*, 2022, p. 41.

87 *Bor v Hungary*, p. 27.

88 See Raisz and Krajnyák, 2022, pp. 104–105.

d) *Kapa and Others v. Poland*

Similar to the previous case, in *Kapa and Others v. Poland*,<sup>89</sup> the applicants experienced excessive noise, vibrations, and odour from traffic on an inadequately equipped road near their home. The ECtHR found that the authorities did not achieve a fair balance between the general interest in motorway development and residents' enjoyment of private and family life. Furthermore, the Court determined that the measures taken by public authorities were ineffective:

172. The Court observes that the authorities faced a difficult task of mitigating the problem of very heavy traffic resulting from the rerouting of the A2 motorway down Warszawska Street. They also had a very limited choice of possible adaptation measures. The Court therefore accepts that the authorities made considerable efforts to respond to the problem. This, however, does not change the fact that these efforts remained largely inconsequential, because the combination of the A2 motorway and the N14 road was, for many reasons, the preferred route for drivers. As a result, the State put vehicle users in a privileged position compared with the residents affected by the traffic.

The Court unanimously held that there was a violation of Article 8.

5.1.2. *Waste Deposit*a) *Brândușe v. Romania*

In *Brândușe v. Romania*, the applicant was detained on police premises located near a former household waste dump that operated without the required authorisations. He was exposed to stale air and persistent flies and insects entering his cell from the dump over several years, which posed a significant risk of serious infection. The ECtHR found that no environmental study had been conducted before the dump began operating, and when such a study was eventually carried out, it revealed a strong nuisance exceeding proposed standards, indicating that residents nearby experienced unbearable odour. The ECtHR concluded that the State failed to meet its positive obligations towards the applicant.

5.1.3. *Water Contamination*a) *Otgon v. Republic of Moldova*

In *Otgon v. Republic of Moldova*, the applicant and her daughter were hospitalised after drinking tap water at home. An outdated sewage pipe had leaked into the drinking water, resulting in the hospitalisation of five people. The Government did not dispute the water contamination or related health risks but denied the applicant victim status because she had received compensation from domestic courts. The ECtHR found that the higher domestic court had reduced the compensation to 324 EUR from 648 EUR

<sup>89</sup> Ibid., p. 105.

without adequate justification, which was below the minimum awarded in comparable cases in the Republic of Moldova. Consequently, the Court concluded that victim status under Article 8 remained applicable.

b) *Dzemyuk v. Ukraine*

In *Dzemyuk v. Ukraine*, a cemetery was built 40 m from the applicant's house. The local village also used water from wells supplied by groundwater. The applicant alleged that his drinking and gardening water was contaminated, violating his right to normal private and family life. Although the national court ordered the cemetery's closure, the order was not enforced. The ECtHR found that the construction and use of the cemetery breached several environmental regulations, public authorities failed to address health risks, and they disregarded the conclusions of the environmental authorities, thereby violating the applicant's rights under Article 8.

#### 5.1.4. Industrial Pollution

a) *Tătar v. Romania*

In *Tătar v. Romania*,<sup>90</sup> the applicants lived near a gold mine that used sodium cyanide for extraction. In early 2000, an accident released 100,000 m<sup>3</sup> of cyanide-contaminated water into the river and surrounding environment due to a dam breach. The applicants initiated administrative and criminal proceedings in national courts, alleging that the company's activities endangered their health and the environment, but these actions were unsuccessful. Before the ECtHR, they invoked Article 2, the right to life, and argued that the State had failed to protect them. The ECtHR, however, assessed the complaints under Article 8 and found a violation. The Court determined that the State had not protected the applicants' rights and had breached the precautionary principle by failing to assess the risks of the gold extraction method before issuing an operating permit and by not taking adequate measures after the accident. Notably, the ECtHR found no causal link between the pollution and the applicants' health deterioration.

The significance of this case lies in the ECtHR's reference to the rights set out in the Aarhus Convention.<sup>91</sup> The Court concluded that the State was required to ensure public access to information and the right to participate in decision-making processes concerning environmental matters. In this instance, citizens either lacked access to information or had only limited access before the permit was granted, and information was also insufficient following the accident. The ECtHR emphasised the importance of the public's right to information.

90 Ibid., pp. 99–101.

91 Romania has ratified Aarhus Convention 11 July 2000.

b) *Băcilă v. Romania*

In *Băcilă v. Romania*, the applicant and her family left their city because of pollution from local factories. After several factories closed, they returned, expecting reduced pollution. The applicant then filed a complaint against the main factory producing lead and zinc, which released contaminated elements and heavy metal dust into the air. The ECtHR reviewed medical documents confirming health deterioration due to pollution, as well as multiple reports on the harmful effects of hazardous chemicals on humans and vegetation. The Court also found that public authorities had failed to reduce pollution levels for the welfare of citizens, stating that:

69. It is not for the Court to rule on the advisability of a possible cessation of the factory's activity so that it complies with environmental protection standards [...]. However, it must be noted that despite an increase in pollution after the privatization of the factory, recognized by the local authorities, it does not appear from the file that they took, before 2007, any measures against the company. The reluctance to sanction the company was motivated by the fact that short-term measures would be ineffective and would threaten a large part of the region's jobs

Even when considering the public interest in hosting a large employer factory, the ECtHR found that the State did not achieve a fair balance with citizens' rights to a safe and healthy environment.

c) *Dubetska and Others v. Ukraine*

In *Dubetska and Others v. Ukraine*, the applicants – two families – lived near a coal mine and a recently opened coal factory, where they were exposed to flooding, contaminated groundwater, and polluted air. A study confirmed an increased risk of cancer, as well as respiratory and kidney diseases, for individuals residing near active mines and factories. The applicants reported a lack of drinkable water, damage to their homes from mining activities, and the development of several health conditions, all supported by medical documentation. Although public authorities attempted to address the situation through various orders to the factory and a resettlement plan, these measures were not enforced. The ECtHR observed that the applicants were compelled to remain in the polluted area because they could not afford to relocate and were unable to sell their homes due to decreased property values. The Court also noted that, over a twelve-year period, public authorities failed to make progress in assisting the applicants, while the industrial facilities continued to operate in violation of national environmental regulations.<sup>92</sup>

92 *Dubetska and Others v. Ukraine*, p. 155.

### 5.2. Cases with No Article 8 Violations

Two cases were ruled with no violations of Article 8.

In the first case, *Ivan Atanasov v. Bulgaria*, the ECtHR had the opportunity to recognise an interest in environmental protection but did not do so. The applicant claimed that public authorities had endangered his and his family's health because they lived near a decommissioned mine. The ECtHR unanimously found no violation of Article 8, stating that the Article does not apply in every instance of environmental deterioration, as the right to nature preservation is not among the Convention rights. The Court also held that fear of negative consequences alone cannot activate Article 8. Although the ECtHR acknowledged that living near the pond posed environmental and health risks, it ruled as it did because of factors such as the considerable distance between the applicant's home and the pollution source, the absence of an active production process, and the lack of concrete evidence of increased morbidity or health problems among residents.

The second case, *Hudorovič and Others v. Slovenia*, differs from the aforementioned judgments because it concerns respect for private life, with applicants from Roma communities complaining about inadequate conditions due to a lack of access to safe drinking water and sanitation. Although the case does not address environmental protection, access to safe drinking water is linked to the enjoyment of private and family life, bringing it within the scope of Article 8. The ECtHR found that public authorities had taken effective positive measures to improve living conditions for the Roma community and determined that the community itself had not made sufficient efforts to improve its own situation, leading to a finding of no violation of Article 8.

### 5.3. Inadmissible Cases under Article 8

For cases deemed inadmissible, applicants typically failed to provide the ECtHR with medical documentation demonstrating that their health had been affected by the negative effect of environmental nuisance (e.g. *Borysiewicz v. Poland*). In some instances, there was also an absence of environmental expert opinions regarding the damage caused by the nuisance, even before national courts (e.g. *Wałkuska v. Poland*).

In *Podelean v. Romania*, the ECtHR addressed the applicant's complaint regarding noise pollution from nearby industrial operations and the alleged failure of national public authorities to protect his right to private and family life. The ECtHR identified four factors that led to the case's inadmissibility: (1) first, the applicant voluntarily established his domicile near the industrial factory, fully aware of the nuisance it generated; (2) second, he complained only about one industrial factory, despite the presence of two other noise sources; (3) third, he benefited from procedural guarantees; and (4) fourth, public authorities attempted to reduce noise emissions by ordering the factory's modernisation and installing sound insulation.<sup>93</sup>

In *Mastelica and Others v. Serbia*, the applicants complained about a high-voltage power line constructed near their homes, citing the effects of electric and magnetic

93 *Podelean v. Romania*, p. 42.

fields on their health and their exclusion from the decision-making process prior to approval. The ECtHR considered that the highest recorded frequency levels were below WHO standards and noted the applicants' lack of medical evidence. Regarding the involvement of certain public institutions, such as the Ombudsman, the Court offered an interesting perspective:

They had regard to the general aims of protecting the environment, which are quite different from the aims of Article 8 of the Convention, namely to provide a safeguard to those personally affected by violations of their fundamental human rights [...]. As already noted above, neither Article 8 nor any of the other provisions of the Convention or the Protocols thereto were specifically designed to provide protection of the environment; other international instruments and domestic legislation are better suited to address such issues.<sup>94</sup>

Because the minimum severity threshold was not met, the case was declared inadmissible.

## 6. Conclusion

The European Convention was established at a time when environmental protection was not a central concern in international affairs. Since its entry into force in September 1953, additional Protocols have introduced new rights, but none have included environmental rights. Nevertheless, the ECtHR has developed an innovative approach to environmental protection. This 'evolutionary' interpretation by the Court has generally advanced the protection of rights and freedoms to support the development of a 'European public order'.<sup>95</sup> As shown in this research, Article 8 is essential for safeguarding individual rights violated by adverse environmental conditions. However, the ECtHR considers environmental cases only when individuals' well-being is at risk. According to the severity test, the Court must assess whether there is a causal link between the activity that significantly affects the environment and the harm suffered by the individual, and whether the adverse effects have reached a certain level of seriousness.<sup>96</sup> The determination of this minimum threshold depends on the specific circumstances of each case. The study found that medical documentation and scientific evidence are crucial for establishing a violation of Article 8. Consequently, the environment remains unprotected unless individuals' rights are affected, regardless of the extent of environmental damage.

<sup>94</sup> *Mastelica and Others v. Serbia*, p. 49.

<sup>95</sup> *Hatton and Others v. United Kingdom*, Joint dissenting opinion of Judges Costa, Ress, Türmen, Zupančić and Steiner, p. 2.

<sup>96</sup> *Manual on Human Rights and the Environment*, 2022, p. 35.

There has been a marked increase in environmental protection cases before the Court, including a rising number of climate litigation cases, which highlights the importance of this issue. In *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, the ECtHR held that Article 8 grants individuals the right to effective protection by State authorities against the serious adverse effects of climate change on their life, health, well-being, and quality of life, and obliges States to ensure such protection. Thus, the State's primary responsibility is to establish and enforce laws and policies that mitigate the current and future effects of climate change.<sup>97</sup>

The analysis of cases from Central and Eastern Europe shows that these cases help interpret key concepts of Conventional rights, particularly the positive obligations of public authorities towards individuals. According to the data in Section 5, of 36 judgments or decisions, 15 involved violations of Article 8, 19 were deemed inadmissible, and 2 found no violation of Article 8. This indicates that, although many cases are inadmissible, a considerable proportion of admissible cases involve Article 8 violations. The study found that most infringements of the right to privacy and family life in Central and Eastern Europe arose from issues such as excessive noise, improper waste disposal, water pollution, and industrial contamination. In most environmental cases where Article 8 was breached, the cause was not a lack of environmental laws, but the States' failure to enforce existing regulations.<sup>98</sup> No cases from Central and Eastern Europe have directly addressed climate change to date.

As the Court states in its case law, neither Article 8 nor any other provisions of the Convention on Human Rights or its Protocols were explicitly designed to protect environmental interests. Other international treaties and national laws are more suitable for addressing environmental protection.<sup>99</sup> Environmental protection is often cited as a global challenge that individual countries cannot address effectively without international cooperation and coordination.<sup>100</sup> Adopting a new protocol to the Convention, as recommended by the Parliamentary Assembly in Resolution 2396 (2021), could significantly strengthen the protection of the right to private and family life in environmental cases by specifically addressing the right to a safe, clean, healthy, and sustainable environment.

97 *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, p. 519, pp. 544–545.

98 *Manual on Human Rights and the Environment*, 2022, p. 46.

99 *Mastelica and Others v. Serbia*, p. 49.

100 Bifulco and Nato, 2020, p. 108.

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# The Right to a Fair Trial and the Right to an Effective Remedy in Environmental Protection (Perspective of the ECtHR Case Law Under Articles 6 and 13 ECHR)

Bartosz MAJCHRZAK

## ABSTRACT

This paper provides a detailed overview of the jurisprudence of the European Court of Human Rights on the application of Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms in environmental cases, highlighting the specific nature of this case law. The study examines: the predominance of cases relating to the civil limb of Article 6 § 1 of the Convention, the catalogue of civil rights relevant to environmental matters, the entitlement of environmental associations to claim or exercise such rights (the associations' standing), the "directly decisive" outcome of domestic proceedings for applicants' civil rights, the application of Articles 6 § 1 and 13 to general acts, and the interrelation between these provisions. Reference material includes the Court's jurisprudence in "key cases", and those concerning Central and Eastern European countries.

## KEYWORDS

right to a fair trial, right to an effective remedy, ECtHR's case law, protection of the environment

## 1. Introduction

It is a well-established fact that the environment is protected under various international conventions regulating specific issues such as climate change, biodiversity, landscape, and air pollution<sup>1</sup>. However, the fundamental treaty, described as 'a constitutional instrument of European public order'<sup>2</sup>, i.e. the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>3</sup> (hereinafter the "ECHR" or

1 Cliza and Spătaru-Negură, 2020, p. 123; Manual, 2022, p. 7.

2 *Loizidou v. Türkiye*, p. 75.

3 Council of Europe, 1950.

Bartosz Majchrzak (2026) 'The Right to a Fair Trial and the Right to an Effective Remedy in Environmental Protection (Perspective of the ECtHR Case Law Under Articles 6 and 13 ECHR)' in Raisz, A., Krajnyák, E. (eds.) *Human Rights and Environmental Protection from a Central and Eastern European Perspective*. Miskolc–Budapest: Central European Academic Publishing, pp. 235–257. [https://doi.org/10.71009/2026.arek.hraep\\_9](https://doi.org/10.71009/2026.arek.hraep_9)



the “Convention”), neither directly includes provisions on environmental preservation, nor explicitly guarantees the right to a safe, clean, quiet, healthy or sustainable environment<sup>4</sup>.

Nevertheless, in light of the evolving case law of the European Court of Human Rights (hereinafter: the “ECtHR” or the “Court”), it can be assumed that the ECHR indirectly provides a degree of environmental protection when alleged violations of Convention rights are associated with potential or actual interference with the environment<sup>5</sup>. In other words, the Court cannot declare environmental complaints admissible unless they directly concern individual rights expressly protected under the ECHR<sup>6</sup>. The ECtHR has already identified that such issues may affect the right to life (Article 2 ECHR), the prohibition of inhuman or degrading treatment (Article 3 ECHR), the right to a fair trial and access to a court (Article 6 ECHR), the right to respect for private and family life as well as home (Article 8 ECHR), the right to receive and impart information and ideas (Article 10 ECHR), the right to freedom of peaceful assembly and association (Article 11 ECHR), the right to an effective remedy (Article 13 ECHR) and the right to peaceful enjoyment of one’s possessions (Article 1 of Protocol No. 1 ECHR)<sup>7</sup>. This linkage is possible because the quality of the environment is closely related to the effective enjoyment of human rights<sup>8</sup>.

The subject of this paper is an analysis of the ECtHR’s jurisprudence based on Articles 6 and 13 ECHR and their application to cases where domestic resolutions had, or could have had, at least an indirect effect on the environment. The analysis assumes the need for at least a general definition of the term “environment”. In this context, the findings of the “Manual” prepared within the framework of the Council of Europe were considered. Under the “Manual”, international law (including the Convention) does not provide a standard definition of the environment, and the ECtHR refrains from doing so due to the nature of the court’s tasks. However, within the Council of Europe framework, the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment<sup>9</sup> seeks to indicate the scope of the concept of environment (Article 2, point 10). Similarly, the International Court of Justice has attempted to define it.<sup>10</sup> The “Manual” provides as follows: ‘Considering the various definitions, it appears to be commonly accepted that the environment includes a wide range of elements, including air, water, land, flora, and fauna, as well as human health

4 Caglayan, 2015, p. 83; Cliza and Spătaru-Negură, 2020, p. 124, 133; Fehete, 2012, p. 1073; Manual, 2022, p. 7; Pedersen, 2010, p. 573; Spătaru-Negură, 2024, p. 334.

5 Cliza and Spătaru-Negură, 2020, p. 124; Manual, 2022, p. 7; Raisz and Krajnyák, 2022, p. 75.

6 Caglayan, 2015, p. 86; Machińska, 2014, p. 60.

7 Manual, 2022, p. 8; see also: Cliza and Spătaru-Negură, 2020, p. 124; Desgagné, 1995, pp. 266–280; Council of Europe and European Court of Human Rights, 2024; Raisz and Krajnyák, 2022, p. 78.

8 Desgagné, 1995, p. 293.

9 Council of Europe, 1993.

10 E.g. International Court of Justice, 1996, p. 29.

and safety, and that it is to be protected as part of the more global goal of ensuring sustainable development.<sup>11</sup>

Therefore, this approach serves as a point of reference for reviewing ECtHR case law. At the same time, the overview answers the specific application of Articles 6 and 13 ECHR in environmental contexts. Given the broad scope of the issue, the focus is put on “key cases” and jurisprudence concerning Central and Eastern European countries.

## 2. General Remarks Concerning the Right to a Fair Trial and the Right to an Effective Remedy

To address the specific application of Articles 6 and 13 ECHR in environmental cases, it is necessary to first outline the normative content of these provisions in general terms, without yet considering their specific scope.

Article 6 § 1 ECHR (“Right to a fair trial”) stipulates: ‘In the determination of his civil rights and obligations, or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly (...)’.

In light of the ECtHR’s case law in environmental matters, it is unnecessary to quote or analyse the remaining sections of Article 6. They specify the guarantees of the right to a fair trial in criminal matters (i.e. the presumption of innocence, the right to be promptly informed of the nature and cause of the accusation, the right to adequate time and facilities for the preparation of defense, the right to self-defense or legal assistance, the right to examine witnesses, and the right to free assistance of an interpreter), which have not yet been specifically referenced in the Court’s environmental jurisprudence.

As for the “civil limb” of Article 6 § 1 ECHR, the notion of “civil rights and obligations” is an “autonomous” concept derived from the Convention and cannot be interpreted solely by reference to domestic law. Accordingly, Article 6 § 1 applies regardless of the nature of the provisions governing the ‘dispute’ (civil, commercial, administrative law, etc.)<sup>12</sup>. However, “The principle according to which the autonomous concepts contained in the Convention must be interpreted in the light of present-day conditions in democratic societies does not give (...) power to interpret Article 6 § 1 as though the adjective “civil” (...) were not present in the text<sup>13</sup>.

The civil nature of a right or obligation must be determined by its substantive content and effects under the domestic law of the State concerned, while also considering the objectives of the Convention and the legal systems of other Contracting

11 Manual, 2022, pp. 133–134.

12 Council of Europe, European Court of Human Rights, 2025a, p. 7.

13 *Ferrazzini v. Italy*, para. 30.

States.<sup>14</sup> In principle, the applicability of Article 6 § 1 to disputes between private individuals classified as “civil” in domestic law is uncontested. This provision also extends to proceedings that come under “public law” domestically when their outcome is decisive for private rights and obligations or for the protection of “pecuniary rights”.<sup>15</sup> Moreover, the ECtHR has adopted a broad interpretation of the “civil limb”, encompassing cases that may not initially appear to concern a civil rights but that directly and significantly affect an individual’s pecuniary or non-pecuniary rights.<sup>16</sup> For example, Article 6 § 1 applies to building permits, administrative permission to pursue an occupation, licenses for serving alcoholic beverages,<sup>17</sup> and disciplinary proceedings before professional bodies where the right to practice a profession is directly at stake.<sup>18</sup>

Recently the Court summarised its case law relating the other requirements for applying Article 6 § 1 in *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*. According to the judgement: ‘For Article 6 § 1 in its civil limb to be applicable, there must be a “dispute” (“contestation” in French) over a right which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether that right is protected under the Convention (...). The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play.’<sup>19</sup>

The concept of a “criminal charge” has also an “autonomous” meaning, independent of categorisations employed in the national legal systems. This applies both to determining the “criminal” nature of the charge and the moment from which such a “charge” exists.<sup>20</sup> The ECtHR prefers a “substantive”, rather than “formal”, conception of a “charge” under Article 6 § 1<sup>21</sup>. It could be defined as ‘the official notification given to an individual by the competent authority of an allegation that he [or she] has committed a criminal offence’<sup>22</sup>. The answer to the question whether there is a “criminal offence” or “criminal charge” in a particular case is determined using the “Engel criteria”: (1) classification in domestic law, (2) nature of the offence, and (3) severity of the potential penalty. The first criterion carries relative weight and serves only as a starting point, while the second and third are of greater significance.<sup>23</sup> The Court points out that these latter criteria are alternative, not cumulative, thus Article

14 *König v. Germany*, para. 89.

15 Council of Europe, European Court of Human Rights, 2025a, p. 17.

16 Council of Europe, European Court of Human Rights, 2025a, p. 18.

17 Council of Europe, European Court of Human Rights, 2025a, p. 17.

18 Council of Europe, European Court of Human Rights, 2025a, p. 18.

19 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 595.

20 Council of Europe and European Court of Human Rights, 2025b, p. 9.

21 *Deweert v. Belgium*, para. 44.

22 *Deweert v. Belgium*, para. 46.

23 Council of Europe and European Court of Human Rights, 2025b, p. 11; *Engel and Others v. the Netherlands*, para. 82.

6 applies if the offence is “criminal” by its nature under the Convention or exposes the person to a sanction that, by its nature and degree of severity, belongs to the “criminal” sphere.<sup>24</sup> On this basis, the criminal limb of Article 6 § 1 has been applied, for example, to offences against military discipline carrying a penalty of committal to a disciplinary unit for several months<sup>25</sup>, road-traffic offences punishable by fines or driving restrictions, administrative offences related to public assemblies<sup>26</sup>, tax surcharges<sup>27</sup>, and administrative fines imposed by Competition Protection Agency for obstructing inspections.<sup>28</sup>

Article 6 § 1 ECHR sets out general principles of broad application (explicitly to two basic categories of trials, i.e. civil and criminal, but also including administrative judicial proceedings), which serve as guarantees of procedural fairness<sup>29</sup>. These guarantees are both procedural and institutional in nature.

First, they include the “practical and effective”<sup>30</sup> right of access to a court<sup>31</sup>, which contains the rights to legal aid (representation)<sup>32</sup> and to the execution of a final judicial decision or an interlocutory order pending that decision.<sup>33</sup>

Second, these provisions establish requirements for what constitutes a “tribunal”: a body with a judicial function (i.e. deciding matters within its competence under the law after proceedings are conducted in a prescribed manner); existing on a legal basis, in accordance with the specific rules governing it (including the composition of the court hearing the case); composed of judges selected on merit, who fulfil the requirements of technical competence and moral integrity required to perform judicial functions and are appointed under relevant rules; an independent and impartial body, referring to both personal and institutional independence, which ensures impartial decision-making and reflects, on one hand, a state of mind denoting a judge’s moral integrity and resistance to external pressure, and a set of institutional and operational guarantees<sup>34</sup>; a body with “full jurisdiction” to examine all questions of fact and law relevant to the dispute before it.<sup>35</sup>

Third, the guarantees under Article 6 § 1 cover the following procedural requirements of: a fair hearing, encompassing effective participation of a party in the procedure, equality of arms, adversarial proceedings, reasoned judicial decisions, and fair

24 *Lutz v. Germany*, para. 55.

25 Council of Europe and European Court of Human Rights, 2025b, p. 12.

26 Council of Europe and European Court of Human Rights, 2025b, p. 13.

27 Council of Europe and European Court of Human Rights, 2025b, p. 14.

28 *Produkcija Plus Storitveno Podjetje D.O.O. v. Slovenia*, paras. 45–46.

29 Schabas, 2015, pp. 270–271.

30 *Weissman and Others v. Romania*, para. 37.

31 Schabas, 2015, pp. 284–285; *Golder v. the United Kingdom*, para. 36; Council of Europe and European Court of Human Rights, 2025b, p. 17.

32 Council of Europe and European Court of Human Rights, 2025a, pp. 54–56.

33 *Okyay and Others v. Türkiye*, para. 72.

34 *Guðmundur Andri Ástráðsson v. Iceland*, paras. 218–234. For specific guarantees of independence and impartiality, see: Council of Europe and European Court of Human Rights, 2025a, pp. 74–88; Council of Europe and European Court of Human Rights, 2025b, pp. 23–33.

35 *Ramos Nunes de Carvalho e Sá v. Portugal*, paras. 176–177.

administration of evidence<sup>36</sup>; a public hearing (which implies *inter alia*, the right to an “oral hearing” and the public pronouncement of judgments)<sup>37</sup>; reasonable duration of proceedings (applicable to all stages of a domestic case, counted from the initiation of the proceedings until the enforcement of the judgment).<sup>38</sup>

According to the ECtHR, Article 6 § 1 constitutes a *lex specialis* in relation to Article 13 of the Convention<sup>39</sup>. This means that the safeguards in the former, ‘implying the full panoply of a judicial procedure, are stricter than, and absorb, those of Article 13<sup>40</sup> (except in cases alleging a violation of the right to trial within a reasonable time under Article 6 § 1<sup>41</sup>). Article 13 ECHR provides for the “right to an effective remedy”, saying: ‘Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.’

This provision articulates the State’s obligation to secure the protection of the Convention primarily within its own legal system, reflecting the subsidiary nature of the ECtHR’s complaint mechanism, as also articulated in Article 35 § 1 ECHR.<sup>42</sup> The effect of Article 13 is to require a domestic remedy capable of addressing the substance of an ‘arguable complaint’ under the Convention and of granting proper relief, while allowing Contracting States some discretion in how they meet their obligations.<sup>43</sup> Thus, Article 13 has no independent viability; it complements the substantive clauses of the Convention and its Protocols and applies only in combination with an alleged violation of another article. The underlying grievance must, however, be “arguable” under the Convention.<sup>44</sup>

The “authority” mentioned in Article 13 need not always be a judicial institution or a tribunal within the meaning of Article 6 § 1. It may instead be an ombudsman, an administrative authority, or even a political authority such as a parliamentary commission. However, the authority’s powers and procedural safeguards, and independence must be considered, as well as whether the applicant is provided with procedural guarantees.<sup>45</sup>

For a “remedy” to be “effective,” it must directly provide redress for the impugned situation, encompass the merits of the applicant’s complaint, be prompt and

36 Council of Europe and European Court of Human Rights, 2025a, p. 88, pp. 106–117; Council of Europe and European Court of Human Rights, 2025b, pp. 35–44, pp. 47–51.

37 Council of Europe and European Court of Human Rights, 2025a, pp. 118–125; Council of Europe and European Court of Human Rights, 2025a, pp. 60–67.

38 Council of Europe and European Court of Human Rights, 2025a, pp. 125–131 ; Council of Europe and European Court of Human Rights, 2025b, pp. 68–72.

39 *Kudła v. Poland*, para. 146; Chanturia, 2023, p. 20.

40 *Kudła v. Poland*, para. 146.

41 *Kudła v. Poland*, para. 147; Chanturia, 2023, p. 20.

42 *Kudła v. Poland*, para. 152.

43 *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, para. 148.

44 Council of Europe and European Court of Human Rights, 2025c, p. 8. For more on the “arguability of the claim”, see: Council of Europe and European Court of Human Rights, 2025c, pp. 8–12.

45 Council of Europe and European Court of Human Rights, 2025c, p. 13.

accessible, and exist at the same time the application is brought before the Court.<sup>46</sup> The “effectiveness” of a remedy does not depend on the certainty of a favourable outcome for the applicant.<sup>47</sup> The ECtHR also indicates that: ‘In the evaluation of the effectiveness of a remedy for the purposes of Article 13 of the Convention, the requirements of Article 6 may be relevant. As a rule, the fundamental criterion of fairness, including the equality of arms, is a constituent element of an effective remedy.’<sup>48</sup>

The scope of Article 13 ECHR extends to acts of the administration (of government) or executive, acts of the judiciary, and even acts of private persons where the State shares responsibility for such acts or has failed to take necessary preventive measures.<sup>49</sup> However, this provision does not guarantee a remedy allowing domestic laws to be challenged before a national authority on the grounds of incompatibility with the Convention,<sup>50</sup> nor does it allow the questioning of general policy.<sup>51</sup>

### **3. “Civil Right” and “Criminal Charge” Recognised Under Domestic Law That Relate to the Environment**

Environmental cases alleging violations of Article 6 § 1 ECHR concern the civil limb of that provision. Examples of domestic “civil rights” that the ECtHR has treated as protected under Article 6 § 1 are set out below.

In *Athanassoglou and Others v. Switzerland*, the applicants complained that they were denied effective access to the courts because Swiss law did not permit them to challenge the Federal Council’s decision to grant Nordostschweizerische Kraftwerke AG a limited licence for the Beznau II Nuclear Power Plant.<sup>52</sup> The ECtHR held that Article 6 § 1 of the Convention did not apply since: ‘the outcome of the procedure before the Federal Council was decisive for the general question whether the operating licence of the power plant should be extended, but not for the “determination” of any “civil right”, such as the rights to life, to physical integrity and of property, which Swiss law conferred on the applicants in their individual capacity.’<sup>53</sup>

In *Posti and Rahko v. Finland*, the applicants alleged lack of access to a tribunal to challenge fishing restrictions imposed by government decrees.<sup>54</sup> The applicants were fishermen operating in the coastal region of the Gulf of Bothnia, based on lease agreements concluded with the State.<sup>55</sup> In this case, the ECtHR defined a “civil right” as the

46 Council of Europe and European Court of Human Rights, 2025c, pp. 17–18.

47 *Kudła v. Poland*, para. 157.

48 *Csüllög v. Hungary*, para. 46.

49 Council of Europe and European Court of Human Rights, 2025c, pp. 23–24; Chanturia, 2023, p. 19.

50 *Supreme Holy Council of the Muslim Community v. Bulgaria*, para. 107.

51 *Hatton and Others v. the United Kingdom*, para. 138.

52 *Athanassoglou and Others v. Switzerland*, para. 35.

53 *Athanassoglou and Others v. Switzerland*, para. 55.

54 *Posti and Rahko v. Finland*, para. 3.

55 *Posti and Rahko v. Finland*, para. 8.

right to fish for salmon and sea trout in those waters beyond the limits introduced by the contested 1996 and 1998 Decrees, which the applicants had enjoyed under a 1995–99 lease agreement.<sup>56</sup>

Several cases involve non-implementation of final court judgments or administrative decisions. In *Kyrtatos v. Greece*, the applicants complained that authorities failed to enforce the Supreme Administrative Court’s annulment of two permits for the construction near their properties.<sup>57</sup> The permits were illegal because associated buildings had to be demolished since the Cyclades Prefect’s decision 9468/1985, altering settlement boundaries, violated Article 24 of the Greek Constitution protecting the environment. The altered boundaries threatened the Ayios Yiannis swamp, an important habitat for protected species, such as birds, fish, and sea turtles.<sup>58</sup> Similarly, *Apanasewicz v. Poland* concerned failure to enforce a final judgment prohibiting a neighbouring property owner from producing and selling concrete;<sup>59</sup> the domestic court noted that the neighbour’s activities had impaired the applicant’s peaceful enjoyment of the property beyond normal neighbourhood inconvenience.<sup>60</sup> In both cases, the ECtHR found a violation of Article 6 § 1 ECHR,<sup>61</sup> although the Court did not elaborated the civil nature of protected rights.

A comparable problem of non-implementation arose in *Taşkın and Others v. Türkiye* and in *Okyay and Others v. Türkiye*. The first case involved the authorities’ failure to implement administrative court judgments quashing the operating permit for the Ovacık gold mine issued by the Ministry of the Environment.<sup>62</sup> As the ECtHR pointed out, the claimants had invoked their right to adequate protection of physical integrity from risks associated with the gold mine located in the neighbourhood.<sup>63</sup> This right is recognised under Turkish law as the right to live in a healthy and balanced environment (Article 56 of the Turkish Constitution). Accordingly, the applicants were entitled under Turkish law to protect against the environmental damage caused by the activities of the mine in question.<sup>64</sup> Once the administrative court had cancelled the permit, any administrative decision taken to circumvent that judgment opened the way to compensation.<sup>65</sup>

The ECtHR provided similar reasoning in *Okyay and Others v. Türkiye*. Applicants complained that their right to a fair hearing had been breached on account of the authorities’ failure to enforce administrative courts’ decisions and orders to halt the operation of three thermal power plants, polluting the environment in the province

56 *Posti and Rahko v. Finland*, para. 52.

57 *Kyrtatos v. Greece*, paras. 2, 27.

58 *Kyrtatos v. Greece*, para. 13.

59 *Apanasewicz v. Poland*, para. 3.

60 *Apanasewicz v. Poland*, p. 14.

61 *Kyrtatos v. Greece*, para. 32; *Apanasewicz v. Poland*, paras. 82–83.

62 *Taşkın and Others v. Türkiye*, p. 21, paras. 27–28, para. 127.

63 *Taşkın and Others v. Türkiye*, para. 131.

64 *Taşkın and Others v. Türkiye*, para. 132.

65 *Taşkın and Others v. Türkiye*, para. 133.

of Muğla, south-west Türkiye.<sup>66</sup> The applicants relied on their constitutional right to live in a healthy and balanced environment which is recognised in the Turkish Constitution,<sup>67</sup> and thus had the standing to seek suspension of the plants' operations and annulment of authorising administrative acts. Administrative refusal to implement the favourable judgments or attempts to bypass them likewise opened the way to compensation.

Therefore, the outcomes of the proceedings before the administrative courts as a whole can be considered to relate to the "civil right" of the applicants.<sup>68</sup> Against such a background, the ECtHR in both above cases found violations of Article 6 § 1 of the Convention.<sup>69</sup>

In *Gorraiz Lizarraga and Others v. Spain*, the applicants, five Spanish citizens and the Coordinadora de Itoiz Association, claimed that they were not given a fair hearing in the judicial proceedings to stop the construction of the Itoiz Dam because they were prevented from participating in the preliminary constitutional ruling proceedings of the 1996 Autonomous Community Act.<sup>70</sup> The construction of the dam would flood three nature reserves and several small villages, including Itoiz, where the applicants lived.<sup>71</sup> While the ECtHR found no violation of Article 6 § 1, it analysed the rights involved in the case. The Court noted that the proceedings, beyond defending the public interest, sought to protect the applicants' specific interests (including members of the association), namely, their home, property, and lifestyle in the valley that was to be flooded. Regarding the Constitutional Court's ruling, declaring the unconstitutionality of the Autonomous Community Act could have protected the environment, homes, and other properties of the applicants.<sup>72</sup> A direct and specific threat menacing personal assets and lifestyles gave the proceedings an "economic" and civil dimension.<sup>73</sup> The ECtHR, therefore, found that the proceedings might concern the "civil rights" of the applicants.<sup>74</sup>

The "civil rights" were also protected in cases involving alleged violation of the right to a hearing within a reasonable time. This occurred not only in *Kyrtatos v. Greece*,<sup>75</sup> but also in *Borysiewicz v. Poland*, where this allegation concerned proceedings to protect the applicant's "home" from nuisances (primarily noise) arising from the operation of a neighbouring workshop.<sup>76</sup>

In *Leon and Agnieszka Kania v. Poland*, the disputed duration of the procedures concerned obtaining and implementing a final administrative decision ordering the

66 *Okyay and Others v. Türkiye*, paras. 3, 9, 60.

67 *Okyay and Others v. Türkiye*, para. 67.

68 *Okyay and Others v. Türkiye*, para. 67.

69 *Taşkın and Others v. Türkiye*, 138; *Okyay and Others v. Türkiye*, para. 75.

70 *Gorraiz Lizarraga and Others v. Spain*, paras. 3, 32.

71 *Gorraiz Lizarraga and Others v. Spain*, para. 9.

72 *Gorraiz Lizarraga and Others v. Spain*, para. 45.

73 *Gorraiz Lizarraga and Others v. Spain*, para. 46.

74 *Gorraiz Lizarraga and Others v. Spain*, para. 47.

75 *Kyrtatos v. Greece*, paras. 2, 33.

76 *Borysiewicz v. Poland*, para. 3, paras. 57–58.

liquidation of the craftsmen’s cooperative “Wielobranżowa”, located next to the applicants’ home.<sup>77</sup> They claimed it caused intolerable noise and pollution, resulting in profound and long-lasting health problems. The cooperative carried out maintenance services for trucks, metal cutting and grinding, and other operations in the iron and steel industry.<sup>78</sup>

In *Deés v. Hungary* the complaint referred to procedures seeking protection from noise, pollution, and smell caused by heavy traffic, which made the applicant’s house practically uninhabitable.<sup>79</sup>

In *Bor v. Hungary*, domestic proceedings involved measures to counter increased noise from a railway station, which prevented applicants from enjoying their homes.<sup>80</sup>

In all these cases, the ECtHR found a violation of Article 6 § 1 of the Convention.<sup>81</sup> However, the Court did not refer more extensively to the civil nature of protected rights or explain why such rights were at issue.

In *L’erablière A.S.B.L. v. Belgium*, a non-profit-making association complained against the Conseil d’Etat’s decision declaring inadmissible its application for judicial review of planning permission to expand technical-landfill site. The ruling found the application defective for lacking a statement of facts, allegedly violating Article 6 § 1 ECHR.<sup>82</sup> It is worth noting that all founding members and administrators of the applicants lived in municipalities directly affected by the landfill expansion plans. In the Court’s view, increasing the landfill capacity would significantly impact their private lives by generating nuisance and decreasing the market value of their properties.<sup>83</sup> The ECtHR unanimously concluded that there had been a violation of Article 6 § 1 of the Convention.

In *Ivan Atanasov v. Bulgaria*, the applicant alleged that the Supreme Administrative Court violated Article 6 § 1 ECHR in recognising his complaint against a licence allowing ET Marin Blagiev to carry and lay sludge from the Plovdiv treatment plant near his farm.<sup>84</sup> The ECtHR found that Bulgarian law conferred on the applicant right to a “healthy and favourable environment”, a “civil” right for the purposes of Article 6 § 1.<sup>85</sup> However, the outcome of the proceedings was not “decisive” for determining any such civil right under Bulgarian law. Accordingly, Article 6 § 1 ECHR did not apply and therefore was not violated.<sup>86</sup>

77 *Leon and Agnieszka Kania v. Poland*, para. 73.

78 *Leon and Agnieszka Kania v. Poland*, paras. 5, 93.

79 *Deés v. Hungary*, para. 3.

80 *Bor v. Hungary*, para. 26.

81 *Kyrtatos v. Greece*, para. 43; *Borysiewicz v. Poland*, paras. 69–70; *Leon and Agnieszka Kania v. Poland*, para. 84; *Deés v. Hungary*, para. 27; *Bor v. Hungary*, para. 31.

82 *L’erablière A.S.B.L. v. Belgium*, para. 20.

83 *L’erablière A.S.B.L. v. Belgium*, para. 28.

84 *Ivan Atanasov v. Bulgaria*, para. 85, paras. 20–30.

85 *Ivan Atanasov v. Bulgaria*, para. 91.

86 *Ivan Atanasov v. Bulgaria*, paras. 95–96.

In *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, the applicants unsuccessfully requested government authorities to take formal decision on “real acts” (based on federal public law that affect rights and obligations, but do not arise from formal rulings) to remedy alleged climate protection omissions.<sup>87</sup> Their complaints were dismissed by the Federal Administrative and Supreme Courts.<sup>88</sup> The applicants (the *Verein KlimaSeniorinnen Schweiz* association and four Swiss citizens) then turned to the ECtHR, arguing that they had no access to a court regarding the State’s failure to adapt measures addressing the negative effects of climate change.<sup>89</sup> The Court referred to the applicants’ “civil right” to life under the Swiss Constitution, which also derives the right to the protection of physical integrity.<sup>90</sup> It found a violation of Article 6 § 1 ECHR insofar as the authorities were obliged to implement climate change mitigation measures already required under domestic law.<sup>91</sup> (excluding issues pertaining to the democratic legislative process, which fall outside this provision<sup>92</sup>).

Interestingly, the ECtHR noted that to the extent that public participation and access to information in environmental matters (as widely recognised in international environmental law) are rights recognised in domestic law, this may lead the conclusion that there is a “civil” right within the meaning of Article 6 of the Convention.<sup>93</sup>

In environmental cases, Article 6 § 1 ECHR has been rarely applied in its “criminal limb”. An example is *European Air Transport Leipzig GmbH v. Belgium*, which concerned fines (between 12 593 and 122 062,70 euros) imposed on the applicant company for violating air traffic noise regulations in the Brussels-Capital Region. The fines were imposed by the Brussels Institute for Environmental Management and unsuccessfully appealed to the Environmental Board and the *Conseil d’État*. The company argued that judicial review before the *Conseil d’État* did not form a remedy before a judicial body with full jurisdiction.<sup>94</sup> Nevertheless, the Court held that the *Conseil* review was sufficiently far-reaching under Article 6 § 1 ECHR, finding no violation.<sup>95</sup>

#### 4. Environmental Association as a Subject of “Civil Rights”

A critical issue in the ECtHR’s jurisprudence on environmental cases concerns whether environmental associations can be subjects of “civil rights” under Article 6 § 1 of the Convention. This question is relevant because such organisations typically

87 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 22.

88 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 34, para. 52.

89 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 575.

90 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 617.

91 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, paras. 634, 638, 640.

92 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 633.

93 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 610.

94 *European Air Transport Leipzig GmbH v. Belgium*, para. 1, paras. 4–5, paras. 7–8, paras. 11, 38, 41; European Court of Human Rights, 2023, pp. 1–2; Council of Europe and European Court of Human Rights, 2024, p. 30.

95 *European Air Transport Leipzig GmbH v. Belgium*, paras. 72–73.

appear in legal (judicial) proceedings to protect a general or public interest, which *prima facie* excludes both a “civil right” and a “directly decisive” outcome for the applicant’s rights, which condition the applicability of Article 6 § 1 ECHR.<sup>96</sup> The question of who qualifies as a rights holder under this provision is also linked to the ‘victim’ status under Article 34 ECHR, which excludes *actio popularis* from the Convention’s protective mechanism. Associations may thus only invoke those Convention rights to which they are entitled before the ECtHR. When interpreting the notion of a “victim of a violation” under Article 34 ECHR in environmental cases, reference must be made to other Articles defining particular Convention rights,<sup>97</sup> especially regarding their subjects. An application may be lodged by an organisation that is a direct victim or that acts on behalf of its members as an “indirect victim”.<sup>98</sup> The question of such associations’ legal standing is particularly important in environmental matters, given their role in protecting the environment.<sup>99</sup>

This issue was analysed in several cases cited in the third subsection of this study.

In *Gorraiz Lizarraga and Others v. Spain* (concerning the halting of the construction of the Itoiz Dam), one applicant was the Coordinadora de Itoiz Association, and the others were its members.<sup>100</sup> Association’s aim was ‘to coordinate its members’ efforts to oppose the construction of the Itoiz dam (...), to represent and defend the area affected by the dam, and this area’s interests before all official bodies at all levels (...)’.<sup>101</sup> The ECtHR held that the association had “victim of a violation” status because it was a party to the proceedings defending its members’ interests.<sup>102</sup> In that case, the Court further held that these proceedings concerned a “civil right” within the meaning of Article 6 § 1 ECHR. The respondent government argued that the proceedings dealt only with collective environmental interests, not private economic rights.<sup>103</sup> In the ECtHR’s view, however, a sufficient premise for a ruling on the merits was that, besides public interest, the national proceedings also concerned specific interests (civil rights), namely, the members’ way of life and properties in the valley that would be flooded by the dam.<sup>104</sup>

An even more flexible approach was adopted by the Court in *Collectif national d’information et d’opposition à l’usine Melox – Collectif stop Melox et Mox v. France*, where the Court held that Article 6 § 1 applied to proceedings brought by associations aimed at protecting the environment. The domestic proceedings concerned an administrative decision authorising the expansion of the Melox nuclear plant. The association acted in its own name, invoking its statutory aim of protecting the environment and the

96 *L’erablière A.S.B.L. v. Belgium*, para. 25; *Verein Klimasenioren Schweiz and Others v. Switzerland*, paras. 620–621.

97 Pogodziński, 2011, p. 30.

98 Pogodziński, 2011, p. 36.

99 Kwiędacz-Palosz, 2020, p. 31.

100 *Gorraiz Lizarraga and Others v. Spain*, para. 8.

101 *Gorraiz Lizarraga and Others v. Spain*, para. 10.

102 *Gorraiz Lizarraga and Others v. Spain*, para. 34.

103 *Gorraiz Lizarraga and Others v. Spain*, paras. 40, 44.

104 *Gorraiz Lizarraga and Others v. Spain*, paras. 45, 47.

public good against national handling of nuclear fuel and waste politics. The ECtHR stressed that organisations can also invoke violations of their rights under Article 6 ECHR when they seek to protect the rights and interests of their members, or even specific rights that they could invoke as legal persons, such as the right to information and active participation in environmental decision-making recognised by domestic law (i.e., French law). Given that the national legal proceedings had been initiated to protect the general interests of the society, the dispute had to be considered genuine and related to an unlawful interference with one of the rights of a civil nature provided for in the national legal system. During domestic proceedings, the scope of the association's rights was resolved in a concrete and binding manner, and the ECtHR assumed that Article 6 ECHR should be applied.<sup>105</sup>

In *L'erablière A.S.B.L. v. Belgium* (relating to a planning permission to expand technical landfill site), the applicant association sought to 'protect the environment in the region of Marche-Nassogne'.<sup>106</sup> The respondent Government claimed that the complaint was incompatible *ratione materiae* with Article 6 § 1 ECHR because the association had not claimed any economic damage and acted only to advance its general purpose.<sup>107</sup> The ECtHR, however, noted that the association's aim was spatially and substantively limited. Its founding members all lived in the Marche-Nassogne region and could, therefore, be regarded as local residents directly affected by the landfill's expansion.<sup>108</sup> On that basis, the Court found that the "dispute" raised had a sufficient connection with a "right" which it could claim as a legal person, bringing the case within Article 6.<sup>109</sup>

More recently, the question of the legal standing of environmental associations was examined in *Verein Klimaseniorinnen Schweiz and Others v. Switzerland* concerning authorities' omissions in climate-change mitigation. The applicants were a nonprofit association and four Swiss nationals, all members of that association. The association promoted effective climate protection on behalf of women, most over 70 living in Switzerland.<sup>110</sup> In this case, the ECtHR adopted a notably broad interpretation of environmental associations' standing. The premise was that climate change disputes often involve complex legal and factual issues requiring significant financial and logistical resources, and coordination, with outcomes affecting many people. Associations regularly act as complainants or key interveners in the case.<sup>111</sup> The Court held that the global nature of climate change as a common concern of humanity justifies recognising associations' standing before the ECtHR. This interpretive direction reflects the urgent need to combat the adverse effects of climate change, including the serious

105 Pogodziński, 2011, pp. 37–38; *Collectif national d'information et d'opposition à l'usine Melox – Collectif stop Melox et Mox v. France*, para. 4.

106 *L'erablière A.S.B.L. v. Belgium*, para. 5.

107 *L'erablière A.S.B.L. v. Belgium*, para. 21.

108 *L'erablière A.S.B.L. v. Belgium*, para. 28.

109 *L'erablière A.S.B.L. v. Belgium*, para. 30.

110 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, paras. 1, 10.

111 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 497.

risk of irreversibility, which requires protection not only of the convention rights of those affected but also those whose rights may be seriously and irreversibly affected in the future.<sup>112</sup> However, to exclude *actio popularis*, certain conditions must exist to allow associations to apply to court.<sup>113</sup> Thus: ‘In order to be recognised as having *locus standi* to lodge an application under Article 34 of the Convention on account of the alleged failure of a Contracting State to take adequate measures to protect individuals against the adverse effects of climate change on human lives and health, the association in question must be: (a) lawfully established in the jurisdiction concerned or have standing to act there; (b) able to demonstrate that it pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members or other affected individuals within the jurisdiction concerned, whether limited to or including collective action for the protection of those rights against the threats arising from climate change; and (c) able to demonstrate that it can be regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention.

In this connection, the Court will have regard to such factors as the purpose for which the association was established, that it is of non-profit character, the nature and extent of its activities within the relevant jurisdiction, its membership and representativeness, its principles and transparency of governance, and whether on the whole, in the particular circumstances of a case, the grant of such standing is in the interests of the proper administration of justice.<sup>114</sup>

Finally, the Court pointed that an association’s standing to act on behalf of members or affected persons does not require showing that those individuals would each qualify as individual victim under Article 34 in climate change cases.<sup>115</sup> As a result of the above findings, the ECtHR also concluded that Article 6 § 1 applied to the complaint of the applicant association which could be considered a “victim” under that provision regarding its allegation of lack of access to a court.<sup>116</sup> The association demonstrated a sufficiently close connection to the subject matter and to individuals seeking protection from the negative effects of climate change. In other words, the applicant association sought to defend its members’ specific civil rights against the negative effects of climate change.<sup>117</sup>

112 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 499.

113 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 500.

114 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 502.

115 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 502.

116 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 623.

117 *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 621.

## 5. Result of the Proceedings That is “Directly Decisive” for Civil Rights Relating to the Environment

A further element of the specific nature of environmental cases in ECtHR’s jurisprudence is the difficulty of proving the premise for applying Article 6 § 1 ECHR - i.e., that the outcome of domestic proceedings was “directly decisive” for the civil right in question. The difficulty arises because, first, the Convention does not explicitly establish an individual’s right to an adequate environment and, second, applications to the ECtHR often concern administrative proceedings assumed to be directly decisive for individual rights or obligations under substantive administrative rather than civil law (in the domestic sense).

An example is *Athanassoglou and Others v. Switzerland* (cited in the third subsection), which addressed whether the outcome of proceedings on renewing a licence to operate a nuclear power plant was directly decisive for the domestic civil rights of applicants.<sup>118</sup> The ECtHR underlined that the applicants did not claim a specific or direct threat to themselves, but rather a general environmental threat posed by all nuclear power plants. Only in response to the Court’s questions did they allege that ‘every nuclear power plant releases radiation during normal operation and thus endangers people’s health’.<sup>119</sup> The Court found that this statement was only the basis for concluding that the outcome of the procedure before the domestic authority was decisive for the general question whether the operating licence of the power plant should be renewed, but not for the determination of any civil rights. Therefore, Article 6 § 1 ECHR was deemed inapplicable.<sup>120</sup>

In *Sdružení Jihočeské Matky v. Czech Republic*, the applicant association, founded by residents living near the Temelín nuclear power plant, alleged a violation of Article 6 § 1 ECHR because it was excluded from certain administrative proceedings and thus unable to defend its substantive rights.<sup>121</sup> The Court held the provision inapplicable, as the outcome of the proceedings before the supervisory authority was not directly decisive for civil rights such as the right to life, health, a healthy environment, and property, which the Czech legal order granted to the applicant association or its members.<sup>122</sup> Partial changes to the plant’s technology or completion dates could not have had an impact on the environment and thus on the applicant’s rights. Neither the Ministry of the Environment’s opinion nor expert reports established a serious, concrete, and direct threat to the environment or to the members’ life, health, or property. In the Court’s view, the applicant association had failed to prove a direct

118 *Athanassoglou and Others v. Switzerland*, para. 46.

119 *Athanassoglou and Others v. Switzerland*, para. 52.

120 *Athanassoglou and Others v. Switzerland*, para. 55.

121 *Sdružení Jihočeské Matky v. Czech Republic*, para. 8.

122 *Sdružení Jihočeské Matky v. Czech Republic*, para. 17.

link between the power plant's operating conditions and any foreseeable harm to its members' rights.<sup>123</sup>

The criterion analysed was also considered in *Ivan Atanasov v. Bulgaria*<sup>124</sup> (cited in the third subsection), which concerned a licence allowing the transport and stacking of sludge from a treatment plant to a tailings pond. Again, the ECtHR ruled that Article 6 § 1 of the Convention did not apply.<sup>125</sup> It observed that the applicant had not alleged any specific risks to his health or well-being, but only of hypothetical consequences for the environment and public health. Therefore the link between the proceedings, focused solely on the legality of the sludge permit for the transportation and placement, and the right invoked by the applicant was too tenuous.<sup>126</sup> By contrast, in *Zander v. Sweden*, applicants challenged a licence permitting waste dumping near their property. The outcome of the proceedings was decisive for the applicants' entitlement to protection against pollution because the dump contaminated their only drinking-water wells. Thus, the adverse effects on their health were immediate and certain, unlike in *Ivan Atanasov v. Bulgaria*.

## **6. Application of Article 6 § 1 ECHR to General Environmental Acts (Including Policy Acts)**

Another issue specific to environmental cases before the ECtHR concerns whether the right to a fair trial extends to general acts, including normative acts of administrative bodies and policy (planning) instruments such as spatial plans. These instruments play a special role in environmental protection because of their broad regulatory scope in both the European Union and individual Member States.

In *Posti and Rahko v. Finland* (cited in the third subsection), Article 6 § 1 ECHR was referred to in decrees of the Finnish Ministry of Agriculture and Forestry restricting fishing, which directly affected the complainants, who were fishermen.<sup>127</sup> The ECtHR recalled that the Convention does not guarantee the right of access to a court with power to invalidate or override laws enacted by the legislature.<sup>128</sup> However, it stressed that the Convention protects the rights that are "practical and effective", not "theoretical" or "illusory". Thus, if a decree or other act, although not formally addressed to an individual, actually affects that person's civil rights or obligations due to specific characteristics or circumstances distinguishing them from others, Article 6 § 1 ECHR may require access to a "tribunal" to challenge the act's provision.<sup>129</sup>

123 *Sdružení Jihočeské Matky v. Czech Republic*, paras. 15–16.

124 *Ivan Atanasov v. Bulgaria*, para. 91.

125 *Ivan Atanasov v. Bulgaria*, para. 96.

126 *Ivan Atanasov v. Bulgaria*, para. 92.

127 *Posti and Rahko v. Finland*, paras. 8–11.

128 *Posti and Rahko v. Finland*, para. 52.

129 *Posti and Rahko v. Finland*, para. 53. Similarly: *Alatulkkila and Others v. Finland*, para. 50.

In *Crash 2000 OOD and Others v. Bulgaria*, the court examined an order by the Bulgarian Minister for Environment and Water declaring Strandzha National Park a protected territory, which included part of the Tsarevo municipality (however, the order did not specify the exact borders of the park).<sup>130</sup> The applicants were two Bulgarian citizens and a company called “Crash 2000” OOD which they own and manage, and seventy foreign nationals with preliminary purchase contracts for apartments, claimed that the order prevented construction on their purchases land.<sup>131</sup> For their construction, the company bought agricultural land from private third parties in the municipality of Tsarevo.<sup>132</sup> The acquired land was part of the Strandzha National Park.<sup>133</sup> Although proceedings were initiated before the Supreme Administrative Court, they were terminated following an amendment to the Protected Territories Act (1998), leaving the ministerial order valid.<sup>134</sup> The applicants argued before the ECtHR that the amendment deprived them of access to a court to protect their property rights.<sup>135</sup> The Court held that the ministerial order declaring Strandzha National Park a protected area concerned a general policy issue in the public interest of environmental protection.<sup>136</sup> The Convention does not guarantee access to courts to challenge policy decisions *per se*. Article 6 § 1 ECHR requires access to a court only where a specific and established individual civil right has arguably been unlawfully interfered with. In this case, the applicants had no established right or legitimate expectation to build on the territory at any time, and the ministerial order issued a decade before their acquisition did not interfere with such a right. The legislative amendment was a general policy measure pursuing an essential environmental goal and did not adversely affect any right existing prior to its enactment.<sup>137</sup> Thus, the Court found the complaint to be manifestly unfounded and dismissed it.<sup>138</sup>

In *Vecbaštika and Others v. Latvia*, the Court again addressed whether Article 6 § 1 ECHR applied to general acts, assessing this question in the context of the premise of the “directly decisive” outcome of the domestic proceedings for the applicants’ civil rights (the fifth subsection of this paper). The applicants, land and house owners, and residents of Dunika parish in western Latvia,<sup>139</sup> alleged a violation of their right of access to the courts when challenging spatial plans authorising the construction of wind farms. Their only recourse was the Constitutional Court, which they argued was not a “tribunal” within the meaning of Article 6 § 1 of the Convention.<sup>140</sup> The ECtHR found that the applicants failed to demonstrate that the adoption of the plans exposed

130 *Crash 2000 OOD and Others v. Bulgaria*, para. 4.

131 *Crash 2000 OOD and Others v. Bulgaria*, para. 1.

132 *Crash 2000 OOD and Others v. Bulgaria*, para. 7.

133 *Crash 2000 OOD and Others v. Bulgaria*, para. 9.

134 *Crash 2000 OOD and Others v. Bulgaria*, paras. 8–28.

135 *Crash 2000 OOD and Others v. Bulgaria*, para. 81.

136 *Crash 2000 OOD and Others v. Bulgaria*, para. 82.

137 *Crash 2000 OOD and Others v. Bulgaria*, para. 84.

138 *Crash 2000 OOD and Others v. Bulgaria*, para. 89.

139 *Vecbaštika and Others v. Latvia*, para. 4.

140 *Vecbaštika and Others v. Latvia*, para. 57.

them to serious and concrete harm or that the Constitutional Court proceedings were directly decisive for their civil rights.<sup>141</sup> It noted that the operation of wind turbines is not associated with hazardous emissions and that any possible negative effects occur only within relatively short distances, while the precise turbines locations had yet to be specified in detailed spatial plans. Only the first applicant had challenged a detailed spatial plan, and her property lay outside the designed protection zone. The Court further noted that wind turbine operation is prohibited if noise exceeds legal limits.<sup>142</sup> Consequently, the applicants did not establish a probable or direct effect on their rights, and Article 6 § 1 ECHR was therefore inapplicable.<sup>143</sup>

## 7. Application of Article 13 ECHR to Environmental Matters

The ECtHR's jurisprudential principles on the right to an effective remedy apply to environmental cases in a standard manner.<sup>144</sup> On this ground, applicants most often allege a violation of Article 13 in conjunction with Article 6 § 1 of the Convention (which is *lex specialis* to the former provision). This was evident in *Powell and Rayner v. the United Kingdom*, one of the cases marking the 'real breakthrough for "greening" of the Convention'.<sup>145</sup> In that case, the applicants complained of excessive noise caused by Heathrow Airport operations, pointing out, *inter alia*, that 'in respect of their claims under Articles 6 § 1 and 8 (...) of the Convention there was no domestic remedy as required by Article 13'.<sup>146</sup> The ECtHR assessed this allegation in parallel with a complaint under Article 6 § 1 ECHR, finding that: 'there is no "civil right" recognised under domestic law to attract the application of Article 6 § 1 (...). In any event, Article 13 (...) does not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before a national authority (...). Accordingly, there was no violation of Article 13 (...) in respect of the applicants' claims under Article 6 § 1'.<sup>147</sup>

Similar parallel adjudication of claims under Articles 6 and 13 occurred in other cases.<sup>148</sup> Conversely, there are instances in which, having resolved an allegation under Article 6 § 1 ECHR, the Court found it unnecessary to analyse the violation of Article 13 ECHR<sup>149</sup> (exceptionally in *Öneryıldız v. Türkiye*, it was the other way around, i.e. the ECtHR stated 'having regard (...) to the reasoning which led the Court to find a violation of Article 13 of the Convention taken together with Article 1 of Protocol No.

141 *Vecbaštika and Others v. Latvia*, para. 70.

142 *Vecbaštika and Others v. Latvia*, para. 69.

143 *Vecbaštika and Others v. Latvia*, para. 71.

144 Council of Europe, European Court of Human Rights, 2024, p. 81.

145 Raisz and Krajnyák, 2022, p. 77.

146 *Powell and Rayner v. the United Kingdom*, paras. 25, 30.

147 *Powell and Rayner v. the United Kingdom*, para. 36.

148 E.g. *Leon and Agnieszka Kania v. Poland*; *Ivan Atanasov v. Bulgaria*.

149 E.g. *Posti and Rahko v. Finland*; *Taşkın and Others v. Türkiye*; *Apanasewicz v. Poland*; *Verein Klimasenioren Schweiz and Others v. Switzerland*.

1 (...), the Court considers that it is not necessary to examine the case under Article 6 § 1<sup>150</sup>).

Environmental cases alleging a violation of Article 13 alone, without a simultaneous complaint under Article 6 § 1 of the Convention, should be singled out as exceptional.<sup>151</sup> In *Hatton and Others v. the United Kingdom*, the applicants, British citizens living near Heathrow Airport, alleged that the government's 1993 policy on night flights and the resulting increase in noise violated their rights under Article 8 and that no effective domestic remedy existed for this complaint, contrary to Article 13 of the Convention.<sup>152</sup> The ECtHR found a violation of the latter, because the scope of the domestic judicial review was limited to classic English public law concepts such as 'irrationality, unlawfulness, and patent unreasonableness'. Therefore, the courts failed to assess whether the increase in night flights formed a justifiable limitation on the right to respect for private and family life or homes of those living near Heathrow Airport. Thus, the scope of review by domestic courts is insufficient to follow Article 13 of the Convention.<sup>153</sup> At the same time, in that case, the ECtHR included an act of government policy (i.e. the Secretary of the State's decision to introduce the 1993 Scheme) within the scope of the right to an effective remedy. Indeed, as the Court reiterated that Article 13 ECHR does not guarantee a remedy for challenging a State's legislation or a general policy. The exception arises when an applicant has a legitimate claim of a convention violation. In such cases, the national system must ensure an effective remedy even for acts of a general nature.<sup>154</sup>

As noted previously, Article 13 ECHR is non-self-contained, as it guarantees the protection of other clauses of the Convention and must therefore be invoked in conjunction with them. These "other" provisions pointed out in environmental cases are: Articles 2<sup>155</sup>, 6 § 1<sup>156</sup> and 8<sup>157</sup> ECHR as well as Article 1 of Protocol No. 1 to the Convention.<sup>158</sup>

## 8. Conclusions

An analysis of the ECtHR jurisprudence relating to the application of Articles 6 § 1 and 13 ECHR in environmental cases leads to the following conclusions:

150 *Öneryıldız v. Türkiye*, para. 160.

151 E.g. *Hatton and Others v. the United Kingdom*; *Kotov and Others v. Russia*.

152 *Hatton and Others v. the United Kingdom*, paras. 3, 84, 131.

153 *Hatton and Others v. the United Kingdom*., paras. 141–142.

154 *Hatton and Others v. the United Kingdom*, para. 138.

155 E.g. *Taşkın and Others v. Türkiye*; *Öneryıldız v. Türkiye*.

156 E.g. *Powell and Rayner v. the United Kingdom*; *Leon and Agnieszka Kania v. Poland*.

157 E.g. *Powell and Rayner v. the United Kingdom*; *Hatton and Others v. the United Kingdom*; *Ivan Atanasov v. Bulgaria*; *Apanasewicz v. Poland*; *Bor v. Hungary*; *Kotov and Others v. Russia*; *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*.

158 E.g. *Posti and Rahko v. Finland*; *Öneryıldız v. Türkiye*; *Ivan Atanasov v. Bulgaria*; *Bor v. Hungary*; *Crash 2000 OOD and Others v. Bulgaria*; *Vecbaštika and Others v. Latvia*.

- 1) The protection of the environment under the above-mentioned provisions rests mainly on Article 6 § 1 of the Convention in its civil limb.
- 2) The Court recognises, in particular, the following “environmental” civil rights: right to life, right to physical integrity, property rights, right to fish to a certain extent, right to compensation for environmental damage, right to live in and enjoy the home, right to healthy and favourable environment, right to public participation, and access to information in environmental matters.
- 3) Only in some cases does the ECtHR clearly justify its finding of a “civil right” under Article 6 § 1 ECHR. In other cases, such reasoning is absent, making it difficult to verify the premise for the application of this provision and reconstruct the characteristics of “civil right” based on administrative cases, which are mostly referred to in the Court’s “environmental” case law.
- 4) The Court’s evolutionary interpretation leads to conclude that the conditions for environmental associations to qualify as holders of “civil right” are not strict, thereby bringing such applications closer to an *actio popularis* filed to protect the public interest (cf. *Collectif national d’information et d’opposition à l’usine Melox – Collectif stop Melox et Mox v. France* and *Verein Klimasenioreninnen Schweiz and Others v. Switzerland*).
- 5) Determining whether domestic proceedings are “directly decisive” for the applicant’s “civil right” is often complicated because “environmental cases” before national authorities typically involve administrative (public law) matters focused on the common good, in which the legal interest of someone other than the applicant, is directly protected (e.g. a company operating a landfill site).
- 6) In the context of “environmental cases”, the Court accepts that general acts – which in principle do not fall within the scope of Article 6 § 1 ECHR – may be subject to the guarantees of that provision if they directly interfere with a specific or established civil right.
- 7) As a rule, Article 13 of the Convention does not apply to legislative or policy acts. However, an exception may arise in environmental cases where the applicant presents a legitimate claim of violating a convention right.
- 8) Despite the general declaration in ECtHR case law that Article 6 § 1 is a *lex specialis* absorbing Article 13, in environmental cases this relationship can be more complex. The ECtHR may assess alleged violations of both provisions in parallel or find it unnecessary to rule on one after addressing the other, even when the first finding relates to Article 13 of the Convention.

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# The European Committee of Social Rights and Environmental Protection

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## ABSTRACT

This paper explores the role of the European Social Charter and the European Committee of Social Rights in addressing environmental concerns through the lens of social rights protection. While the European Social Charter does not explicitly guarantee the right to a healthy environment, its provisions, particularly those relating to health, housing, just, safe and healthy conditions of work and vulnerable populations, have been interpreted by the European Committee of Social Rights as encompassing environmental issues. Through its monitoring mechanisms, especially the collective complaints procedure, the Committee has developed a body of decisions that indirectly contribute to the recognition of environmental rights. This study critically examines how these developments enhance environmental protection within the broader framework of social justice and human dignity.

## KEYWORDS

European Social Charter, European Committee of Social Rights, environmental protection, social rights, collective complaints

## 1. Introduction

The growing environmental crisis is one of the most urgent challenges of our time, demanding coordinated legal, political and societal responses. Climate change, pollution and ecological degradation are increasingly jeopardising fundamental human rights, such as the right to life, health and adequate living conditions. While international and European human rights frameworks have traditionally focused on civil and political rights, there is growing acknowledgement of the need to integrate environmental protection into these legal systems.

The European Social Charter (ESC), a key instrument within the Council of Europe, offers a framework for upholding social and economic rights. Although it does not explicitly guarantee the right to a healthy environment, the Charter's provisions on health, housing, just, safe and healthy conditions of work, vulnerable

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populations and protection for marginalised groups offer pathways for addressing environmental issues.

The European Committee of Social Rights (ECSR), as the Charter’s supervisory body, has gradually interpreted these rights in ways that recognise environmental dimensions, especially in cases involving vulnerable populations and harmful living conditions.

This study investigates how the ESC and ECSR contribute to advancing environmental rights through the indirect enforcement of social rights. The objective is to show that while lacking a direct environmental mandate, these mechanisms serve as important tools for strengthening environmental protections within the context of human dignity and social equity.

## **2. The European Social Charter and the European Committee of Social Rights**

The ESC, adopted in 1961 and revised in 1996, remains a central legal instrument for promoting social and economic rights within the framework of the Council of Europe. Unlike the European Convention on Human Rights (ECHR), which mainly addresses civil and political rights, the ESC establishes obligations related to employment, health, housing, education and protections for vulnerable groups. The Revised Charter (1996) extends and modernises these rights to better address evolving social needs.

As a treaty, the ESC imposes binding legal obligations on the ratifying States, albeit with flexibility. Countries can choose which provisions to accept provided they agree to a core set of essential articles. This system has encouraged broad ratification, but also led to variations in the scope of the obligations across Member States.

The oversight of the Charter’s implementation falls under the ECSR. The ECSR is composed of 15 independent legal and social policy experts.

Although the ESC does not explicitly include environmental rights, some articles have been interpreted by the ECSR as indirectly protecting environmental interests. For example: Art. 11, on the right to health, has been linked to environmental health risks, such as pollution and unsafe living conditions; Art. 13, regarding social and medical assistance, can be triggered when environmental harm disproportionately affects the most vulnerable population; Art. 31 in the Revised Charter relates to the right to housing and can encompass environmental dimensions, such as exposure to toxic environments or climate-related displacement.

Through these interpretations, the ESC has evolved into a framework capable of addressing environmental issues under the banner of social rights and human welfare. To assess states compliance with the ESC, the ECSR mainly uses the reporting procedure and the collective complaints procedure. It also issues interpretative

statements.<sup>1</sup> These statements cover all the provisions of the ESC, serve as an authentic source of interpretation and play a guiding role for States Parties, as they offer detailed and accessible explanations of the nature of their legal obligations under the Charter and the way in which its provisions apply to specific problems or contexts.

The reporting procedure is based on the provisions of the ESC of 1961 and governed by Arts. 21–29. Based on these articles, States Parties must prepare and submit periodic reports outlining the legal and practical implementation of the Charter’s provisions at the domestic level.

These reports are analysed by the ECSR, which adopts conclusions on the conformity or non-conformity of national situations (from a legislative and practical perspective) with the provisions of the Charter. If the conclusions indicate non-conformity, the State Party is requested to align its legislation and/or application with the provisions of the Charter.

The Committee of Ministers monitors the implementation of the ECSR’s conclusions. Its monitoring work is prepared by the Governmental Committee of the ESC and the European Code of Social Security (hereinafter the “Governmental Committee”). The latter comprises representatives of the States Parties to the Charter and is assisted in its activities by observers from European organisations of employers and trade unions.

Based on the work of the Governmental Committee, the Committee of Ministers adopts a resolution that concludes each monitoring cycle and may contain individual recommendations. Although these conclusions are not legally binding, they can influence domestic policymaking and lead to reforms.

The reporting procedure applies to States that have ratified the ESC, and concerns only those provisions that have been accepted by the respective States (*à la carte* ratification). Of the forty-six (46) Member States of the Council of Europe, forty-two (42) have become Parties<sup>2</sup> to the ESC to varying extents.

Between 2005 and 2007, in the periodic reporting procedure, the ECSR adopted conclusions on States Parties’ obligations to reduce air pollution in accordance with universal climate change treaties<sup>3</sup> and to integrate, *inter alia*, environmental protection into school curricula to raise public awareness and understanding around environmental issues<sup>4</sup> or around access to safe (potable) water, considered essential for a dignified life.<sup>5</sup>

1 For details regarding the content of the Interpretative Statements of the ECSR see: Council of Europe, n.d.

2 The following are not parties to the European Social Charter: the Swiss Confederation, San Marino, Monaco, and Liechtenstein.

3 See, in this regard, the conclusions adopted by the Committee regarding Albania, 2007; and Italy, 2007.

4 See, in this regard, the conclusions adopted by the Committee regarding the Republic of Moldova, 2005.

5 See, in this regard, the conclusions of the Committee regarding Georgia, 2013.

However, in 2021, a brief overview of the conclusions adopted by the Committee on the implementation of Art. 11(3) of the ESC highlighted the absence of concrete recommendations for this provision. Although the Committee asked States Parties to provide information on measures taken to prevent exposure to various forms of pollution (air, water or others), including in proximity to industrial areas; on measures taken to limit toxic emissions, spills and the transfer of such substances into the environment; on measures taken to manage mines or nuclear areas from an environmental protection perspective; on measures taken to address the health issues of affected populations; on measures taken to inform the public, including students and pupils, about general and local environmental issues; the replies provided by States Parties showed either a lack of response, or inadequate or incomplete responses to those questions. Consequently, this situation has prevented the ECSR from assessing the conformity or nonconformity of national legislation and practices with the provisions of the Charter.

Given this, in most cases, the Committee requested those States to include complete/detailed information in their subsequent periodic reports, emphasising that otherwise it would adopt conclusions of nonconformity with the provisions of the Charter.<sup>6</sup>

The collective complaints procedure is mainly regulated by the Additional Protocol Regarding the System of Collective Complaints, adopted in 1995 and entered into force in 1998.<sup>7</sup> The collective complaints procedure, introduced in 1995, allows designated organisations, such as non-government organisations (NGOs), trade unions and employers' associations, to submit complaints about systemic violations of Charter rights. The ECSR assesses these complaints and issues legal interpretations that, while not binding like court judgements, carry significant political and legal influence. The Committee of Ministers may then recommend actions to the concerned State.

Currently, the Protocol has been ratified by sixteen (16)<sup>8</sup> out of forty-six (46) Council of Europe Member States. Consequently, the ECSR has a quasi-judicial competence with only approximately 35% of the Council of Europe Member States. Moreover, within this percentage, only approximately 38% (six states) are from Central, Eastern, and South-eastern Europe.<sup>9</sup> Thus, the decisions relevant to this research concern approximately 13% of the Council of Europe's Member States.

6 See, in this regard, the conclusions adopted in 2021 regarding Romania, Czech Republic, Slovakia, Russian Federation, Serbia, Estonia, Ukraine, etc.

7 Referred to hereinafter as the Additional Protocol. For further details regarding the content of the Additional Protocol related to the collective complaints system, see: Council of Europe, 1955a.

8 In alphabetical order, these sixteen states are: Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, Netherlands, Norway, Portugal, Slovenia, Spain and Sweden.

9 In alphabetical order, these six states are: Bulgaria, Croatia, Cyprus, Czech Republic, Greece and Slovenia.

To date, the Committee has adopted decisions on the merits of 104 collective complaints, some of which concern the six states located in Central, Eastern, and South-eastern Europe that are Parties to the Protocol.

The normative provisions contained in the Protocol are detailed and explained in The Explanatory Report of the Additional Protocol Regarding the System of Collective Complaints, adopted in Strasbourg in 1998.<sup>10</sup> According to this report, the purpose of the Protocol is to enhance the protection and effectiveness of the social rights detailed in the ESC. This is not a new concept, as it was mentioned for the first time in Recommendation 839 (1978) of the Parliamentary Assembly of the Council of Europe. Although the system conceived by the Protocol falls within parameters similar to those within the International Labour Organization, it still presents some particularities.

First, the complaints are collective. They address issues of a general nature, namely the nonconformity of state laws and/or practices with the provisions of the Charter. Unlike the UN Committee on Economic, Social, and Cultural Rights, which has the competence, under the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights (OP-ICESCR) to deal with both complaints submitted by groups of individuals and complaints submitted by individuals, the ECSR lacks the competence to address individual complaints.

Second, according to Art. 1 of the Protocol, the organisations entitled to submit complaints before the Committee are identified quite precisely as follows.<sup>11</sup>

- 1) International organisations of employees and employers (European social partners) in accordance with Art. 27(2) of the ESC. These organisations are the European Trade Union Confederation (ETUC), Business Europe and the International Organisation of Employers (IOE).
- 2) NGOs, which have consultative status at the level of the Council of Europe, and have been included, at their request, in a list<sup>12</sup> drawn up by the Governmental Committee of the ESC and the European Code of Social Security; additionally, any state may grant the right to submit collective complaints to any NGOs under its jurisdiction, having a representative position; however, thus far, only Finland has granted this right to relevant NGOs at the national level

10 Referred to hereinafter as the Explanatory Report. For further details regarding the content see: Council of Europe, 1995b.

11 In the case of most human rights treaties, organisations are not conditioned through inclusion on a list or other similar requirements. When the right to submit a complaint is granted to an organization, it may file the complaint on behalf of an individual or a group of individuals whose rights have been violated.

12 The compilation of the list is done in accordance with the Decision of June 22, 1995, by the Committee of Ministers. A NGO wishing to obtain such status must submit an application accompanied by supporting documents that demonstrate its competence in the areas covered by the Charter, its access to credible sources of information, and its ability to undertake the necessary verifications to obtain the legal opinions required to document a particular case. The decision to include an organisation on the list is made by the Governmental Committee and is valid for a period of four years, and can then be renewed.

(Art. 2 of the ESC); in both cases, the right to submit collective complaints is limited to the area of activity in which these organisations have recognised competence;

- 3) Representative organisations of trade unions and employers at the national level, which fall under the jurisdiction of that State [Art. 23(1) of the ESC].

Third, because of the specific nature of the collective complaints, their submission does not require the exhaustion of domestic remedies,<sup>13</sup> nor does the complainant have to be a victim of an alleged violation of a right under the ESC.<sup>14</sup>

Regarding the admissibility conditions of a complaint before the ECSR, these are derived from several documents, namely Art. 4 of the Additional Protocol on the Collective Complaints System, from the commentary in Art. 4 of the Protocol in accordance with The Explanatory Report of the Additional Protocol on the Collective Complaints System and from The Rules of Procedure of the European Committee of Social Rights (Rules 23–35).<sup>15</sup>

Thus, according to Art. 4 of the Additional Protocol Regarding the Collective Complaints System, the admissibility requirements are identified relatively succinctly as follows:

‘The collective complaint shall be logged in writing.

The collective complaint shall relate to a provision of the Charter accepted by the Contracting Party” (the complaint needs to refer to one of the following provisions: Arts. 1–19 of Part II of the ESC Charter, arts. 1–4 of Part II of the 1988 Additional Protocol to the 1961 ESC; and Arts. 1–31 of Part II; and Art. E of Part V of the Revised ESC);

The collective complaint shall indicate in what respect the State Party has not ensured the satisfactory implementation of this provision.’

In the Explanatory Report, which details the content of Art. 4 of the Protocol and interprets it in the context of the ESC, three conditions for the admissibility of such a complaint are identified. It specifies that these conditions were agreed upon during the adoption of the Charter, namely:

13 The exhaustion of domestic remedies is a customary condition in the field of international human rights protection, being provided by most universal human rights treaties (International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR)) and regional human rights treaties (European Convention on Human Rights, African Charter on Human and Peoples’ Rights, and the American Convention on Human Rights).

14 The victim condition is one of the standard requirements in the field of fundamental rights protection, explicitly regulated not only by the ECHR but also by the two UN Covenants, as well as by other regional human rights instruments.

15 Referred to hereinafter as the Rules of Procedure. For further details, see: Council of Europe and European Committee of Social Rights, 2022.

‘A complaint may be declared admissible even if a similar request has already been submitted to a national or international body.<sup>16</sup>

The fact that the substance of the complaint has been examined as part of the “normal” government reports procedure does not constitute in itself an impediment to the complaint’s admissibility’;

the ECSR has discretionary power in this regard.

‘Because of their “collective” nature, complaints may only raise questions concerning non-compliance of a state’s law and practice with one of the provisions of the Charter’;

thus, alleged violations of rights enshrined in the ESC by individuals are not admissible.

According to the Explanatory Report, the ECSR may include the abovementioned conditions in its Rules of Procedure. A reading of these rules highlights some content nuances, namely, the requirement that they:

‘Complaints shall be signed by the person (s) with the competence to represent the complainant organization;<sup>17</sup>

Complaints made by the organizations listed in Art. 1 (a) and (b) of the Protocol shall be submitted in one of the official languages of the Council of Europe” (English or French); Complaints made by organizations listed in Art. 1 (c) and Art. 2 (1) of the Protocol, may be submitted in an official language of the State concerned other than one of the Council of Europe.’<sup>18</sup>

However, in addition to the admissibility conditions mentioned above, two further clarifications are needed.

First, these conditions are supplementary to those mentioned in Arts. 1 and 2 of the Additional Protocol regarding the entities which are entitled to submit complaints. Additionally, if the entity entitled to submit a complaint is a national trade union or an employer’s organisation, it must prove that it is representative for the purpose of submitting collective complaints. Similarly, if the entity entitled to submit a complaint is an international or national NGO, it must prove that it has specific competence in the area referred to by the provision(s) of the Charter that forms the object of the complaint.

Second, it must not be overlooked that, based on the principle of sovereign equality and the dependence of international obligations on the consent/agreement of States,

16 This condition is also a particular one, given that, in the field of human rights, international procedures generally follow the principle *electa una via non datur recursus ad alteram* (once a choice has been made, recourse to another remedy is not allowed).

17 European Committee of Social Rights, 2024, Rule 23, para. 2.

18 European Committee of Social Rights, 2024, Rule 24.

one of the essential conditions for filing such a complaint is that the State against which such a complaint is filed must be a party to the Additional Protocol regarding the Collective Complaints System. As mentioned earlier, only sixteen (16) of the forty-six (46) Member States of the Council of Europe are Parties to this Protocol.

Although the collective complaints procedure is regulated by both the Additional Protocol and the Explanatory Report, the relevant procedural aspects are specifically outlined in the Rules of Procedure. In all cases, according to these rules, the entire process of considering a collective complaint is confidential, with the ECSR working in private sessions and working documents remaining confidential.

Thus, in the initial phase, the complaint admissibility conditions, both regarding the entity entitled to submit the complaint and the State Party against which the complaint is directed, are analysed. The latter has the possibility to present its position with respect to the complaints. All States that are Parties to the ESC are notified that a specific complaint has been declared admissible; however, only States that are also Parties to the Additional Protocol have the right to submit comments. The rationale is that the complaint itself, as well as its admissibility, are issues that may be relevant not only for the State which is directly targeted by a particular collective complaint, but also of interest to any of the States that are Parties to the Additional Protocol. The Charter also provides the possibility for international organisations of workers and employers to submit observations regarding the abovementioned issues, as well as the possibility for any of the aforementioned entities to submit comments regarding the claims of any of the Parties involved in this procedure.

After completing the admissibility stage, the ECSR proceeds to analyse the substantive aspects of the complaint. For this purpose, ECSR may organise, if deemed necessary, oral hearings with the Parties and other entities participating in the procedure. At the end of the substantive analysis, the Committee adopts a report that includes conclusions on the satisfactory/non-satisfactory implementation of the Charter's provisions by the State Party in question. This report and its conclusions serve as the basis for the adoption by the Committee of Ministers of a resolution containing the final recommendations for the State Party. From the moment this resolution is adopted, the Committee's conclusions, as expressed in the recommendations addressed to the State Party, become public.

The following sections analyse some of the decisions adopted by the ECSR in cases that relate to environmental protection and climate change in the context of Arts. 2, 3, 11 and 31 of the ESC.<sup>19</sup>

19 See for further details: Council of Europe, 2022.

### **3. The Right to Just and Safe and Healthy Conditions of Work in the Context of Environmental Protection and Climate Change**

#### **3.1. Regulation**

‘All workers have the right to just conditions of work.’<sup>20</sup>

‘With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

[...] 4. to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed’;<sup>21</sup>

‘With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

[...] 4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations’;<sup>22</sup>

‘All workers have the right to safe and healthy working conditions.’<sup>23</sup>

‘With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Contracting Parties undertake: to issue safety and health regulations; to provide for the enforcement of such regulations by measures of supervision; to consult, as appropriate, employers’ and workers’ organisations on measures intended to improve industrial safety and health.’<sup>24</sup>

‘With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers’ and workers’ organisations: to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment; to issue safety and health regulations; to provide for the enforcement of such regulations by measures of supervision; to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.’<sup>25</sup>

20 Council of Europe 1961; 1996, Part I. para. 2.

21 Council of Europe 1961, art. 2.

22 Council of Europe 1996, art. 2.

23 Council of Europe 1961; 1996, Part I. para. 3.

24 Council of Europe 1961, art. 3.

25 Council of Europe 1996, art. 3.

### 3.2. *Fundamental Principles and Relevant Jurisprudence*

The right to just working conditions is protected under Art. 2(4) of both the 1961 and the Revised Charter. Additionally, Art. 3 guarantees that workers have the right to safe and healthy working conditions. In cases where pollution could lead to the violation of these rights, States have the obligation to adopt, apply and effectively monitor regulations concerning safety and health and to provide additional benefits to workers engaged in hazardous or unhealthy occupations.<sup>26</sup>

*Marangopoulos Foundation for Human Rights (further abbreviated MFHR) v. Greece*<sup>27</sup> was a landmark case for the Committee. The complaint was submitted by and international NGO against Greece citing occupational health risks caused by miners' excessive exposure to air pollution from mining activities. It was argued that Greece violated Art. 3 (right to safe and healthy working conditions) and Art. 2 (right to fair working conditions) of the 1961 Charter, as the Greek State failed to effectively monitor and enforce safety and health regulations and did not provide benefits to workers employed in mining, a hazardous and unhealthy occupation.

In its response, the Committee stated that in areas such as the right to safety and health at work, States are required to provide clear and plausible explanations and information on the evolution of workplace accidents and on measures taken to ensure the enforcement of regulations, and thus prevent accidents. The Committee emphasised that although Greece has had legislation on safety and health in compliance with Art. 3(1) of the Charter, compliance with the Charter cannot be ensured merely by the existence of legislation if it is not effectively applied and rigorously monitored. Therefore, the Committee considered that the extent to which the State addresses the application of safety and health regulations, as provided in Art. 3(2) of the Charter, is essential for the rights guaranteed by Art. 3 to be effective. In this case, the Committee concluded that Greece failed to meet its obligations to effectively monitor the implementation of workplace safety and health regulations concerning air pollution in line with Art. 3(2) of the Charter, especially since the government acknowledged the lack of inspectors and could not provide precise data on accidents in the mining sector.

Furthermore, the Committee considered that the mining industry was one of the most dangerous sectors in which risks to worker health and safety could not be eliminated. The Greek legislation classified mining as a difficult and hazardous occupation. Therefore, in addition to preventive and protective measures, Greece was requested to provide compensation to this sector, which it failed to do, violating Art. 2 (4) of the Charter.

Similarly, states are requested to pay special attention to workers exposed to asbestos and ionising radiation hazards in accordance with Art. 3 (1) of the 1961 Charter and Art. 3 (2) of the Revised Charter. Therefore, States must provide evidence

26 See for further details, Council of Europe, 2022.

27 European Committee of Social Rights, 2006, para. 193–195.

that workers exposed to these hazards are protected, at least to the level established by international reference standards.

Asbestos can pose environmental risks and affect workers health. Therefore, States must align their national legislation with the protection standards outlined in Recommendation 1369 (1998) of the Parliamentary Assembly of the Council of Europe regarding the dangers of asbestos for workers and the environment. The ILO Asbestos Convention No. 162 (1986), the Rotterdam Convention (2004) and the Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from risks related to exposure to asbestos at work (as amended) include international reference standards that establish the minimum exposure limits to be implemented at the national level. These measures include: expanding protective measures and information regarding the harmful effects of asbestos for workers in all potentially hazardous occupations; eliminating the use of technologies that release asbestos fibres into the environment; and ensuring adequate medical surveillance for workers by strengthening the role and resources of occupational health services.

Finally, national standards concerning ionising radiation must take into account the 2007 recommendations of the International Commission on Radiological Protection (ICRP, Publication No. 103), specifically regarding maximum workplace exposure doses, but also for individuals who, although not directly assigned to work in a radioactive environment, may occasionally be exposed to radiation. In this regard, States Parties must implement Council Directive 2013/59/Euratom of 5 December 2013, which incorporates ICRP recommendations. Other Euratom Council directives related to the maritime transport of radioactive waste, nuclear safety at nuclear facilities, surveillance and control of shipments of radioactive waste and spent fuel and nuclear safety at nuclear installations must also be implemented in the national legislation and jurisdictions of the States Parties to the Charter.

## **4. The Right to Health Protection in the Context of Environmental Protection and Climate Change**

### ***4.1. Regulation***

‘Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.’<sup>28</sup>

‘With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed inter alia: to remove as far as possible the causes of ill health; to provide advisory and educational facilities for the promotion of health and the

28 Council of Europe 1961; 1996, Part I., para. 11.

encouragement of individual responsibility in matters of health; to prevent as far as possible epidemic, endemic and other diseases.<sup>29</sup>

‘With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia: to remove as far as possible the causes of ill-health; to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health; to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.’<sup>30</sup>

#### **4.2. Fundamental Principles and Relevant Jurisprudence**

Based on Art. 11 of the Charter, the Committee has interpreted the right to health as including access to a healthy environment<sup>31</sup> and therefore, requests that States, when presenting their periodic reports, indicate the measures taken to ensure such an environment for individuals (not only for workers). As part of this process, the Committee seeks, among other things, to obtain the most accurate information regarding pollution levels and the implementation of national action plans.<sup>32</sup>

The Committee has also highlighted the complementarity between the right to health under Art. 11 of the Charter and Arts. 2 and 3 of the ECHR (considering health-care a prerequisite for human dignity) as well as Art. 8 of the ECHR.<sup>33</sup> As a result, the Committee concluded in several state reports regarding the right to health that the necessary measures under Art. 11 (1) should be designed to eliminate the causes of diseases arising from environmental threats such as pollution (the precautionary principle). Therefore, the failure to adopt measures to avoid or reduce environmental degradation may violate specific social rights.

The obligation of States to take measures to create a healthy environment is at the core of the Charter’s system of guarantees and may be relevant for the application of various specific provisions of the Charter.

The Committee’s recognition of environmental concerns as having a central position in the Charter’s system of guarantees may be relevant in the applications of various specific provisions of the Charter. In the case of *ATTAC ry, Globaali sosiaalityö ry, and Maan ystävät ry v. Finland*,<sup>34</sup> the Committee recognised that an international trade agreement can have wide-reaching consequences for the implementation of the social rights guaranteed by the Charter. However, the legal evaluation of whether these consequences involve a breach of the obligations arising from the provisions of the Charter and may result from the application and implementation of such an

29 Council of Europe 1961, Art. 11.

30 Council of Europe 1996, Art. 11.

31 See for other details: Trilsh, 2009; Lougarre, 2015; Cliza and Spataru-Negura, 2020; Cliza and Spataru-Negura, 2018.

32 European Committee of Social Rights, 2013a. See for further details: Council of Europe, 2022.

33 See for details: Pedersen, 2008.

34 European Committee of Social Rights, 2019, para. 12.

international trade agreement can only be adequately conducted by the Committee within the context of national legislation and practice, and cannot be concluded before the agreement takes effect.

Turning back to the decision *MFHR v. Greece*, the Committee reaffirmed the Charter as a living instrument whose purpose was to protect rights not only theoretically but also in practice.<sup>35</sup> Therefore, the rights and freedoms provided in the Charter should be interpreted in light of current conditions, including the current environmental situation. Given the increasing connection between health protection and a healthy environment, made both by the States Parties to the Charter and by other international bodies, the Committee has interpreted Art. 11 of the Charter (the right to health protection) as including the right to a healthy environment.<sup>36</sup> Additionally, the Committee has noted that the interpretation of this right is guided by the principles established by the ECHR, the Inter-American Court of Human Rights, the African Commission on Human and People's Rights, the UN CESCR and the Court of Justice of the European Union. The Committee also referred to studies conducted by the World Health Organization (WHO) and independent researchers on the harmful effects of lignite on human health.

Another interesting observation can be found in the complaint *MFHR v. Greece*.<sup>37</sup> The complaint referred to a situation of air pollution prior to (partially) 1 August 1998, when the *Protocol on Collective Complaint Procedures* was not yet in force in Greece. In this case, the Committee applied the *ratione temporis* principle. In these circumstances, the main issue raised by the complaint concerned how to distinguish between acts already committed and those ongoing, considering the State's obligation to take all reasonable measures to ensure that a certain event does not occur. In this regard, the Committee noted Art. 14 of the Draft Articles on States Responsibility for their Internationally Wrongful Acts (2001) drafted by the International Law Commission (ILC). This Art. states that when a State has an international obligation to take preventive measures against a certain event but fails to do so, it violates its international obligations for the entire period during which the event continues to exist. Therefore, the Committee considered that it had *ratione temporis* jurisdiction to examine the complaint, as the issues raised could constitute a violation of the obligation to prevent damage caused by air pollution as long as the pollution continues. The violation could even be progressively amplified if insufficient measures are taken to stop it.

As a final key reference, we can look at the complaint of the *International Federation for Human Rights (FIDH) v. Greece*.<sup>38</sup> In this case, complainants argued that water pollution in the Asopos River had harmful effects on local residents. For this, the Committee emphasised that the right to a healthy environment is included in the

35 European Committee of Social Rights, 2006, para. 194.

36 See for details: Guematcha, 2024; Lukas, 2021, pp. 159–172.

37 European Committee of Social Rights, 2006. This approach can also be found in: European Committee of Social Rights, 2008; 2009.

38 European Committee of Social Rights, 2013a, paras. 50, 51.

Social Charter, as recognised in *MFHR v. Greece*, and that the right to health protection under Art. 11 of the Charter complements Arts. 2 and 3 of the ECHR (considering, as noted, that healthcare is a prerequisite for human dignity) as well as Art. 8 of the Convention. The Committee emphasised the government's obligation to take preventive measures and established that the lack of scientific certainty should not be used as an argument for postponing preventive and protective measures for the population.<sup>39</sup>

States are obliged to apply the precautionary principle when there are reasonable grounds to believe that there is a risk of serious human health damage.

In the case *FIDH v. Greece*, the Committee considered that when there are threats of serious human health damage, the lack of complete scientific certainty should not be used as a reason for delaying appropriate measures.<sup>40</sup> When a preliminary scientific assessment indicates reasonable grounds for concern about the potentially harmful effects on human health, the State must take precautionary measures in line with the high level of protection required under Art. 11 to prevent these potentially dangerous effects. By requesting the application of the precautionary principle, the Committee applied one of the environmental protection principles in the context of social rights. Notably, according to European legislation, this precautionary principle in decision-making must be mandatory in the national legislation of EU Member States as a fundamental principle underlying legislation in any field as well as the basis for administrative decisions by national authorities.

The Committee considered that the Greek State had failed to take adequate measures to eliminate the causes of diseases and prevent them as far as possible.<sup>41</sup> This conclusion was based on the following arguments: the delay in which Greek authorities recognised the severity of pollution in the Asopos River and its negative effects on public health; the delay in adopting remedial measures, which worsened the causes of diseases and thwarted their prevention; the deficiencies in the implementation of existing regulations and programmes regarding the pollution of the Asopos River and its negative effects on health; the difficulties in coordinating relevant administrative activities by competent bodies at the national, regional and local levels; the deficiencies in spatial planning; the poor management of water resources and waste; and the problems in controlling industrial emissions and lack of appropriate initiatives regarding the presence of Cr-6 in the water.

States must prioritise the publication of environmental damage information within public health by means of awareness and education campaigns.

Thus, in the case *FIDH v. Greece*, the Committee considered that the competent authorities in Greece should have requested the development and implementation of a systematic information and awareness programme for the affected population, with the active and regular contribution of all administrative institutions involved (at the national, regional and local levels). The Committee established that public

39 European Committee of Social Rights, 2013a, paras. 133–140.

40 European Committee of Social Rights, 2013a, para. 151.

41 European Committee of Social Rights, 2013a, para. 153.

information through awareness campaigns, especially in situations of real danger, must be carried out quickly and effectively to limit potentially serious consequences for public health. However, it admitted that the exact scope of such awareness/information campaigns may vary depending on the nature and severity of the public health issues addressed by such warnings. Simultaneously, States must demonstrate that they have undertaken concrete measures in the field of health public education/information policies, particularly for groups affected by specific issues.<sup>42</sup>

States are responsible for activities that are harmful to the environment, whether such activities are carried out by public authorities or by private companies.

In the admissibility phase of *MFHR v. Greece*,<sup>43</sup> the Greek government argued that since the mining operations causing environmental damage were carried out by a private entity, the State could not be held accountable for its actions. However, the Committee, in its decision on the merits, emphasised that, regardless of the legal status of the company, Greece had the obligation to ensure compliance with its commitments under the Charter, meaning that obligations undertaken by a State cannot be circumvented in this way.<sup>44</sup>

Similarly, in *FIDH v. Greece*, as argued by the complainant organisation, although the beginning of the pollution of the Asopos River water in the late 1960s and its subsequent increase resulted from the activities of private industries along the river, the Committee observed that the Greek authorities failed to establish that the pollution was caused by the activities of private companies operating along the river. Regardless of this situation, the Government is held responsible for the negative effects of these activities on the health of the local population, as it has the obligation to establish conditions for compliance with environmental regulations through environmental permits issued or that should have been issued, as well as the obligation to ensure the enforcement of these operating permits granted to those companies.

Overcoming pollution is an objective that can only be achieved gradually but within a reasonable time.

Thus, States must strive to achieve this objective, showing measurable progress and making the best possible use of the resources at their disposal. The measures taken by States to overcome pollution are evaluated in light of their national legislation and agreements made within the European Union and the United Nations, as well as their effective implementation in practice.

In *MFHR v. Greece*, the Committee acknowledged that the use of lignite and, implicitly, its mining, serves legitimate objectives under the Charter, such as energy independence, access to electricity at a reasonable cost and economic growth. At the same time, Greece, along with all EU Member States, was committed to concrete obligations in addressing climate change through greenhouse gas emission reduction. Overcoming pollution by reducing fossil fuels for electricity generation and

42 European Committee of Social Rights, 2013a, paras. 156–158.

43 European Committee of Social Rights, 2006, para. 109.

44 European Committee of Social Rights, para. 192.

transitioning to green energy production is a priority of EU public policies in the energy sector, and significant funds have been allocated from the EU budget through all financial instruments created for this purpose. The Committee identified several areas in which the State's efforts were considered insufficient in relation to Greece's national and international commitments to overcome pollution, leading to a failure to protect the health of the population. The Committee assessed Greece's general efforts to combat pollution in line with international emission control commitments and found that Greece's National Allocation Plan for greenhouse gas emissions, developed according to EU legislation, was far less stringent than Greece's binding targets under the Kyoto Protocol.<sup>45</sup> Based on these facts and other elements, the Committee found no real evidence of Greece's commitment to improving the air pollution situation within a reasonable time. In this decision, the Committee established a precedent for examining a State Party's compliance with its international environmental obligations. The same reasoning is now reflected in the Committee's conclusions regarding state reports on health protection.

To combat air pollution, in light of the right to a healthy environment, States are required to implement appropriate strategies, which should include the following measures: development and periodic updating of comprehensive environmental legislation and regulations; adoption of specific measures, such as modifying equipment, setting emission limits and measuring air quality, to prevent local air pollution and contribute to its reduction globally; ensuring the proper application of environmental standards and rules through an adequate monitoring mechanism; informing and educating the public, including school students, about general and local environmental issues; and assessing health risks through epidemiological monitoring of affected groups.

Although in the case *MFHR v. Greece*, the Committee found that the Greek Constitution included environmental protection, that Greece had adopted adequate environmental laws and regulations, had implemented the process required by the Aarhus Convention and had set exposure limits for pollution from lignite mining, the relevant measures had not been applied and enforced effectively.

The Committee has also analysed the internal measures taken by States to help reduce global air pollution in light of their obligations under global climate change agreements. Regarding public awareness and education on environmental issues, to develop a sense of individual responsibility for health, the Committee has urged States to integrate, among other things, environmental protection into school curricula and has encouraged States to ensure that environmental protection is part of public awareness initiatives, aimed at developing a sense of individual responsibility for health.

In Greece, the Committee has identified several major shortcomings, such as the limited number of environmental inspection bodies responsible for controlling the general quality of the environment and air, limited State efforts to inform and educate

45 European Committee of Social Rights, 2006, para. 207.

the public on health and environmental issues and an insufficiently organised and limited number of health risk monitoring systems. As a result, the Committee concluded that despite the margin of tolerance granted to national authorities in these matters, Greece had failed to reasonably balance the interests of people living in lignite mining areas with the public interest, thereby violating its obligations under Art. 11 (1-3) of the Charter.

In the interpretation of the ECSR, Article 11 of the Charter requires States parties to take a series of measures with a view to ensure that some of their relevant activities are in conformity with its provisions. Thus, states must take preventive and protective measures to ensure access to safe drinking water. The Committee considers access to safe drinking water essential for living with dignity and for the respect of human rights. Therefore, States must take measures to improve access to safe drinking water for rural populations. Measures include building and maintaining the necessary infrastructure to provide clean and accessible drinking water, improving water distribution systems and monitoring water quality to prevent contamination.

States must take measures to guarantee food safety to eliminate the threat posed by foodborne diseases and outbreaks of such diseases. Food safety is threatened by numerous contaminants, which can originate from environmental pollution. Therefore, Member States must establish binding national food hygiene standards, taking into account relevant scientific data. These measures include: establishing and maintaining a mechanism for monitoring compliance with these standards throughout the food chain; developing, implementing and regularly updating systematic preventive measures, particularly through labelling; and monitoring the occurrence of foodborne diseases.

States must adopt regulations and legal rules regarding the prevention and reduction of noise pollution. States must establish general noise regulations and adopt legal rules to regulate noise pollution, including: integrating noise prevention into regional and local land-use planning; imposing easily monitorable restrictions on temporarily noisy activities; developing action plans to reduce noise in the most severe situations; monitoring plans for the main sources of environmental noise; and creating noise maps.

Additional measures to prevent and combat noise pollution include: preventing locally generated noise from any commercial activities; reducing noise caused by urban transportation and airports; and conducting medical studies on health issues related to noise and utilising their results.

These measures are essential for protecting public health and improving the quality of life by ensuring a cleaner and healthier environment. Effective implementation of these measures contributes to the respect for fundamental human rights and maintaining high public health standards.

States must protect their populations from the consequences of nuclear accidents that occur abroad and affect their territory. Additionally, when a state obtains some of its energy from nuclear power plants, it is obligated to prevent associated risks to communities in the affected areas. The Committee established that radiation dose

limits for the population must be set in accordance with the 1990 Recommendation of the International Commission on Radiological Protection. For the EU Member States, the Council Directive 96/29/Euratom needs to be transposed into national legislation concerning the protection of workers and the public from the hazards of ionising radiation. The assessment of compliance with Art. 11 (3) varies from country to country, depending on how much energy is produced through nuclear power.

In accordance with Art. 11, States must apply a policy prohibiting the use, production and sale of asbestos and products containing asbestos. According to Art. 11 (3), the Committee established that States must also adopt legislation requiring owners of residential properties and public buildings to check for the presence of asbestos and, if necessary, remove it as well as imposing obligations on companies regarding the disposal of asbestos waste.

States have an obligation to ensure equal access to healthcare protection and adopt protective measures to ensure that environmental pollution does not stem from or contribute to discrimination in accordance with Art. E of the Revised Charter and the Preamble of the 1961 Charter. The Committee notes that Art. 11 of the Charter imposes a series of positive obligations to ensure the effective exercise of the right to health, and it evaluates compliance with this provision, particularly considering the situation of disadvantaged and vulnerable groups.

In the case of *European Roma Rights Centre (ERRC) v. Bulgaria*,<sup>46</sup> the Committee recognised Bulgaria's inclusive health insurance system and efforts made to ensure access to medical care for some of the most disadvantaged sectors of the community. However, it indicated that there was sufficient evidence that the Roma communities did not live in healthy environments, partly attributed to the State's failure to adopt adequate preventive policies. Specifically, the lack of protective measures to ensure clean water in Roma neighbourhoods and insufficient measures to ensure public health standards in the housing in these neighbourhoods. The Committee concluded that Bulgaria violated its positive obligations to ensure adequate access to healthcare for the Roma population, particularly through its failure to address specific issues faced by Roma communities due to unhealthy living conditions and difficulty accessing healthcare services<sup>47</sup>. This constituted a violation of Arts. 11 (1), (2), and (3) of the Revised Charter regarding Art. E (non-discrimination).

In the case *European Roma and Travellers Forum (ERTF) v. Czech Republic*,<sup>48</sup> the Committee reached similar conclusions. The Committee considered that there was sufficient evidence that in many cases, Roma communities in the Czech Republic did not live in healthy environments, partly attributed to the State's failure to adopt relevant policies and the lack of protective measures to ensure clean water in Roma neighbourhoods, and insufficient measures to ensure public health standards in the housing in these neighbourhoods. Although the Czech Republic adopted the Strategy

46 European Committee of Social Rights, 2018, paras. 74–78.

47 European Committee of Social Rights, paras. 86, 93.

48 European Committee of Social Rights, 2016, paras. 117, 123–124, 127–128.

for Combating Social Exclusion 2011–2015, which includes the concept of health as part of Roma integration, progress has been too minimal to realise their rights, constituting a violation of Arts. 11 (1), (2), and (3) of the 1961 Charter in light of the Preamble.

In the case *Médecins du Monde – International v. France*,<sup>49</sup> Médecins du Monde claimed that the environmental risks faced by migrant Roma in France were all related to their living conditions in camps. An international NGO documented that the living conditions were degrading, with harmful and polluting waste points, a lack of access to drinking water, poor ventilation and harmful heating methods. The general condition was characterised by excessive humidity owing to the authorities' failure to instal electricity. These poor living conditions have led to respiratory, skin, and gastrointestinal infectious diseases as well as scabies. Moreover, the international NGO stated that the poor living conditions have caused multiple accidents, such as burns, gas poisoning and fires. After reviewing the evidence, the Committee concluded that Roma communities did not live in a healthy environment and reminded the Parties that they must take appropriate measures to prevent, as far as possible, epidemics, endemic, and other diseases as well as accidents. Since France failed to fulfil its positive obligation to address the specific issues faced by Roma communities due to their unhealthy living conditions, raise adequate awareness of environmental health issues and take specific measures to address these particular issues, the Committee found that there was a violation of Art. E in relation to Arts. 11 (1), (2), and (3).

## **5. Right to Housing in the Context of Environmental Protection and Climate Change**

### **5.1. Regulation**

‘Everyone has the right to housing.’<sup>50</sup>

‘With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed: to promote access to housing of an adequate standard; to prevent and reduce homelessness with a view to its gradual elimination; to make the price of housing accessible to those without adequate resources.’<sup>51</sup>

### **5.2. Fundamental Principles and Relevant Jurisprudence**

The Committee emphasised that the right to housing under Art. 31, Part I of the Revised Charter, in connection with Art. E regarding non-discrimination, includes the obligation of States to adopt measures to combat all forms of racial segregation in ecologically hazardous areas. States are obligated to assist disadvantaged and

49 European Committee of Social Rights, 2012, para. 183.

50 Council of Europe 1996, Part I, para. 31.

51 Council of Europe 1996, Art. 31.

vulnerable groups in improving their living conditions and environment and to ensure housing in healthy ecological surroundings.<sup>52</sup>

In the case *Médecins du Monde - International v. France*,<sup>53</sup> the Committee referred to a recommendation from the Committee of Ministers on improving the housing conditions of Roma and travellers in Europe, stating, among other things, that Member States should take measures to combat any form of racial segregation in ecologically hazardous areas. This includes investing in the development of safe locations and taking measures to ensure that Roma communities have practical and affordable housing alternatives to discourage settlements in or near hazardous areas.<sup>54</sup> It is well known that Roma typically settled in abandoned or unhealthy environments (unsanitary), which is why they need to receive assistance to improve the sanitary conditions of their homes, including their living environments. Therefore, Member States, through their competent authorities, should ensure that Roma housing is located in suitable living areas and healthy ecological surroundings. Existing settlements that cannot be relocated from inappropriate locations should be improved with adequate ecological and constructive measures. The Committee concluded that there was a violation of Art. E in relation to Art. 31 (1), the right to housing, due to a lack of access to housing of an adequate standard and degrading housing conditions.

## 6. Conclusions

The ESC is an international regional treaty that seeks to ensure that all people in Europe benefit from a minimum set of social and economic rights. The ECSR is the body that uses the reporting procedure and the collective complaints procedure to foster social justice, equality and general well-being in the respective legal order of States Parties to the Charter.

In light of the case law discussed here, several general observations emerge, including the fact that the Committee’s decisions in the examined matters can be grouped into two main categories: decisions in which the ECSR established new lines of jurisprudence (such as the two decisions in the cases against Greece in 2006 and 2013 and the one against Finland in 2019); and decisions in which, following these jurisprudential lines, the ECSR found nonconformity of the legislation and/or practices of a particular State Party with one or several provisions of the Charter.

In conclusion, the ECSR, a quasi-judicial body, has developed a “jurisprudence” that can be observed in all the material through which it interprets the provisions of the Charter, namely: conclusions resulting from the reporting procedure; interpretative statements in the conclusions; decisions adopted following the use of the collective complaint procedure.

52 Troilo, 2024; See for further details: Council of Europe, 2022.

53 European Committee of Social Rights, 2012, para. 183.

54 European Committee of Social Rights, 2012, para. 183.

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# The EU Charter as a Catalyst for Environmental Action: Spotlighting Articles 37 and 47

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## ABSTRACT

The Charter of Fundamental Rights of the European Union has emerged as a powerful instrument for environmental protection within the bloc. This chapter delves into the Charter's relevance in this domain, analysing its impact beyond mere legal pronouncements. It explores how the Charter elevates environmental considerations to a core principle within the EU (Article 37), empowering individuals and organisations to champion a healthy planet (Article 47). The chapter examines how the Charter's emphasis on continuous improvement drives the development of ambitious environmental goals and fosters a legal landscape where environmental protection remains a top priority. It further analyses the Charter's interplay with existing EU environmental legislation, highlighting its role in ensuring a robust and unified approach to environmental safeguards. Finally, the relationship between the EU Charter and the European Convention on Human Rights (ECHR) is considered, exploring both convergence and divergence in their approaches to environmental protection and fair trial rights.

## KEYWORDS

EU Charter, Human Rights, Environmental Protection, Access to Justice, Aarhus Convention, Treaty on the Functioning of the European Union

## 1. Introduction

In this era of increasing environmental challenges, the European Union's legal framework has progressively strengthened its commitment to ecological preservation. Central to this evolution is the Charter of Fundamental Rights of the European Union (EU Charter),<sup>1</sup> which has emerged as a pivotal instrument for environmental protection within the bloc. This chapter thoroughly examines the Charter's profound relevance, moving beyond mere declaratory statements to analyse its active impact on environmental governance. It specifically investigates how the EU Charter elevates

1 European Union, 2012a, pp. 391–407.

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environmental considerations to a foundational principle (Article 37) and simultaneously empowers individuals and organisations to advocate for a healthy planet through legal recourse (Article 47).

The analysis further explores how the Charter's inherent emphasis on continuous improvement not only propels the pursuit of ambitious environmental objectives but also cultivates a dynamic legal environment where safeguarding the environment remains of paramount concern. Additionally, the chapter meticulously assesses the Charter's symbiotic relationship with existing EU environmental legislation, underscoring its crucial role in fostering a coherent and comprehensive approach to environmental safeguards across the Union.

Finally, a critical examination of the interface between the EU Charter and the European Convention on Human Rights (ECHR) is conducted to identify areas of both congruence and divergence in their respective frameworks for environmental protection and fundamental fair trial rights. This exploration is predominantly grounded in the extensive case law of the Court of Justice of the European Union (CJEU), offering both a systematic overview of seminal judgments and a robust foundation for future scholarly enquiries.

## 2. Evolution and Importance of the EU Charter

The express reference to human rights was absent from the Community treaties. However, the European Union (EU) has traditionally rooted its human rights obligations within its own legal order. This approach was reflected in the ancient case law<sup>2</sup> and the preamble to the 1986 Single European Act. Besides being protected as *Community* concepts arising within the EU system itself, human rights have been further recognised by Article 6 of the Treaty on the European Union (TEU)<sup>3</sup> and the EU Charter, which came into force in December 2009, along with the Treaty of Lisbon.<sup>4</sup> The EU Charter not only overshadowed questions about whether the EU needed a human rights policy but also became the centrepiece of the EU constitutionalisation process.<sup>5</sup>

On cursory examination, the significance of the EU Charter in the realm of environmental protection may not be readily apparent. Only Article 37 directly addresses environmental protection: 'A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.' The EU Charter does not establish any new powers for the Union.<sup>6</sup> However, its

2 See the judgments of the Court of Justice of the European Union, 1969; 1970; 1974.

3 European Union, 2012b, pp. 47–390.

4 See: von Bogdandy, 2000.

5 Eeckhout, 2002, p. 945.

6 See: Court of Justice of the European Union, 2014a, para. 42; European Union, 2012a, Art. 51(2); European Union, 2012b, Art. 6(1).

significance transcends mere legal pronouncements, acting as a catalyst for ambitious environmental policies. In this respect, the EU Charter fulfils the expectation that it would serve to extend the influence of European law and policy, or at least serve as a source of inspiration for further EU action.<sup>7</sup>

Moreover, the EU Charter has evolved into a potent instrument that wields influence through procedural means to safeguard the EU environment. This initial subtlety can be attributed to the multifaceted nature of the EU Charter's impact. While it may not explicitly dedicate entire chapters to environmental concerns, its overarching principles and specific articles, particularly Article 47, subtly yet profoundly permeate environmental decision-making and legal frameworks across the EU. This substantive influence elevates environmental considerations from peripheral concerns to core principles guiding EU policies and legislation. Article 47 of the EU Charter guarantees the right to an effective remedy and a fair trial. This is essential to environmental litigation and, in a wider context, to the enforcement of EU environmental law. This allows individuals to seek redress through the courts, fostering a legal landscape in which environmental protection can be actively championed. It states that:

'Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.'

The link between Articles 37 and 47 of the EU Charter strengthened over time, reflecting environmental threats. Eckes pointed out that justice plays a prominent role in the EU climate-change debate. Supported by the value-guided language in Article 37 of the EU Charter and EU Treaties, the EU has been successful in phrasing climate change as an issue of human rights and justice.<sup>8</sup>

Similarly, to underline the importance of Article 37 of the EU Charter, Humblet and Duggal<sup>9</sup> conclude that, by virtue of this article, the EU has elevated environmental protection to the level of constitutionality.

Consequently, environmental concerns have played a critical role in investor-state arbitration, and Article 37 of the EU Charter might be a viable defence for Member States that adopt climate change and environmental measures. Such a defence would not consist of a jurisdictional challenge,<sup>10</sup> but of a defence based on the applicable law which protects the notion of sustainable investment enshrined in the applicable international investment agreement. Article 37 of the EU Charter could, therefore, operate as a powerful tool to foster environmental protection in investor-state

7 See: Betten 2001.

8 Eckes, 2012, p. 16.

9 Humblet and Duggal, 2020.

10 Based on the Court of Justice of the European Union, 2018.

disputes and, therefore, address a prolific complaint in the backlash against investor-state arbitration.

### 3. Character and Scope of the EU Charter

The EU Charter does not characterise individual articles as being constitutive of rights, principles, or both. However, it distinguishes between principles and rights, as is apparent, for example, in the second sentence of Article 51(1), and in Articles 52(2) and (5) thereof. Such a characterisation is incumbent upon future jurisprudence that shall also consider the directions found in the explanations.

The explanations relating to the Charter of Fundamental Rights, which, according to Article 52(7) thereof ‘shall be given due regard by the Courts of the Union’, provide, with regard to Article 52(5) of the EU Charter, that the principles may be implemented through legislative or executive acts adopted by the EU in accordance with its powers, and by the Member States only when they implement EU law. Accordingly, those principles become significant for the courts only when such acts are interpreted or reviewed, but, conversely, do not give rise to direct claims for positive action by the EU institutions or Member States’ authorities. This seems consistent with both the case law of the CJEU and the approach of the Member States’ constitutional systems to principles.

The EU Charter principles differ from the EU Charter rights in nature: they are non-relational and not inter-subjective; they contain mere duties without corresponding claim rights. This has consequences for their justiciability, which the EU Charter limits.<sup>11</sup> This is an important aspect to consider in further analysis of the EU Charter’s content.

With regard to Article 47 of the EU Charter, it is settled case law that the provision is not intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to the admissibility of direct actions brought before the Courts of the EU. This is apparent from the explanation referring to that article, which must, in accordance with the third subparagraph of Article 6(1) of the TEU and Article 52(7) of the EU Charter, be considered for the interpretation of the EU Charter.<sup>12</sup>

Things get even more complicated, as the scope of application of the EU Charter is a multifaceted and dynamic legal landscape. Three fundamental systems of rights protection apply to Member States: their own national system of human rights protection, the ECHR, and the EU Charter. Determining when and how the EU Charter applies necessitates a careful analysis that intertwines the elements of EU law, national legislation, and the specific factual circumstances of individual cases.

11 See: Lock, 2019.

12 See the judgments of the Court of Justice of the European Union 2013a, para. 42; 2013b, para. 32; 2013c, para. 97.

At its heart, Article 51(1) of the EU Charter provides the guiding principle: The provisions of the Charter are addressed to the institutions of the EU and to its Member States ‘when they are implementing Union law’. This establishes a fundamental link: the implementation of EU law acts as the key to unlocking the EU Charter’s applicability. However, delineating the precise contours of this principle requires a nuanced, contextual approach.

The CJEU plays a pivotal role in shaping the scope of the EU Charter. Through its case law, the CJEU has elaborated on the concept of implementing Union law, casting a wider net than a literal interpretation might suggest. The Court has held that Member States can be seen as implementing EU law not only when directly transposing EU Directives into national law, but also in situations where their actions fall broadly within the scope of EU law or affect areas covered by EU rules. This expansive interpretation underscores the fact that the EU Charter’s reach extends beyond mere compliance with specific EU directives and regulations. It encompasses a broad range of actions by which Member States interact and operate within the framework of EU law.

Nevertheless, the fact that an area falls within the potential competence of the EU—that is, within the shared competence where the EU can potentially legislate—does not suffice for the application of the EU Charter or general principles of law.

Notably, in Case C-617/10 (*Åkerberg Fransson*),<sup>13</sup> the CJEU added a *conciliation* clause. It held that, where a national court reviews the compatibility with fundamental rights of a national measure which implements EU law but does so in a situation where national action is not entirely determined by the latter, the national court remains free to apply national standards of protection. This occurs on the condition that the level of protection provided by the EU Charter and the primacy, unity, and effectiveness of EU law are not compromised. In a later Case C-176/12 (*Association de médiation sociale*),<sup>14</sup> the CJEU confirmed that the fundamental rights guaranteed in the legal order of the EU are applicable in all situations governed by EU law without distinguishing among the various sources of rights provided for in Article 6 TEU.

However, there are limitations to the EU Charter’s scope. Member States acting wholly outside the realm of EU law fall outside its ambit. Purely national situations, lacking any nexus to EU legislation or the broader aims of the EU, generally have no recourse within the EU Charter’s principles. Furthermore, the EU Charter primarily safeguards rights against governmental and public bodies, and is generally not directly applicable to disputes between private individuals.

To provide an example of environmental protection, in Case C-206/13 (*Siragusa*),<sup>15</sup> the CJEU elucidates the rules when a measure would be considered to fall within the scope of the EU Charter. Mr Siragusa was required to dismantle a building on the grounds that it had been built in breach of Italian law, protecting its cultural heritage

13 Court of Justice of the European Union, 2013d.

14 Court of Justice of the European Union, 2014b.

15 Court of Justice of the European Union, 2014c.

and landscape. The referring court raised the question of whether the rigidity of Italian law was compatible with the right to property as guaranteed by the EU Charter, referring to the Aarhus Convention and several provisions of EU environmental law. None of these, however, appeared to have any link with the facts of the case or the decision of the Italian authorities to order demolition. The CJEU accepted that there was a connection between the proceedings and EU environmental law because protection of the landscape is an aspect of environmental protection. It held, however, that the concept of implementing EU law under Article 51 of the EU Charter requires ‘a certain degree of connection above and beyond the matters covered being closely related or one of those matters having an indirect impact on the other’.<sup>16</sup>

To determine whether a national measure implements EU law, the Court will consider, *inter alia*, the following factors: whether the measure intends to implement an EU law provision, the nature of the measure, whether it pursues objectives distinct from those covered by EU law (even if capable of indirectly affecting EU law), and the existence of specific EU rules governing the matter or capable of influencing it.<sup>17</sup>

The CJEU also reiterated that the scope of the application of the general principles was the same as that of the EU Charter. After finding that the Italian measure did not fall within the scope of the application of EU law, it was followed by the same token that the CJEU did not have the jurisdiction to apply the principle of proportionality.<sup>18</sup>

Similarly, in Case C-339/10 (*Asparuhov Estov*),<sup>19</sup> the CJEU declined jurisdiction to answer the preliminary question of the lack of jurisdiction. The applicants challenged the national legislation which precluded them from contesting a ministerial decision concerning town planning, arguing for its incompatibility with Article 47 of the EU Charter, which guaranteed the right to an effective remedy. The CJEU recalled that, under the EU Charter and established case law, fundamental rights are binding upon Member States whenever they implement European Union law. It also reiterates that the EU Charter does not establish any new power for the Union, nor does it modify the Union’s existing powers. Given that the order for reference did not contain any specific information to show that the contested ministerial decision would constitute a measure implementing EU law, ‘or would be connected in any other way’<sup>20</sup> with EU law, the CJEU could not provide the answer.

In summary, while a considerable degree of uncertainty persists, the test applied by the CJEU appears to be predominantly objectives- and effects-based. National legislation will fall within the scope of the EU Charter if it pursues objectives analogous to those pursued by EU law, provided that the EU objectives are sufficiently specified. Furthermore, a national measure falls within the scope of EU law if it affects EU provisions with sufficient directness. The mere fact that national legislation falls within an area of potentially shared competence is insufficient to trigger the application of

16 Court of Justice of the European Union, 2014c, para. 24

17 Court of Justice of the European Union, 2014c, para. 25.

18 Court of Justice of the European Union, 2014c, para. 35.

19 Court of Justice of the European Union, 2010a.

20 Court of Justice of the European Union, 2010a, para. 14.

EU standards. Moreover, the measure falls within the scope of EU law if it sufficiently and directly affects EU dispositions.

Notably, the scope of the EU Charter is not static. Its application continually evolves in tandem with the expanding reach of EU Law. As the EU delves into new policy areas and strengthens its presence within existing domains, the potential to invoke the Charter expands commensurately. This adaptability ensures that the EU Charter remains a relevant and potent instrument as the EU itself undergoes transformation, particularly towards sustainable development and a circular economy.

Furthermore, Article 52(2) of the EU Charter provides that the rights recognised by the EU Charter for which provisions are made in the Treaties are to be exercised under the conditions and within the limits defined by those Treaties. This is the case with Article 37 of the Charter, which is based on Article 3(3) TEU and Articles 11 and 191 TFEU (see below).

Article 53 of the EU Charter then suggests that the EU Charter shall not adversely affect the rights contained in national constitutions, EU law, and international treaty law ‘recognised in their respective fields of application’. The Charter, therefore, establishes a minimum standard of rights protection while retaining all higher existing standards. As for international human rights treaties, the minimum guarantee is restricted to treaties to which the Union, the Community or all the Member States are parties. This is particularly important for the judicial protection of environmental matters guaranteed by the Aarhus Convention. All Member States and the EU are parties to the Aarhus Convention, which provides more detailed provisions than the EU Charter regarding the scope, effectiveness, and timeliness of the judicial review (see below).

#### **4. Relationship with the ECHR Regime**

The EU Charter is, if not a child, then at least a godchild of Germany. Due to the sole efforts of the German government, the consolidation of the protection of fundamental rights within the EU was placed on the European Council’s agenda.<sup>21</sup> Simultaneously, the EU Charter was inspired by and drafted based on the ECHR, with the clear aim that the two regimes would eventually merge into one European human rights standard. Although that has not happened, the EU Charter and the ECHR form a twin constellation, safeguarding fundamental rights within the European legal firmament.

The ECHR plays a significant role in the development of Community rights. In its interpretation, the CJEU frequently refers to the provisions of the ECHR, although recourse to other treaties has not been precluded. The particular significance afforded to the ECHR represents a positive step in the EU’s acknowledgement of the relevance of human rights principles external to the EU system for developments within it. Nevertheless, the EU is not obligated to adhere strictly to the ECHR text or case law

21 Besselink, 2001, p. 68.

of the European Court of Human Rights (ECtHR). The incorporation of any specific right as one of the general principles of EU Law occurs on a case-by-case basis. From the CJEU's standpoint, it is apparent that aside from the ECHR, other international human rights treaties have not been accorded substantial weight. Moreover, such treaties are regarded merely as useful guides for human rights protection within the EU rather than being directly legally binding upon its institutions.<sup>22</sup>

The function of the EU Charter is not to enable the harmonisation of the systems of protection of the fundamental rights of Member States. It does not establish a minimum standard that is generally applicable to Member States, like the ECHR does. The EU Charter has not been elaborated on by the necessity to create such a standard, but rather by a genuine demand for a uniform application of EU law.<sup>23</sup> At its core, the EU Charter was designed to bolster and consolidate the protection of fundamental rights of individuals within the Union's unique legal context. In contrast, the ECHR stems from the Council of Europe, a broader international organisation encompassing a wider geographical reach.

Nevertheless, the relationship between the EU Charter and the ECHR is one of synergy and subtle distinction, particularly when considering environmental protection and fair trial rights. As previously noted, the CJEU frequently refers to ECtHR case law. However, Article 37 of the EU Charter is referred to in the separate opinion of Judge Costa in the famous ECtHR case *Hatton and Others v. UK* (Heathrow night flights):

‘Since the beginning of the 1970s, the world has become increasingly aware of the importance of environmental issues and of their influence on people’s lives. Our Court’s case-law has, moreover, not been alone in developing along those lines. For example, Article 37 of the Charter of Fundamental Rights of the European Union of 18 December 2000 is devoted to the protection of the environment. I would find it regrettable if the constructive efforts made by our Court were to suffer a setback.’<sup>24</sup>

Both instruments support environmental protection, albeit in completely different ways. Article 37 of the EU Charter sets lofty policy goals for high-level environmental protection and continuous improvement. Through Article 8 (the right to private and family life), the ECHR offers environmental protections to affected individuals and environmental NGOs. However, the ECtHR often takes a more reactive approach, focusing on preventing environmental harm that disrupts individual well-being. This divergence stems from the different objectives of both Charters. The EU Charter is intrinsically linked to the EU's economic and social integration projects, which allow for ambitious environmental policies. The broader scope of the ECHR necessitates a

22 See: Ahmed and Butler, 2006, p. 773.

23 See: Van Danwitz and Paraschas, 2017, p. 411.

24 European Court of Human Rights, 2001.

more measured approach to ensure a baseline for environmental protection across diverse legal systems.

The right to an effective remedy and fair trial, enshrined in Article 47 of the EU Charter, has a strong counterpart to Article 6 of the ECHR. Both the instruments guarantee impartial hearings, access to legal counsel, and the presumption of innocence. The ECtHR has established a rich body of jurisprudence to interpret Article 6, which informs the EU Charter.

The EU Charter and the ECHR do not compete, but rather engage in constructive dialogue. Article 52(3) of the EU Charter mandates that when providing similar safeguards, the level of protection under the Charter must never fall below that guaranteed by the ECHR. This established a dynamic ratcheting effect, pushing for ever-higher standards of rights protection across Europe. In principle, the EU Charter should not lead to divergence from the ECHR and Strasbourg case law.

Notable differences emerge in practical application. The scope of the EU Charter is limited to situations in which EU law has been implicated. The ECHR has a broader reach, potentially applying to any alleged breach of human rights within the Council of European member states. This distinction can have significant implications for individuals who seek to enforce procedural rights across diverse legal contexts.

Therefore, the relationship between the EU Charter and the ECHR can be characterised by both convergence and subtle divergences. While the fundamental principles espoused by Articles 37 and 47 of the EU Charter are echoed in both instruments, the ambitious environmental objectives enshrined in the EU Charter contrast with the ECHR's indirect and reactive approach. Similarly, the shared commitment to due process rights is subject to varying jurisdictional scopes of application. Ultimately, both instruments act in harmony to form a formidable bulwark for fundamental rights protection within Europe, and their unique characteristics shape the complex, nuanced, and ever-evolving legal landscape.

## **5. Article 37 of the EU Charter: A Cornerstone of Environmental Protection in the European Union**

Nestled within Title IV of the EU Charter, Article 37 stands as a cornerstone principle proclaiming a lofty and inestimable objective: the integration of a high level of environmental protection and the unceasing improvement of environmental quality. According to the CJEU, Article 37 of the EU Charter reaffirms the transversal and fundamental nature of the objective to consider environmental protection in defining and implementing EU policies and activities.<sup>25</sup>

Article 37 of the EU Charter builds on the principle established by Article 11 of the TFEU, which requires that environmental protection requirements be integrated into the definition and implementation of the Union's policies and activities, particularly

25 Court of Justice of the European Union, 2011a, para. 121.

with a view to promoting sustainable development. However, as Jans notes,<sup>26</sup> the principle of integration lost its status as a guiding principle of EU law (Articles 1–6 TFEU) in the Lisbon Treaty and became one of the ordinary integration principles.

The harmonious integration of environmental protection into other policy domains is an inevitable consequence of laws being implemented within the context of the environment. Any substantial regulation, or its absence, will invariably affect the natural world. However, the systematic and comprehensive integration of environmental protection is indispensable for achieving sustainable development and shifting environmental policymaking from the traditional antagonistic model to a new cooperative model.<sup>27</sup> In this regard, a profound connection exists between Article 37 of the Charter and Article 3 of the TEU, both of which underscore the paramount importance of sustainable development.

Article 3(3) of the TEU provides that the European Union is to work in particular for a ‘high level of protection and improvement of the quality of the environment’.<sup>28</sup> According to the CJEU, Article 37 of the Charter is: ‘essentially based on Article 3(3) TEU and Articles 11 and 191 TFEU’.<sup>29</sup>

Secondary EU environmental legislation ‘comes within the framework provided for both in Article 3 TEU and in Article 37 of the Charter, provisions according to which, in essence, the European Union is to work for sustainable development and ensure a high level of protection of the environment’.<sup>30</sup>

Simultaneously, Article 37 of the EU Charter confirms the ambitions of the EU to achieve the high level of environmental protection embodied in Article 191(2) of the TFEU.

The wording of Article 37 of the EU Charter emphasises two pivotal elements regarding the quality of integration of environmental aspects into EU policies: a high level of environmental protection should be achieved, and the regulation should aim to improve the state of the environment. These elements are of significant importance because they signal that the mere integration of environmental protection (taking into account) is insufficient. Obviously, Article 37 of the EU Charter does not amend the individual EU policies established by the TFEU and seems to be of lower strength than such a direct amendment. Nevertheless, it serves as a far-reaching explanatory instrument.

The requirement for a high level of environmental protection follows the main aim of the environmental policy set in Article 191(2) of the TFEU (Union policy on the environment shall aim at a high level of protection) and extends this aim to other EU policies. Therefore, in principle, the ambitious character of environmental protection must be inherent in EU law regardless of the legal basis.

26 Jans, 2011, pp. 1543–1545.

27 See: Hertin and Berkhout, 2001.

28 See: Court of Justice of the European Union, 2016a, para. 42.

29 Court of Justice of the European Union, 2016a, para. 62.

30 Court of Justice of the European Union, 2021a, para. 60.

The origin of the principle of high-level environmental protection (as well as other principles) can be traced back to the Single European Act, which includes a specific chapter on the environment in the EC Treaty. The then Article 100a of Title VII obliged the Commission to base its proposals under Paragraph 1 on a *high level of protection*. A high level of protection and improvement in the quality of the environment became one of the objectives of the Community (Article 2 EC), since an environmental policy [Article 3(1)(l) EC] was inevitable.

For example, Advocate General Ruiz-Jarabo Colomer explained the practical impact of the principle of high-level environmental protection in Case C-6/03 (*Deponiezweckverband Eiterköpfe*): ‘...the attainment of a high level of protection and improvement of the quality of the environment has become one of the objectives of European integration, the achievement of which requires the development of a suitable policy (Articles 2 and 3(1)(l) EC), (21) from which it follows that the adoption of more stringent national measures must conform to Community guidelines, since it is not only specific provisions which can be incompatible but also programmes drawn up in this supranational sphere.’<sup>31</sup>

Unlike Article 191(2) of the TFEU, Article 37 of the Charter does not provide an explicit corrective which would limit the high-level protection principle. 191(2) TFEU requires taking into account the diversity of situations in the various regions. In other words, the regulations adopted in EU environmental policy must set different targets for individual Member States or their regions if the situation in the region demands them. This requirement can be derived from the principles of subsidiarity and proportionality.

The principle of a high level of protection legitimises legal regulation which, while respecting the principle of proportionality, aims for rules that are more stringent than the necessary minimum standard. The CJEU often refers to the principle of a high level of protection when EU regulations are challenged as being too strict. For example, in Case C-358/14 (*Poland v Parliament and Council*),<sup>32</sup> Poland contested an EU ban on placing tobacco products containing menthol as a characterising flavour on the market. It argued that such a measure is too strict and inappropriate for achieving the objective of human health protection. The CJEU concluded that, *inter alia*, ‘the EU legislature weighed up, on the one hand, the economic consequences of that prohibition and, on the other, the requirement to ensure, in accordance with Article 114(3) TFEU, a high level of human health protection with regard to a product which is characterised by properties that are carcinogenic, mutagenic and toxic to reproduction.’<sup>33</sup>

Furthermore, the principle of a high level of protection must be considered in decision-making, including the considerations of the judiciary. For example, the Tribunal postponed the annulment of the invalid EU Act because the annulment of

31 Court of Justice of the European Union, 2004.

32 Court of Justice of the European Union, 2016b.

33 Court of Justice of the European Union, 2016b, para. 102.

the contested decision with an immediate effect would run counter to the objectives of ensuring a high level of environmental protection. The Tribunal ruled in Case T-699/17 (*Poland v. Commission*) that: ‘the annulment of the contested decision with immediate effect would run counter to the objectives of ensuring a high level of environmental protection and the improvement of environmental quality, as provided for in Article 191(2) TFEU, in Article 37 of the Charter of Fundamental Rights of the European Union, and in recitals 2 and 44 as well as in Article 1 of Directive 2010/75, to which the contested decision contributes.’<sup>34</sup>

Nevertheless, Article 37 of the EU Charter does not provide the right to bring actions regarding environmental matters before the national courts or the CJEU, or any other rights. It ‘only contains a principle providing for a general obligation on the European Union in respect of the objectives to be pursued in the framework of its policies’.<sup>35</sup> The explanatory memorandum pertaining to Article 37, which establishes the obligation to integrate environmental considerations into EU policies and activities, states that it ‘also draws on the provisions of some national constitutions’. This constitutes the sole explicit reference to a fundamental right enshrined only within the constitutions of certain Member States. The EU Charter, however, does not go as far as to establish a right to a favourable environment.

Article 37 of the Charter is often invoked alongside other legal instruments such as EU directives and regulations, forming a strong legal framework for environmental protection in the EU. Therefore, the inscription of Article 37 into the EU Charter reflects a growing conviction within the EU that environmental protection could no longer be relegated to the periphery of European integration.

The emphasis on a high level of environmental protection under Article 37 sets a dynamic standard. It compels the EU to strive for unrelenting improvements, fostering the development of ambitious environmental goals, and the ongoing pursuit of innovative solutions. This focus on continuous progress ensures that environmental protection remains a top priority within the EU and is not a static achievement.

This approach works in the opposite way, as Article 37 of the EU Charter limits the preference of other areas to environmental protection. For example, nuclear energy sector regulations cannot oust the application of, inter alia, Article 37 of the EU Charter.<sup>36</sup> Accordingly, the requirement to preserve and improve the environment, expressed in both the Charter and TFEU, as well as the secondary legislation that flows from it, is applicable in the nuclear energy sector.<sup>37</sup> A practical consequence arises: When the Commission assesses whether State aid for economic activity within a particular sector satisfies the primary condition laid down in Article 107(3)(c) of the TFEU, it must verify that the activity does not contravene the relevant rules of EU environmental law. Should the Commission identify an infringement of these rules, it

34 General Court of the European Union, 2021, para. 64.

35 General Court of the European Union, 2016, para. 47.

36 Court of Justice of the European Union, 2020a, para. 100.

37 See, by analogy, the judgment of the Court of Justice of the European Union 2009, paras. 87–91.

is obliged to declare the aid incompatible with the internal market without undertaking any further examination.

Similarly, Article 37 of the EU Charter helps interpret derogatory regimes set in environmental directives in a restrictive manner. For example, in Case C-900/19 (*One Voice and Ligue pour la protection des oiseaux*),<sup>38</sup> the CJEU concluded the following regarding the protection of wild birds: ‘It follows from the wording of Article 9(1)(c) of the Birds Directive, read in the light of Article 8(1) of that directive, from the objectives of that directive and from the framework within which it falls, a framework which is based on the provisions of Article 3 TEU, of Article 37 of the Charter, of the first subparagraph of Article 191(2) TFEU and of Article 13 TFEU on animal welfare, that the condition of selectivity laid down in Article 9(1)(c) of that directive must be understood as meaning that it can be satisfied, in the case of a non-lethal method of capture leading to by-catch, only if that by-catch is limited in size, that is to say, it concerns only a very small number of specimens captured accidentally, for a limited period, and only if those specimens can be released without sustaining harm other than negligible harm.’<sup>39</sup>

Several EU environmental Directives and Regulations expressly aim for a high level of protection, usually in the preamble or the objectives of the act. For example, Article 1 of the SEA Directive (2001/42/EC)<sup>40</sup> states ‘The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment’.

The aims of the Directive, read in line with Article 37 of the EU Charter, support an extensive interpretation of the material scope of environmental law. For example, in Case C-24/19 (*A and Others; Wind turbines at Aalter and Nevele*),<sup>41</sup> concerning again the environmental impact assessment of plans and programmes, the CJEU observed the following: ‘Secondly, Article 2(a) of Directive 2001/42 includes not only the preparation and adoption of “plans and programmes”, but also modifications to them (see, to that effect, judgments of 22 March 2012, *Inter-Environnement Bruxelles and Others*, C-567/10, EU: C:2012:159, paragraph 36, and of 10 September 2015, *Dimos Kropias Attikis*, C-473/14, EU: C:2015:582, paragraph 44). As the Advocate General stated in point 68 of his Opinion, that latter case, in which the modification of the plan or programme concerned is also likely to have significant environmental effects, within the meaning of Article 3(1) of Directive 2001/42, most often arises when an authority decides of its own initiative to carry out such a modification, without being obliged to

38 Court of Justice of the European Union, 2021a.

39 Court of Justice of the European Union, 2021a, para. 65.

40 European Parliament and Council, 2001, pp. 30–37.

41 Court of Justice of the European Union, 2020b.

do so. Those foregoing considerations are consistent with the purpose and objectives of Directive 2001/42, which itself comes within the framework established by Article 37 of the Charter of Fundamental Rights of the European Union, according to which a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the European Union and ensured in accordance with the principle of sustainable development.<sup>42</sup>

However, the scope of the EU requirements cannot be extended beyond setting higher levels of environmental protection. In Case C-444/15 (*Associazione Italia Nostra Onlus*),<sup>43</sup> the referring national court challenged, in essence, the validity of Article 3(3) of the SEA Directive in light of Article 191 of the TFEU and Article 37 of the Charter. Specifically, it provides that plans and programmes which require an environmental assessment pursuant to Articles 6 and 7 of the Habitats Directive<sup>44</sup> are not subject to a mandatory environmental assessment under the SEA Directive. However, according to the CJEU, it was concluded that: ‘Article 3(3) of Directive 2001/42 has revealed nothing which could affect its validity in the light of Article 191 TFEU, it follows that that provision also reveals nothing which could affect its validity in the light of Article 37 of the Charter.’<sup>45</sup>

Even without expressive wording in the EU secondary legislation, Article 37 of the EU Charter may serve to emphasise the multi-layered motives behind EU legislation and the relationship between environmental protection and other public interests. For example, in Case C-626/22 (*Ilva and Others*),<sup>46</sup> the CJEU analysed the underlying principles of the integrated permitting procedure which applies to large industrial operations. It held that: ‘Having regard to the close link between the protection of the environment and that of human health, Directive 2010/75 seeks to promote not only the application of Article 37 of the Charter, as stated in recital 45 of that directive, but also the application of Article 35 of the Charter, it not being possible to achieve a high level of protection of human health without a high level of environmental protection, in accordance with the principle of sustainable development. Directive 2010/75 thus contributes to protecting the right to live in an environment which is adequate for personal health and well-being, as referred to in recital 27 thereof.’<sup>47</sup>

Therefore, Article 37 extends far beyond the realm of lofty pronouncement. It serves as a guiding compass for EU institutions, impelling them to integrate environmental considerations into their policies and endeavours. This symphonic approach ensures that environmental concerns are not treated as isolated silos but rather as integral components of every facet of European decision-making. Furthermore, as Tridimas pointed out, there is no reason why articles of the EU Charter which incorporate principles rather than rights should be denied any interpretative value in the

42 Court of Justice of the European Union, 2020b, paras. 43–44.

43 Court of Justice of the European Union, 2016a.

44 Council of the European Communities, 1992, pp. 7–50.

45 Court of Justice of the European Union, 2016a, para. 63.

46 Court of Justice of the European Union, 2024.

47 Court of Justice of the European Union, 2024, para. 72.

absence of action implementation: ‘Indeed, the value of constitutional principles is precisely to inform the interpretation of normative rules, including those that have not been adopted specifically in order to implement them. This is the case, for example with the principle of environmental protection which is proclaimed in Article 37 of the Charter.’<sup>48</sup>

## 6. Article 47 of the EU Charter: Safeguarding Justice in the European Union

Article 47 of the EU Charter stands as a stalwart pillar of justice within the European Union. It enshrines two invaluable safeguards—the right to an effective remedy and the right to a fair trial. These imperatives guarantee that individuals whose rights are infringed have access to equitable and impartial legal recourse. The inclusion of Article 47 in the EU Charter acknowledges the paramount importance of ensuring that everyone within the EU, regardless of background or circumstance, has the opportunity to seek redress for violations of their rights based on EU law, that is, within the scope of the application of EU legislation.

The practical import of Article 47 of the EU Charter is multifaceted. It guarantees individuals the ability to seek reparations for breaches of their EU-protected rights before a competent and independent tribunal. This commitment to due process ensures that legal proceedings are conducted with fairness, transparency, and respect for the fundamental rights of all parties involved. Furthermore, Article 47 of the EU Charter safeguards the right to competent legal counsel. This provision ensures that individuals navigating the complexities of the legal system have access to informed and professional representation, levelling the playing field, and fostering a just and equitable legal system.

In this respect, Article 47 of the EU Charter goes well beyond the guarantees of Article 6 of the ECHR (right to a fair trial), which is limited in several ways. First, the ECHR requirements are applicable to the determination of civil rights and obligations or criminal charge. The ECtHR broadly interprets the scope of Article 6 of the ECHR; therefore, it also applies to access to administrative courts if civil rights are at stake. For example, if a neighbour challenges the construction of a building that may affect their ownership rights.<sup>49</sup> Nevertheless, this provision is not automatically applicable to all environmental or public health-related matters. However, Article 47 of the EU Charter makes no difference to the various rights and freedoms guaranteed by EU law.

Second, Article 47 of the EU Charter puts much more emphasis on the effectiveness of the judicial protection as it establishes the right to an effective remedy and not merely the right to a fair trial. This includes the possibility of being advised, defended, and represented. Similarly, legal aid must be made available to those who

48 Tridimas, 2014, p. 380.

49 See: European Court of Human Rights, 1982.

lack sufficient resources, in so far as such aid is necessary to ensure effective access to justice.

The effective judicial protection of individuals' rights under EU law constitutes a general principle derived from the constitutional traditions common to Member States, enshrined in Articles 6 and 13 of the ECHR and reaffirmed by Article 47 of the EU Charter. Respect for the rule of law is one of the common values enshrined in Article 2 of the TEU. The second subparagraph of Article 19(1) of the TEU, which requires Member States to provide remedies sufficient to ensure effective judicial protection in the fields covered by EU law, represents a concrete manifestation of that value. Article 47 of the Charter must be considered when interpreting the second subparagraph of Article 19(1).<sup>50</sup>

It falls to Member States to establish a system of legal remedies and procedures that ensure effective judicial protection in fields covered by EU law. Member States have the responsibility of designating the courts or institutions empowered to review the validity of national provisions, prescribing legal remedies and procedures to contest the validity of those provisions, and, where an action is successful, annulling them and determining the effects of such an annulment.<sup>51</sup>

Member States must ensure effective judicial protection in the fields covered by EU law, in the absence of specific EU rules on the matter. Still, EU law does not compel Member States to adopt a specific system of remedies or procedural rules governing actions to safeguard the rights that individuals derive from EU law,<sup>52</sup> provided that the available remedies and procedures comply with the principles of equivalence and effectiveness. In Case C-583/11 (*Inuit Tapiriit Kanatami and Others v. Parliament and Council*),<sup>53</sup> the CJEU emphasised that neither the TFEU nor Article 19 TEU necessitates the creation of remedies beyond those already laid down by national law to ensure the observance of EU law before national courts. This position differs only if the structure of the national legal system provides no remedy whatsoever that makes it possible, even indirectly, to ensure respect for the rights that individuals derive from EU law. In such circumstances, national courts must assert jurisdiction to determine an action brought about by an affected person to defend the rights guaranteed to them by EU law.<sup>54</sup>

Consequently, reflecting the principles of equivalence and effectiveness, detailed procedural rules governing actions to safeguard an individual's rights under EU law must be no less favourable than those governing similar domestic actions. Further, they must not render the exercise of rights conferred by EU law practically impossible

50 See: Court of Justice of the European Union, 2021b, para. 102; 2022a, para. 89.

51 See: Court of Justice of the European Union, 2018, para. 34.

52 See: Court of Justice of the European Union, 2010b, para. 74.

53 Court of Justice of the European Union, 2013c, paras. 103–104.

54 The rules of *locus standi* and the requirements, *inter alia*, of direct and individual concern in Article 263 TFEU are specific to actions for the annulment of acts of the EU institutions before the General Court. Actions in fields covered by EU law before national courts are, in principle, subject to the principle of procedural autonomy.

or excessively difficult. These requirements are also based on the principle of sincere cooperation enshrined in Article 4(3) of the TEU.<sup>55</sup>

The requirement for judicial independence derived from the second subparagraph of Article 19(1) of the TEU encompasses two aspects. The first external aspect necessitates that the court concerned exercises its functions with complete autonomy, without being subject to any hierarchical constraint or subordinated to any other body, and without taking orders or instructions from any source whatsoever. Thereby, it is protected against external interventions or pressure liable to compromise the independent judgment of its members and influence their decisions. Second, the internal aspect is linked to impartiality and seeks to ensure that an equal distance is maintained between the parties to the proceedings and their respective interests regarding the subject matter. The latter aspect demands objectivity and the absence of any interest in the outcome of the proceedings, apart from the strict application of the rule of law.<sup>56</sup>

The right to effective judicial protection pursuant to Article 47 of the Charter does not exist in isolation; it must be linked to a right conferred on or freedom guaranteed by EU law. Any individual may invoke Article 47 of the EU Charter before a national court challenges an act adopted by a Member State in its implementation of EU Law which adversely affects that individual.<sup>57</sup> Within this context, Member States enjoy considerable discretion in determining what constitutes an impairment of a right or freedom, the conditions for the admissibility of actions, and the bodies before which such actions may occur.<sup>58</sup> In Case C-73/10 P (*Internationale Fruchthandels-Gesellschaft Weichert v. Commission*),<sup>59</sup> for example, the CJEU held that the right of access to a court is not absolute and is subject to limitations, such as rules establishing time limits within which an action must be initiated. Such rules must, however, not restrict a litigant's access in such a way or to such an extent as to impair the essence of the right they seek to assert. Such rules must pursue a legitimate aim, and the relationship between the means employed and the aim pursued must be reasonable and proportionate.<sup>60</sup>

On *locus standi* before national courts, the CJEU has stated that: 'whilst it is, in principle, for national law to determine an individual's standing and legal interest in bringing proceedings, EU law nevertheless requires, in addition to observance of the principles of equivalence and effectiveness, that the national legislation should not undermine the right to effective judicial protection...'.<sup>61</sup>

55 Save where it provides otherwise, EU law imposes no particular judicial model on the Member States. See: Court of Justice of the European Union, 2019a, para. 130.

56 See: Court of Justice of the European Union, 2022b, para. 41.

57 Court of Justice of the European Union, 2021c, paras. 45–46.

58 See, by analogy, Court of Justice of the European Union, 2011b, para. 55; 2020c, paras. 60–65.

59 Court of Justice of the European Union, 2010c, para. 53; 2013e; European Court of Human Rights, 2016, para. 120.

60 See: European Court of Human Rights, 1998, para. 44.

61 Court of Justice of the European Union, 2015, para. 50; 2005, paras. 18–21; 2007, para. 36; 2010b, paras. 74–80.

As regards its relevance for environmental disputes, Article 47 of the EU Charter is not the sole EU guarantee on access to justice in environmental matters. Most notably, the EU is a party to the 1998 Aarhus Convention, which requires wide access to justice to review decisions on environmental information [Art. 9(1)], decisions, acts or omissions concerning large projects [Art. 9(2)], and other environmental acts or omissions [Art. 9(3)]. Furthermore, the procedures must provide adequate and effective remedies, including injunctive relief, as appropriate and be fair, equitable, timely, and not prohibitively expensive [Article 9(4)].

To implement the Aarhus Convention, in certain instances, EU secondary legislation specifically affords *locus standi* to bring action in environmental matters before national courts to advance the objectives that the legislation pursues. In particular, the specific requirements of Art. 11 of the 2011 EIA Directive<sup>62</sup> and Art. 25 of the Industrial Emissions Directive<sup>63</sup> cover the judicial review of decisions concerning large projects, particularly the land-use permit, building permit, and operation permit. These requirements are largely copied from the Aarhus Convention and are therefore very similar. For example, both Directives guarantee the public the right to challenge the substantive or procedural legality of acts and require the proceedings to be fair, equitable, timely, and not prohibitively expensive.

However, there are no EU regulations on general access to justice in environmental matters. The Commission adopted a proposal for a Directive on access to justice in environmental matters in 2003.<sup>64</sup> Still, the proposal did not gather sufficient support from national governments and was finally withdrawn by the Commission in 2014.<sup>65</sup> The Member States opined that judicial protection belonged to their competence because of the principle of subsidiarity.<sup>66</sup> Consequently, specific provisions aimed at ensuring effective judicial protection are currently limited to a few areas of the EU environmental law. However, Article 47 of the EU Charter serves as a strong argument for the direct applicability of EU environmental legislation if the Aarhus Requirements are not implemented or if there are any obstacles to effective judicial review.

This situation is relatively simple in the case of the activities covered by Art. 9(2) of the Aarhus Convention, the situation is relatively simple. In 1996, the CJEU concluded that specific provisions of the EIA Directive could have a direct effect.<sup>67</sup> In 2011, it extended the set of provisions to include Art. 11, which sets out specific conditions for public participation in decision-making and access to judicial protection.<sup>68</sup> The CJEU has not addressed the direct effects of the Industrial Emissions Directive. Still,

62 European Parliament and Council, 2012, pp. 1–21.

63 European Parliament and Council, 2010, pp. 17–119.

64 European Commission, 2003.

65 European Commission, 2014.

66 Krämer, 2012, p. 147.

67 See: Council of the European Communities, 1985, arts. 2(1), 4(2); Court of Justice of the European Union, 1996.

68 Court of Justice of the European Union, 2011b.

the conclusions regarding the EIA Directive can be used *per analogiam*, given that the provisions of both directives are very similar.

Furthermore, in 2016, the CJEU concluded in Case C-243/15 (*Lesoochránárske zoskupenie II*)<sup>69</sup> that the requirements of Article 6(3) of the Habitats Directive on the assessment of projects fall under the regime Art. 9(2) of the Aarhus Convention and can be directly applicable even though the Habitats Directive contains no provisions on access to justice. The CJEU concluded that

‘inasmuch as Article 47 of the Charter, read in conjunction with Article 9(2) and (4) of the Aarhus Convention, enshrines the right to effective judicial protection, in conditions ensuring wide access to justice, of the rights which an environmental organisation meeting the conditions laid down in Article 2(5) of that convention derives from EU law, in this instance from Article 6(3) of Directive 92/43, read in conjunction with Article 6(1)(b) of that convention, it must be interpreted as precluding, in a situation such as that at issue in the main proceedings, an interpretation of rules of national procedural law to the effect that an action against a decision refusing such an organisation the status of party to an administrative procedure for authorisation of a project that is to be carried out on a site protected pursuant to that directive does not necessarily have to be examined during the course of that procedure, which may be definitively concluded before a definitive judicial decision on possession of the status of party is adopted, and is automatically dismissed as soon as that project is authorised, thereby requiring that organisation to bring an action of another type in order to obtain that status and to secure judicial review of compliance by the competent national authorities with their obligations stemming from Article 6(3) of that directive’.<sup>70</sup>

The CJEU confirmed that many other EU directives can be directly applicable, this time in the regime of Art. 9(3) of the Aarhus Convention. Article 9(3) of the Aarhus Convention is broader in scope in that it covers a wider category of measures and decisions, and is addressed to members of the public in general. Conversely, that provision confers greater discretion to Member States when they lay down the criteria for determining, among all members of the public, who has the right to bring the action provided for in that provision.<sup>71</sup> Article 9(3) of the Aarhus Convention contemplates Member States adopting laws that afford broader or even unrestricted standing to maintain certain kinds of environmental action; nevertheless, it imposes no obligation to adopt such rules.<sup>72</sup> The Court held that according to the specific wording of Article 9(3) of the Aarhus Convention, the criteria that Member States are permitted

69 Court of Justice of the European Union, 2016c.

70 Court of Justice of the European Union, 2016c, para. 73.

71 See: Court of Justice of the European Union, 2021d, paras. 36, 37, 62.

72 See: Court of Justice of the European Union, 2022c, para. 49.

to establish in their national law relate to determining which persons are entitled to bring an action (*locus standi*), not to defining the subject matter of the action where the latter concerns alleged infringements of national environmental law provisions.<sup>73</sup>

Therefore, provisions of EU environmental law that do not provide for public participation may have a direct effect. The CJEU adopted the formulation that it would be ‘incompatible with the binding effect attributed to a directive by Article 288 TFEU to exclude, in principle, the possibility that the obligations which it imposes may be relied on by those concerned’.<sup>74</sup> In Case C-361/88 (*Commission v. Germany*),<sup>75</sup> the CJEU found a link between air protection and individuals’ rights, – even though air quality legislation does not contain comprehensive rules regarding access to justice. The Court concluded that the quality (concentration) limit values aim to protect human health. Thus, they have the objective of protecting individuals’ rights to health. They are sufficiently precise and unconditional for direct application. This means that the individual has the right to trace back the limit values in their national legislation; it follows from this that Member States are obliged to transpose the limit values of the air pollution directive into their national laws. Later, in its judgment in Case C-237/07 (*Janecek*),<sup>76</sup> the CJEU held that individuals directly affected must be able to request the drawing up of an action plan to reduce air pollution, irrespective of the form in which such a plan is adopted. In Case C-404/13 (*ClientEarth*),<sup>77</sup> the CJEU reached the same conclusion regarding the Ambient Air Quality Directive.<sup>78</sup>

Further on, the CJEU started referring to Article 47 of the EU Charter and translated its conclusions regarding air quality directives in cases concerning water management: In Case C-664/15 (*Protect Natur-, Arten- und Landschaftschutz Umweltorganisation*),<sup>79</sup> the CJEU concluded that environmental associations must be able to challenge a decision before a court to approve a project which does not require the EIA [and therefore access to justice does not fall under Art. 9(2) of the Aarhus Convention and detailed requirements of the EIA Directive], but which may be contrary

73 Court of Justice of the European Union, 2022c, para. 64.

74 Court of Justice of the European Union, 2017, para 57.

75 Court of Justice of the European Union, 1991.

76 Court of Justice of the European Union, 2008, paras. 37, 39: ‘...the natural or legal persons directly concerned by a risk that the limit values or alert thresholds may be exceeded must be in a position to require the competent authorities to draw up an action plan where such a risk exists, if necessary by bringing an action before the competent courts (...) the failure to observe the measures required by the directives which relate to air quality and drinking water, and which are designed to protect public health, could endanger human health, the persons concerned must be in a position to rely on the mandatory rules included in those directives.’

77 Court of Justice of the European Union 2014d, para. 56.

78 European Parliament and Council, 2008, pp. 1–44.

79 Court of Justice of the European Union, 2017.

to an obligation under the Water Framework Directive.<sup>80</sup> By denying environmental organisations ‘any right to bring an action against such a decision to grant a permit, the relevant national procedural law is contrary to the requirements flowing from a combined reading of Article 9(3) of the Aarhus Convention and Article 47 of the Charter’.<sup>81</sup>

Similarly, in *Case C-535/18 (Land Nordrhein-Westfalen)*<sup>82</sup>, also concerning the Water Framework Directive, the CJEU held that the members of the public concerned by a project must be able to assert, before the competent national courts, that there has been a breach of the requirements to prevent the deterioration of bodies of water. EU law permits Member States to provide that where a procedural defect affecting the decision to approve a project did not alter the substance of that decision, an application for its annulment is admissible only if the irregularity in question deprived the claimant of their right to participate effectively in the environmental decision-making process. The claimants in the main proceedings were either subjected to expropriation or had a domestic well for their private water supply within the area covered by the project. The CJEU concluded that they could be affected by the decision, though not entirely. While the protection of groundwater as a resource for human use is of their concern, the state of bodies of surface water does not seem to affect them.<sup>83</sup>

In *Case C-197/18 (Wasserleitungsverband Nördliches Burgenland and Others)*,<sup>84</sup> the CJEU concluded that the Nitrates Directive<sup>85</sup> was directly applicable. In that regard, the CJEU referred to the above-mentioned C-664/15 case and held that where they met the criteria, if any, laid down in national law: ‘members of the public have the rights provided for in Article 9(3) of the Aarhus Convention. That provision, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union,

80 Court of Justice of the European Union, 2017, para. 30: ‘By its first question, the referring court asks, in essence, whether Article 4 of Directive 2000/60 or that directive as a whole must be interpreted as meaning that, under Article 9(3) of the Aarhus Convention, an environmental organisation must be able to contest before a court a decision on a permit that is governed exclusively by the legislation governing water-related matters in respect of a project that is not subject to an environmental impact assessment under Directive 2011/92.’

81 Court of Justice of the European Union, 2017, para. 52.

82 Court of Justice of the European Union, 2020d.

83 Court of Justice of the European Union, 2020d, paras. 124, 128: ‘However, neither the information contained in the order for reference nor the observations submitted to the Court are capable of establishing the relevance, for the claimants in the main proceedings, of the bodies of surface water that may also be affected by the project at issue. In those circumstances, it does not appear that the claimants in the main proceedings can be concerned by a possible infringement of obligations deriving from Article 4(1)(a) of Directive 2000/60, with the result that the Court’s examination will concern only Article 4(1)(b), regarding groundwater (...) it must be held that, by its objective and the obligations laid down in Article 4(1)(b) in order to attain that objective, Directive 2000/60 also pursues the specific objective of protecting groundwater as a resource for human use.’

84 Court of Justice of the European Union, 2019b.

85 Council of the European Communities, 1991, pp. 1–8.

imposes on Member States an obligation to ensure effective judicial protection of the rights conferred by EU law, in particular the provisions of environmental law.<sup>86</sup>

The decision in question contained several provisions in the annexes intended to ensure that waters are protected with respect to both the discharge of rainwater into surface waters and its infiltration into the groundwater. The CJEU ruled that the affected natural and legal persons, such as the applicants in the main proceedings (including the municipality and a water distribution association), should be able to require competent national authorities to amend an existing action programme, or adopt additional measures or reinforced actions.<sup>87</sup>

Therefore, the CJEU case law helps eliminate the double standard in the implementation of Art. 9(3) of the Aarhus Convention at the EU and national levels.<sup>88</sup> On the one hand, legal protection under the Aarhus Convention goes beyond effective legal protection under Article 47 of the Charter, as suggested by Advocate General Kokott in her Opinion in Case C-260/11 (*Edwards and Pallikaropoulos*).<sup>89</sup> Indeed, while the latter provision expressly relates to the protection of individual rights, legal protection in environmental matters 'generally serves not only the individual interests of the claimants, but also, or even exclusively, the public'.<sup>90</sup> She also rightly pointed out that 'the recognition of the public interest in environmental protection is especially important since there may be many cases where the legally protected interests of particular individuals are not affected or are affected only peripherally'.<sup>91</sup> In such cases, 'as the environment cannot defend itself before a court [it] needs to be represented by active citizens or non-governmental organisations'.<sup>92</sup>

On the other hand, Article 47 of the EU Charter provides guarantees to a wider group of entities than the public or the public concerned. For example, municipalities are not members of the public concerned because the Aarhus Convention considers them primarily part of the state.<sup>93</sup> However, their rights may be affected by violations

86 Court of Justice of the European Union, 2019b, para. 33.

87 Court of Justice of the European Union, 2019b, para. 73: '...natural and legal persons, such as the applicants in the main proceedings, should be in a position to require the competent national authorities to amend an existing action programme or adopt additional measures or reinforced actions, provided for in Article 5(5) of that directive, as long as the nitrate levels in the groundwaters exceed or could exceed, in the absence of such measures, 50 mg/l at one or more measuring points within the meaning of Article 5(6) of that directive.'

88 See: Pernice-Warnke, 2008.

89 Court of Justice of the European Union, 2012.

90 Court of Justice of the European Union, 2012, paras. 39–40.

91 Court of Justice of the European Union, 2012, para. 42.

92 Court of Justice of the European Union, 2012, para. 42.

93 See: Aarhus Convention Compliance Committee, 2015, para. 52: 'While under the domestic law of Parties municipalities might exercise their right to self-government and other subjective rights, even before courts, in the context of the Convention and international law in general, a "public authority" under article 2, paragraph 2 (a), of the Convention was considered an emanation of the Party concerned. Hence, an allegation brought to the Committee by the communicant would give rise to an internal dispute between authorities of a Party concerned, which was not within the remit of the Committee. The Committee therefore found that the communicant was not a member of the public for the purposes of article 15 of the Convention...'

of EU Directives, and thus have access to judicial protection, including through the direct effect of the EU Directives.

The recent case law of the CJEU elaborates on the intensity of judicial reviews and effective remedies, further explaining the basic requirements for adequate judicial protection. Given the technical nature of EU environmental legislation and its problematic enforcement, such case law seems extremely valuable.

For example, in Case C-873/19 (*Deutsche Umwelthilfe*)<sup>94</sup> the CJEU concluded with reference to Article 47 of the EU Charter that an environmental NGO must be allowed to challenge an administrative decision granting or amending EC-type approval at the national level, which may be contrary to EU rules on motor vehicles concerning emissions:<sup>95</sup> ‘...the fact that an environmental association, although authorised for the purposes of having access to the judicial procedures referred to in Article 9(3) of the Aarhus Convention, cannot access justice in order to challenge a decision granting or amending EC type-approval which may be contrary to Article 5(2) of Regulation No 715/2007 and, therefore, contrary to a ‘provision of national law relating to the environment’ within the meaning of Article 9(3) of that convention, constitutes a limitation of the right to an effective remedy, guaranteed by Article 47 of the Charter. Such a limitation cannot be considered justified.’<sup>96</sup>

Similarly, in Case C-723/17 (*Craeynest and Others*),<sup>97</sup> the CJEU ruled that individuals must be able to challenge the air pollution monitoring system in their cities because EU law lays down detailed rules concerning the use and location of sampling points to measure air quality in zones and agglomerations comprising the territory of each Member State. The obligation to establish sampling points such that they provide information on the most polluted locations and the obligation to establish a minimum number of sampling points are clear, precise, and unconditional. In this respect, the average values across an entire zone or city are insufficient, as they may underestimate the exposure to polluted air.

Article 47 of the EU Charter links access to justice at the EU level, which has been insufficient for many years. Most notably, the appropriateness of the CJEU’s approach was dramatically called into question by Advocate General Jacobs in the C-50/00 P (*Union de Pequeños Agricultores*)<sup>98</sup> case and, simultaneously, by the Court of First Instance in the T-177/01 (*Jégo-Quééré*)<sup>99</sup> case. To avoid depriving applicants of their right to effective judicial protection, Advocate General Jacobs proposed a less stringent test for individual concern.

According to this proposal, a person could ‘be regarded as individually concerned by a Community measure where, by reason of his particular circumstances, the

94 Court of Justice of the European Union, 2022c.

95 European Parliament and Council, 2007, pp. 1–16.

96 Court of Justice of the European Union, 2022c, para. 72.

97 Court of Justice of the European Union 2019c.

98 Court of Justice of the European Union, 2002.

99 Court of First Instance of the European Communities, 2002, para. 51.

measure has, or is liable to have, a substantial adverse effect on his interests'.<sup>100</sup> This argument for broadening the locus standi, albeit unsuccessful, was also supported with a reference to Article 47 of the EU Charter.

Access to justice in environmental matters at the EU level is regulated by the Aarhus Regulation adopted in 2006.<sup>101</sup> The regulation was recently amended to align with the Aarhus requirements.<sup>102</sup> Unsurprisingly, the amendment<sup>103</sup> refers to the EU Charter as well:

‘This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union (the “Charter”), in particular the need to integrate a high level of environmental protection into the policies of the Union (Article 37), the right to good administration (Article 41) and the right to an effective remedy and to a fair trial (Article 47). This Regulation contributes to the effectiveness of the Union system of administrative and judicial review, and as a result, strengthens the application of Articles 37, 41 and 47 of the Charter and thereby contributes to the rule of law, enshrined in Article 2 TEU.’<sup>104</sup>

## 7. Conclusion

The EU Charter has demonstrably enhanced the EU’s commitment to comprehensive environmental protection. It elevates environmental considerations, empowers individuals and organisations, drives continuous improvement, and strengthens existing legal frameworks. As the EU faces ongoing environmental challenges, the EU Charter stands as a potent symbol of its commitment to a sustainable future for generations to come.

The scope of application of the EU Charter is a complex and nuanced field. It is intimately linked to the implementation of EU law, broadly construed, and operates primarily as a tool to ensure that Member States respect fundamental rights when acting within the EU’s sphere of influence. While limitations exist, its scope remains fluid, adapting to the evolving nature of the EU. The EU Charter, therefore, stands not as a static monument to rights, but as a dynamic instrument whose full potential continues to unfold with the passage of time.

While the EU Charter and the ECHR share the goal of protecting fundamental rights, their approaches to environmental protection differ in scope and emphasis. The EU Charter allows for more ambitious environmental goals and applies them to specific legal contexts. However, both instruments work in concert, establishing a ratcheting effect that drives ever-higher standards of environmental protection across Europe.

100 Court of Justice of the European Union, 2002, para. 60.

101 European Parliament and Council, 2006, pp. 13–19.

102 See: Vomáčka, 2023.

103 European Parliament and Council, 2021, pp. 1–7.

104 European Parliament and Council, 2021, preamble para. 26.

Article 37 of the EU Charter mandates the integration of environmental considerations at the heart of EU policies and actions. This enshrines environmental protection as a guiding principle, compelling policymakers and legislators to consider the environmental implications of their decisions proactively. In environmental cases, this provision becomes a yardstick against which laws, policies, and actions can be measured, ensuring alignment with the EU's commitment to a healthy planet. Article 37 of the EU Charter not only safeguards existing environmental protection but also fuels the drive for continuous improvement. The mandate for a high level of protection has pushed the EU to set ambitious environmental goals, pursue innovative solutions, and invest in sustainable technologies. In environmental cases, this means that the threshold for protection rises over time, creating a legal landscape that increasingly favours preservation and restoration.

Article 47 of the EU Charter serves as a potent safeguard against justice in the European Union. This guarantees individuals the ability to vindicate their rights and participate in a legal system that upholds the hallowed principles of fairness, impartiality, and due process. In doing so, Article 47 plays a critical role in ensuring that the scale of justice remains balanced and accessible to all within the Union. This has profound significance in the context of environmental cases, which are often referred to by the CJEU to support enforcement via the direct effect of EU environmental directives.

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# The Protection of the Environment in Regional Human Rights Systems Outside Europe I: The Inter-American Human Rights System

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## ABSTRACT

The Inter-American human rights system plays a crucial role in advancing the doctrine of environmental protection in human rights law, particularly by recognising the environmental rights in binding human rights instruments and allowing for their interpretation through the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR). This chapter analyses the normative and jurisprudential framework for the protection of the environment in the Inter-American human rights system, and maps the current challenges of the interpretation of the right to a healthy environment.

## KEYWORDS

IACtHR, human rights, environment, climate change, indigenous rights, right to a healthy environment

## 1. Introduction

The Inter-American human rights system plays a crucial role in advancing the doctrine of environmental protection in human rights law, particularly by recognising the environmental rights in binding human rights instruments and allowing for their interpretation through the Inter-American Commission on Human Rights (hereinafter the IACHR or the Commission) and the Inter-American Court of Human Rights (hereinafter the IACtHR or the Court). This framework draws significant inspiration from the evolving jurisprudence of other human rights adjudicatory bodies, such as the European Court of Human Rights (the ECtHR), the African Court of Human and Peoples' Rights (the ACtHPR), and various United Nations treaty bodies, whilst also

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developing its own unique solutions that may, in turn influence their interpretation as well.

This chapter explores the development of the Inter-American human rights doctrine of environmental protection, with a special focus on the interpretation of the autonomous right to a healthy environment. The analysis begins with a description of the normative framework of the Inter-American human rights system and the position of environmental protection therein, followed by a discussion of the first cases in which the Commission and the Court addressed the issue of environmental protection. The Court's doctrine regarding environmental protection reached a milestone in 2017 with the adoption of *Advisory Opinion OC-17/23* on human rights and the environment, recognising the justiciability of environmental rights. Since then, this approach has been confirmed in contentious cases involving indigenous peoples, and more recently, in the environmental litigation of non-indigenous communities. The chapter concludes with an analysis of the IACtHR's evolving jurisprudence on climate change, highlighting the Court's increasing role in shaping the international doctrine of States' human rights obligations in this context.

## **2. The Bogotá Declaration, the American Convention on Human Rights, and Their Relevance for Environmental Protection in the Inter-American System**

The American Convention on Human Rights (ACHR) or the so-called 'Pact of San José' was adopted on 22nd November 1969 in San José, Costa Rica as an instrument of the Organization of American States (OAS).<sup>1</sup> The Convention was a major breakthrough in the development of the Inter-American human rights framework, as it was the first binding human rights treaty in the region, and the second major regional human rights treaty in the world.<sup>2</sup> Prior to the adoption of the ACHR, members of the OAS adopted the American Declaration of the Rights and Duties of Man, also known as the Bogotá Declaration on 10th June 1948,<sup>3</sup> which is considered the world's first international human rights instrument, even preceding the Universal Declaration of Human Rights (UDHR).<sup>4</sup> Although formally non-binding, the Bogotá Declaration is

1 American Convention on Human Rights 'Pact of San José', Costa Rica, 22 November 1969, Organization of American States, UNTS vol. 1144, no. 17955.

2 The first regional human rights treaty, the Convention for the Protection of Human Rights and Fundamental Freedoms or the European Convention on Human Rights opened for signature on 4 November 1950 in Rome, Italy, in the framework of the Council of Europe. See: UNTS vol. 213, no. 2889. The third binding regional human rights treaty, the African Charter on Human and Peoples' Rights or the Banjul Charter was adopted on 27 June 1981 in Nairobi, Kenya under the Organization of African Unity. See: UNTS vol. 1520, no. 26363.

3 American Declaration on the Rights and Duties of Man, adopted by the 9th International Conference of American States, New York, United States of America, 10 June 1948, E/CN.4/122.

4 The Universal Declaration of Human Rights was adopted as a General Assembly resolution on 10 December 1948. See: A/RES/217 A (III).

usually considered a source of inspiration for the IACHR, due to it being the only Inter-American human rights document in existence until the Convention entered into force in 1978.<sup>5</sup> Although the IACtHR may primarily interpret the Convention, its Article 64(1) provides that the member states of the OAS may consult the Court ‘regarding the interpretation of the Convention or of other treaties concerning the protection of human rights in the American states’. This provision necessarily raises the question of whether the Bogotá Declaration could be considered as a treaty and consequently, whether the Court may interpret its provisions as well. The legal status of the Declaration was addressed in *Advisory Opinion OC-10/89*, in which the Court affirmed that although the Declaration could not be regarded as a treaty *strictu sensu* under international law, it served as a source of international obligations for the member states of the OAS, based on their earlier conduct by authorising the IACHR to monitor the rights set forth in the Declaration.<sup>6</sup> Nonetheless, the Bogotá Declaration has a limited impact on the Court’s environmental jurisprudence, primarily because of the absence of any reference to environmental protection or environmental rights therein.

The American Convention, which drew significant influence from the normative framework of its European counterpart, the European Convention on Human Rights (ECHR),<sup>7</sup> also embraces collective (economic, social, and cultural) rights under Chapter III. However, the ACHR does not explicitly enshrine any environmental right either, arguably for the same reason: at the time of the adoption of these conventions (in 1950 and 1969 respectively), the theoretical framework outlining the interrelationship between environmental protection and human rights had not yet evolved to a level that could be adequately reflected in a human rights convention.<sup>8</sup> Albeit the ACHR contains no explicit reference to environmental rights, the IACtHR, much like the ECtHR, has developed its environmental jurisprudence through the evolutive interpretation of other rights enshrined in the Convention, while also reflecting the specificities of Latin American societies.

### ***2.1. The Role of the Inter-American Commission on Human Rights in Developing the Environmental Standards of the Inter-American Human Rights System***

Environmental protection first appeared in the context of the protection of indigenous peoples’ rights in the Inter-American human rights systems. One of the earliest cases involving environmental protection was the *Yanomami* case before the IACHR in 1985. The Yanomami Indians, an indigenous population in Brazil, faced a number of threats to their health and life due to the construction of a highway through their native lands, resulting in the displacement of native villages. The invasions were

5 Cerna, 2009, pp. 1212–1213.

6 Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89, IACtHR, 14 July 1989, paras. 43–45.

7 Steiner and Alston, 2000, cited in Goldman, 2009, p. 867.

8 See the chapter of Gyula Bándi in the present volume.

carried out without prior and adequate protection for the safety and health of the Yanomami Indians, which led to deaths caused by epidemics of influenza, tuberculosis, measles, and venereal diseases. The Commission pronounced the violation of several rights recognised in the Bogotá Declaration, such as the right to life, liberty and personal security (Article I), the right to residence and movement (Article VIII), and the right to the preservation of health and to well-being (Article XI).<sup>9</sup> Although the Commission recognised the violation of human rights of indigenous peoples, it did not establish a direct connection between environmental degradation and the violation of the Declaration. Nonetheless, the case is remarkable for being among the first indigenous cases involving environmental issues.<sup>10</sup>

The recognition of land rights was accentuated in *Maya Indigenous Community of the Toledo District v. Belize*, in which the Commission found a violation of rights enshrined in the Bogotá Declaration for the State's failure to protect the lands traditionally used and occupied by the indigenous community. Namely, the government granted logging and oil concessions on the Mayan lands, which caused substantial environmental harm and brought long-term and irreversible damage to the natural environment upon which the indigenous community depended.<sup>11</sup> From the perspective of the development of the Commission's approach to environmental protection, the *Maya* decision is remarkable for recognising the Maya peoples' communal property rights to the lands. The Commission further pointed out that the violation of property rights was also exacerbated by environmental damage that severely affected the Mayan communities.<sup>12</sup> The Commission encountered numerous other cases regarding the impact of the violation of indigenous peoples' property rights on the environment, however given that such cases were later referred to the Court, they will be discussed in the next subchapter.

Another aspect of environmental protection is the question of climate change and its impact on human rights. One of the earliest rights-based climate change cases in the world was the so-called 'Inuit petition' before the IACHR in 2005, filed in the name of all Inuit of the Arctic regions of the United States and Canada.<sup>13</sup> The petitioners, seeking relief from violations resulting from global warming, caused by acts and omissions of the United States, referred to the violation of several rights guaranteed in the Bogotá Declaration, including the Inuits' right to the benefits of culture (Article XIII) to use and enjoy the lands they had traditionally occupied and the right to use and enjoy their personal, intangible and intellectual property under the right to own private property (Article XXIII), the right to the preservation of health (Article XI), the right to life, liberty and personal security (Article I), the right to residence and movement (Article VIII), and the right to the inviolability of the home (Article IX). The

9 Resolution no. 12/85, Case no. 7615, Brazil, 5 March 1985, IACHR.

10 Scott, 2000, pp. 214–216.

11 *Maya Indigenous Community of the Toledo District v. Belize*, Case 12.053, Report No. 40/04, 12 October 2004, IACHR.

12 Rodríguez-Pinzón, 2005, pp. 113–116.

13 Petition No. P-1413-05, 16 November 2006, IACHR.

petition was remarkably progressive for its time, as in 2005 it already drew attention to the vulnerability of indigenous peoples caused by the climate crisis. The petition appeared before the adoption of the major catalyst for climate change litigation, the Paris Agreement.<sup>14</sup> However, in the absence of clear human rights obligations in the context of climate change, the Commission found the petition inadmissible, which is arguably a questionable approach from today's perspective, particularly in light of the UN Human Rights Committee's (UN HRC) decision in the *Torres Strait Islanders* case in 2022.<sup>15</sup>

Furthermore, several environment-related petitions are pending before the IACHR at the time of the conclusion of the present chapter, including the 'Athabaskan petition' initiated by indigenous peoples of the Arctic,<sup>16</sup> and the petition seeking to redress violations of the rights of children in Cité Soleil, Haiti.<sup>17</sup> Both petitions could have a profound impact on the development of the Inter-American human rights system's approach to environmental protection. Firstly, the 'Athabaskan petition' may give the Commission an opportunity to clarify the environmental perspective of the rights enshrined in the Bogotá Declaration. This clarification would be particularly relevant for Canada, which is not a party to the ACHR, therefore, its citizens are limited to seeking remedies for human rights violations exclusively through the Commission on the basis of the rights enshrined in the Bogotá Declaration. The implications of this case could also extend beyond the confines of the petition, as it could set a precedent for other environment- or climate-change-related cases also for alleged violations by

14 Paris Agreement, 12 December 2015, UNTS vol. 3156, no. 54113. On the role of the Paris Agreement in climate change litigation, see: Voigt, 2023, p. 237.

15 In *Daniel Billy and Others v. Australia*, also known as the *Torres Strait Islanders* case, the UN Human Rights Committee adopted a landmark decision in the context of human rights protection of indigenous peoples against the adverse impacts of climate change. The Committee found the violation of Articles 17 (right to private and family life) and 27 (the right of minorities to enjoy their own culture) for Australia's failure to adequately protect Torres Strait Islanders against the adverse impacts of climate change. See: *Daniel Billy and Others v. Australia*, UNHRC, 22 September 2022. See also: Sancin, 2024; Feria-Tinta, 2022. While there is no formal obligation of the IACHR to implement UN treaty bodies' approaches, cross-fertilisation of different human rights courts and bodies holds particular significance in climate change litigation, as it represents a highly dynamic and evolving area of legal development, which, at the same time, requires global solutions. See: Feria-Tinta, 2024.

16 Petition to the Inter-American Commission on Human Rights seeking Relief from Violations of the Rights of Arctic Athabaskan Peoples resulting from Rapid Arctic Warming and Melting caused by Emissions of Black Carbon by Canada, 23 April 2013. For a comparative overview of the 'Inuit petition' and the 'Athabaskan petition' in light of legal developments in the field of climate change and human rights, see: McCrimmon, 2016.

17 Petition and Request for Precautionary Measures to the Inter-American Commission on Human Rights, Six Children of Cité Soleil, Haiti and Sakala Community Center for Peaceful Alternatives Petitioners concerning violations of the American Convention on Human Rights, 4 February 2021.

the United States, who did not ratify the ACHR either,<sup>18</sup> yet it is one of the highest-emitting countries in the world.<sup>19</sup> Furthermore, the petition concerning the children in Cité Soleil draws attention to the long-standing environmental injustices arising from toxic trash disposal in the residential district of Port-Au-Prince, which causes short and long-term health harm to the inhabitants of the area, including children. The petition would give opportunity to the IACHR to elaborate on the standards of the ACHR regarding protection against toxic waste treatment also for non-indigenous peoples.

### **2.2. The First Environmental Cases of the Inter-American Court of Human Rights**

The IACtHR, established in 1979, has two main functions according to the ACHR: adjudicatory in contentious cases submitted by States Parties or the Commission, and advisory jurisdiction in inquiries made by OAS Member States or organs. Both functions are particularly relevant in the development of environmental protection in the Inter-American human rights system.

The environmental perspective initially emerged within the Court's jurisprudence on indigenous rights, by broadening the Commission's early conclusions. The *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* was the Court's first high-profile case interpreting Article 21 of the ACHR (right to property) in the context of indigenous peoples' rights, and adopted in 2001.<sup>20</sup> The members of the community contested the government's permission to cut trees in the indigenous lands without prior consultation with them. The government argued that the indigenous communities had no title to the land, however it was the government itself that did not demarcate the lands belonging to indigenous peoples despite their continuous efforts since the 1950s. The Court emphasised the autonomous meaning of 'property' in Article 21 of the ACHR, which also included the rights of members of the indigenous communities within the framework of communal property, and highlighted that property of such lands did not merely mean a matter of possession, but a material and spiritual element, which they must fully enjoy. The Court emphasised that indigenous peoples' customary law must be considered when interpreting the right to property under Article 21. Consequently, possession of the land by indigenous communities should be sufficient to establish property rights under the American Convention, even in the absence of

18 See: The status of ratification of the ACHR [Online]. Available at: <https://treaties.un.org/pages/showdetails.aspx?objid=08000002800f10e1> (Accessed: 18 January 2025). The accession of the United States to the ACHR has been pending since its signature in 1977. Arguments against ratification are based on federalist and sovereignty concerns, as well as opposition to the interpretation of certain specific matters in international human rights law, such as abortion or the death penalty. See: Diab, 1992. While environmental and climate change litigation shows a growing tendency in the U.S., such litigation remains at the domestic level, as the IACtHR does not have jurisdiction over the United States. The only recourse for U.S. citizens in the Inter-American human rights system is through the IACHR on the basis of the Bogotá Declaration.

19 UNEP, 2015, p. 24.

20 See: Anaya and Grossman, 2002.

formal recognition.<sup>21</sup> Although the judgment is primarily remarkable for establishing the indigenous communities' title to the lands that traditionally belonged to them, the aspect of environmental protection appeared in the expert opinions, which emphasised the dependence of indigenous peoples on nature and consequently, and the importance of measures that avoid environmental damages.<sup>22</sup>

The Court developed its approach to the title of lands traditionally belonging to indigenous communities in the context of concessions for mining and logging in the case of the *Saramaka People v. Suriname* in 2008. In this case, in addition to ordering the State to delimit, demarcate and grant collective title over the territory, the Court also ruled that the State shall grant the members of the Saramaka people legal recognition of collective juridical capacity.<sup>23</sup> In this judgment, concerns over the degradation of the environment were accentuated, and the State was ordered to perform prior environmental (and social) impact assessments,<sup>24</sup> and to pay just compensation for damage, including material and immaterial damage regarding the Saramaka people's spiritual connection with the territory, and the distress endured.<sup>25</sup>

The Court embraced a similar approach in *Kichwa Indigenous People of Sarayaku v. Ecuador*. The case concerned the violation of the Kichwa indigenous people's collective rights to consultation, to indigenous communal property, and to cultural identity (Articles 13 and 21 of the ACHR), *inter alia* due to oil exploration activities authorised by Ecuador on the ancestral lands without prior consent.<sup>26</sup> Exploration activities caused significant environmental damage which was carefully addressed by the Court in ordering comprehensive reparations that extend well beyond compensation for pecuniary and non-pecuniary damage, also including measures of restitution (removal of explosives and reforestation of the area), guarantees of non-repetition, and satisfaction, such as a public act of acknowledgment of international responsibility and the publication and broadcasting of the judgment.<sup>27</sup> Such measures, particularly the obligation of restitution, underscore the IACtHR's forward-looking approach to compensation, which is a key strength of environmental protection in the Inter-American human rights system. In fact, this was the first time that the Court conducted a proceeding at the site of the events of a contentious case,<sup>28</sup> allowing the delegation of judges to observe the conditions and gather first-hand evidence to determine the necessary measures. Therefore, the *Kichwa* case significantly contributed to the IACtHR's jurisprudence regarding environmental protection, even though the Court did not explicitly address the role of a healthy environment under the rights

21 Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Judgment of 31 August 2001, IACtHR, paras. 148–151.

22 *Ibid.* Expert opinions of Charles Rice Hale and Roque de Jesús Roldán Ortega.

23 Case of the Saramaka People v. Suriname, Judgment of 28 November 2007, IACtHR, para. 174.

24 *Ibid.*, para. 158.

25 Orrellana, 2008, pp. 845–846.

26 Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, Judgment of 27 June 2012, IACtHR.

27 *Ibid.*, paras. 279–340.

28 Verdonck and Desmet, 2017, p. 477.

guaranteed in the ACHR, let alone self-standing environmental rights. Nonetheless, the Court implicitly embraced an ecological approach to indigenous rights by developing the doctrine of restitution and other reparation measures for environmental damage, which has been enhanced in its subsequent case law.<sup>29</sup>

### **3. Environmental Rights Before the Inter-American Court of Human Rights: The Right to a Healthy Environment and Its Justiciability**

#### ***3.1. The Right to a Healthy Environment in Advisory Opinion OC-17/23***

As presented above, environmental protection was first embraced in the Inter-American human rights system in the context of indigenous people's rights, particularly under property rights as enshrined in Article 21 of the ACHR. However the right to a healthy environment has been part of the Inter-American human rights system since the adoption of the Protocol of San Salvador (the Protocol or the PSS) in 1988,<sup>30</sup> which recognised this right along with other economic, social, and cultural rights. Article 11 of the Protocol states that

1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.
2. The States Parties shall promote the protection, preservation, and improvement of the environment.

While the rights enshrined in the PSS were not directly justiciable before the Commission or the Court, with the exception of the right to unionisation (Article 8(1(a) of the PSS) and the right to education (Article 13 of the PSS),<sup>31</sup> the right was not referred to in the key judgments either as a source relevant to the interpretation of other rights

29 See, for instance, Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and Their Members V. Panama, Judgment of 14 October 2014, IACtHR; Case of the Kaliña and Lokono Peoples V. Suriname, Judgment of 25 November 2015, IACtHR; Case of the Xucuru Indigenous People and its Members v. Brazil, Judgment of 5 February 2018, IACtHR.

30 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 'Protocol of San Salvador', 17 November 1988.

31 Ibid., Article 19(6).

in connection with the environmental aspects of the cases.<sup>32</sup> Whether the Court has jurisdiction over the rights enshrined has long been discussed in scholarly works<sup>33</sup> primarily focusing on the interpretation of Article 26 of the ACHR. Article 26 lays down the duty of progressive development in the field of economic, social, and cultural rights, by providing that

The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

The IACtHR first rendered economic, social and cultural rights justiciable under Article 26 in *Lagos del Campo v. Peru* in connection with labour rights,<sup>34</sup> and concluded that the rights named in this Article form an integral part of the American Convention, regarding which Article 1(1) establishes general obligations. Earlier case law, such as *Acevedo Buendía et al. v. Peru* suggests that economic, social and cultural rights have been indirectly protected under the civil and political rights enshrined in Articles 3–25 of the Convention,<sup>35</sup> reflecting the IACtHR's emphasis on interdependence and

32 Scarce exceptions could be the Case of the Yakye Axa Indigenous Community v. Paraguay and the Case of Kawas Fernández v. Honduras. In the first example, the complaint concerned the State's failure to acknowledge the property rights of the community over their ancestral land, including the alleged violation of the right to life by depriving communities of traditional means of livelihood. Regarding the alleged violation of the right to life, the Court had to establish whether the environmental conditions negatively affected the community members' right to life. To this aim, the Court considered the existing international corpus juris regarding the special protection required by indigenous communities, in view of certain rights guaranteed by the Protocol, such as right to health (Article 10), right to a healthy environment (Article 11), right to food (Article 12), right to education (Article 13), and right to the benefits of culture (Article 14). See: Case of the Yakye Axa Indigenous Community v. Paraguay, Judgment of 17 June 2005, IACtHR, para. 163. The Case of Kawas Fernández, the Court dealt with the murder of the president of an organisation fighting for the improvement of the quality of life, including the protection of environment in the Bahía de Tela region in Honduras. Although the primary focus of the judgment was on the protection of the right to life (Article 4), prohibition of arbitrary deprivation of life (Article 4(1)), right to humane treatment (Article 5), right to physical, mental and moral integrity (Article 5(1)), the Court also addressed the link between environmental protection and human rights, as well as the right to a healthy environment as incorporated in Article 11 of the PSS. See: Case of Kawas Fernández v. Honduras, Judgment of 3 April 2009, IACtHR, paras. 148–149.

33 For an overview of the diverse approaches, see Ruiz-Chiriboga, 2013, pp. 165–168.

34 Case of Lagos del Campo v. Peru, Judgment of 31 August 2017, IACtHR, paras. 142–154.

35 Case of Acevedo Buendía et al. ('Discharged and Retired Employees of the Comptroller') v. Peru, Judgment of 1 July 2009, IACtHR, para. 101.

indivisibility between first- and second-generation human rights,<sup>36</sup> also embraced by the PSS.<sup>37</sup>

The Court thoroughly addressed the justiciability of environmental rights under the ACHR in *Advisory Opinion OC-23/17*. The request focused on state obligations regarding the environment and human rights in a cross-border context, namely when there is a danger that major infrastructure projects may have severe effects on the marine environment.<sup>38</sup> The request provided the Court with an excellent opportunity to articulate its position regarding the role of human rights law in environmental protection issues in a comprehensive and systemic manner.<sup>39</sup> The Court recognised the ‘undeniable relationship’ between the protection of the environment and the realisation of human rights, acknowledging that environmental degradation and climate change negatively affect the enjoyment of human rights. Additionally, the Court summarised the human rights affected by environmental degradation, particularly the right to a healthy environment, the right to life, personal integrity, private life, health, water, food, housing, participation in cultural life, property, and the right not to be forcibly displaced.<sup>40</sup> As pointed out above, the Court addressed the environmental aspect of these rights in its earlier case law, however it had not extensively interpreted the right to a healthy environment as enshrined in Article 11 of the Protocol, even if it briefly referred to it. Therefore, the advisory opinion marked the first occasion for the Court to elaborate on the content and nature of the right, significantly building on the international *corpus iuris* and the jurisprudence of other regional human rights courts.

The Court recognised both the collective and individual dimension of the right to a healthy environment, noting that the former embraces a universal value that is owed to present and future generations. This approach builds on the theory of intergenerational equity, which aims to address the problems of unsustainable development and environmental degradation and induce future-oriented decision-making, by proposing that each generation shall bequeath the planet to future generations in at least as good a condition as they had received it. The doctrine, as proposed by Edith Brown

36 Feria-Tinta, 2007, p. 443.

37 The preamble of the Protocol of San Salvador provides that ‘Considering the close relationship that exists between economic, social and cultural rights, and civil and political rights, that the different categories of rights constitute an indivisible whole based on the recognition of the dignity of the human person, for which reason both require permanent protection and promotion if they are to be fully realized, and the violation of some rights in favor of the realization of others can never be justified’.

38 The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity: Interpretation and Scope of Articles 4(1) and 5(1) in Relation to Articles 1(1) and 2 of the American Convention on Human Rights), Advisory Opinion OC-23/17 of 15 November 2017, IACtHR.

39 For a comprehensive overview of Advisory Opinion OC-17/23, see Feria-Tinta and Milnes, 2016, p. 64.

40 Advisory Opinion OC-23/17, para. 66.

Weiss, has so far limited recognition in public international law,<sup>41</sup> thus its implicit recognition certainly demonstrates the forward-looking approach of the IACtHR. On the other hand, the individual dimension arises when the violation has a direct or indirect impact on an individual in connection with other substantive rights. This dimension has been scarcely addressed by the IACtHR prior to the adoption of the Advisory Opinion, which primarily focused on the collective aspect of environmental protection in connection with other human rights in indigenous cases. In contrast, the environmental jurisprudence of the IACtHR's European counterpart, the ECtHR primarily embraces the individualistic approach to environmental protection, and owing to the strict victim status criteria, the collective dimension is so far, relatively less elaborated.<sup>42</sup>

Furthermore, not only did the IACtHR consider the anthropocentric dimension of the right to a healthy environment, but also recognised its ecocentric aspect. Namely, the Court explicitly stated that the right to a healthy environment 'protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves', not because of the benefits they offer for humans, but for their intrinsic value. This argument is embedded in the theory of rights of nature, which propose the recognition of legal personality to elements of nature or the environment.<sup>43</sup> This tendency is particularly tangible in Latin American States, including Bolivia, Colombia, and Ecuador.<sup>44</sup>

The Court significantly built on universal human rights instruments to elaborate on the vulnerability aspect of the right to a healthy environment, emphasising that the effect of environmental degradation may impact certain groups with greater intensity, including indigenous peoples, children, people living in extreme poverty, minorities, women, people with disabilities, and displaced people.<sup>45</sup> The vulnerability aspect has been a key element in the IACtHR's environmental jurisprudence. As evidenced by the cases discussed above, the Court has frequently addressed matters involving indigenous peoples, consistently considering their vulnerable status as a decisive factor for determining violations.

In the aforementioned Advisory Opinion, the IACtHR provided a comprehensive interpretation of the interrelationship of human rights and the environment and elaborated state obligations deriving from the right to life and personal integrity in the context of environmental protection. The Court developed the substantive obligations based on the jurisprudence of human rights judicial and quasi-judicial bodies,

41 Brown Weiss, 1989. On the status of the recognition of intergenerational equity in public international law, see: Krajnyák, 2024, pp. 12–18.

42 Article 34 of the ECHR limits the scope of applicants to those who claim to be a victim of a violation. The ECtHR tends to carefully examine the victim status in environmental cases, and denies standing from those who do not meet this criteria. See, for instance, *Cordella and Others v. Italy*, Judgment of 24 January 2019, ECtHR.

43 See: Nash, 1989.

44 Advisory Opinion OC-23/17, para. 62. See also: Espinosa, 2015, p. 608.

45 Advisory Opinion OC-23/17, para 67. See also: Gear, 2011, p. 23.

including its own case law and that of the IACHR, as well as the ECtHR, the ACtHPR, the African Commission on Human and Peoples' Rights (ACHPR), UN human rights treaty bodies; and other international tribunals, such as the International Court of Justice (ICJ) and the International Tribunal for the Law of the Sea (ITLOS). Such obligations include the obligation of prevention, the application of the precautionary principle, and the obligation of cooperation.<sup>46</sup>

The obligation of prevention includes the duty to regulate, the duty to supervise and monitor, the duty to require and approve environmental impact assessments, the duty to prepare a contingency plan, and the duty to mitigate if environmental damage occurs. Furthermore, the Court noted that the precautionary principle, drawing significantly from the *Case of Pulp Mills on the River Uruguay*,<sup>47</sup> obliges States to protect the rights to life and to personal integrity in cases where it is plausible that an activity may cause serious and irreversible environmental harm, even in the absence of scientific certainty. The obligation to cooperate is a customary norm recognised by the ICJ in the *Nuclear Tests cases*,<sup>48</sup> the *Advisory Opinion on the legality of the threat or use of nuclear weapons*,<sup>49</sup> and the abovementioned *Pulp Mills* case. However, in contrast with the other two environmental obligations, the duty to cooperate is an obligation between States, that are not primarily directed towards individuals. The Court defined these duties in three categories, namely the duty to notify, the duty to consult and negotiate with potentially affected States, and the duty to share information. The interpretation of the duty of cooperation was particularly important, as it is explicitly enshrined in Article 26 of the ACHR (progressive development), and the PSS.

Remarkably, the Court also established procedural obligations to ensure human rights in the context of environmental protection. These consist of access to information, public participation, and access to justice in environmental matters. This categorisation is based on Principle 10 of the Rio Declaration on Environment and Development, stating that

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.<sup>50</sup>

46 Advisory Opinion OC-23/17, paras. 127–210.

47 *Pulp Mills on the River Uruguay*, (Argentina v. Uruguay), Judgment of 20 April 2010, ICJ.

48 *Nuclear Tests* (Australia v. France), Judgment of 20 December 1974, ICJ.

49 *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996.

50 Rio Declaration on Environment and Development, Rio de Janeiro, 3–14 June 1992, Principle 10.

This provision has been a source of inspiration for two regional conventions: the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters adopted under the aegis of the United Nations Economic Commission for Europe (UNECE) in 1998 (the so-called Aarhus Convention), and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (the Escazú Agreement), adopted with the support of the Economic Commission for Latin America and the Caribbean (ECLAC) in 2018. Although the initiative to prepare a binding treaty on Principle 10 in the region was at the negotiation stage at the time of the adoption of *Advisory Opinion OC-17/23*, it is remarkable that the IACtHR had already integrated its core values into the Inter-American human rights framework before the adoption of the treaty, and well before its entry into force in 2021. In addition, the IACtHR significantly built on the ECtHR's jurisprudence referencing the Aarhus Convention in matters involving procedural environmental rights.

The importance of procedural environmental rights in human rights litigation is shown by the high number of cases in which the ECtHR references both the Rio Declaration and the Aarhus Convention, even when addressing Respondent States that had not ratified the Convention.<sup>51</sup> The key reason for this lies in the universal acceptance of procedural rights and their embeddedness in international environmental law and human rights law. Procedural rights are enshrined in the ACHR in Articles 13 (freedom of thought and expression), 8 (right to a fair trial), and 25 (right to judicial protection), among others, and therefore could also be used in connection with environmental matters. This was the case, for instance, in *Claude Reyes et al. v. Chile*, in which the applicants relied on the abovementioned procedural rights of the ACHR for the state authorities' failure to provide them with the information they requested about a planned deforestation project. Although the claim did not touch upon substantive environmental issues, the Court established procedural guarantees of access to State-held information of public concern.<sup>52</sup> The procedural aspect also appeared in indigenous cases, such as in the case of *Kaliña and Lokono Peoples v. Suriname*, in which the Court found a violation of the right to judicial protection regarding the right to the free access to information of the members of the indigenous community, along with the violation of substantive rights, which is similar to the other indigenous cases discussed above.<sup>53</sup>

Therefore, it could be concluded that the IACtHR incorporated procedural standards in its environmental jurisprudence, even in the absence of a binding universal or regional convention on procedural environmental rights in the region at the time, primarily based on soft law documents of the United Nations (Principle 10 of the Rio

51 See, for instance, *Taşkin and Others v. Turkey*, Judgment of 10 November 2004, ECtHR, para. 99.

52 *The Case of Claude Reyes et al. v. Chile*, Judgment of 19 September 2006, IACtHR, paras. 81–103. See also: Chavez, 2013, p. 513.

53 *The Case of the Kaliña and Lokono Peoples v. Suriname*, Judgment of 25 November 2015, IACtHR, para. 268. See also: McKay, 2018, p. 31.

Declaration and its subsequent reaffirmations at the Johannesburg World Summit on Sustainable Development in 2002, the Rio+20 Conference on Sustainable Development in 2012, the Bali Guidelines on the implementation of Principle 10), and the ECtHR's Aarhus-based jurisprudence. Although it may be too early to assess the impact of the Escazú Agreement on the IACtHR's jurisprudence, it is expected play a key role in strengthening the protection of environmental defenders. Notably, the Escazú Agreement is the first binding treaty in the world to contain specific provisions on human rights defenders in environmental matters<sup>54</sup> that sheds light on the critical situation of environmental defenders in Latin America. According to Global Witness, Latin America has been the most dangerous region for defenders, with nearly 90% of the globally recorded killings taking place in the region.<sup>55</sup> So far, the murder of environmental defenders has been individually addressed in a few cases like *Kawas Fernández v. Honduras*<sup>56</sup> or *Luna López v. Honduras*.<sup>57</sup> Both judgments considered environmental defenders and human rights defenders and emphasised the State's obligation to take positive measures to protect their right to life. However, the majority of such murders remain unpunished, and only a small number of such cases reach the Court<sup>58</sup> that could establish some reparations, such as measures of rehabilitation and guarantees of non-repetition. Therefore, strengthening the protection of environmental defenders will remain one of the most pressing challenges of environmental protection in the Inter-American system, and will be addressed in the pending *Advisory Opinion on the Climate Emergency and Human Rights*.<sup>59</sup>

The recognition of the interrelationship of human rights and the environment, as well as the Court's comprehensive interpretation of the right to a healthy environment, embracing both its collective and individual dimensions and defining its inherent substantive and procedural aspects, in *Advisory Opinion OC-17/23*, marks a

54 Article 9 of the Escazú Agreement reads as follows:

'1. Each Party shall guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters, so that they are able to act free from threat, restriction and insecurity.

2. Each Party shall take adequate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters, including their right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement, as well as their ability to exercise their access rights, taking into account its international obligations in the field of human rights, its constitutional principles and the basic concepts of its legal system.

3. Each Party shall also take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidations that human rights defenders in environmental matters may suffer while exercising the rights set out in the present Agreement.' See: UNTS vol. 3388. See also: Pánovics, 2021, p. 23.

55 Global Witness, 2023.

56 See supra 32.

57 The Case of Luna López v. Honduras, Judgment of 10 October 2013, IACtHR.

58 Lehne Cerrón, 2024.

59 Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile, 9 January 2023, IACtHR. See also: International Service for Human Rights, 2024.

historic milestone in the development of human rights law. It is the first time a human rights court has addressed the relationship between environmental protection and human rights in a systematic way, building on decades-long tendencies in universal and regional human rights adjudication. In addition to systematising States' human rights obligations in relation to environmental protection, the Advisory Opinion went beyond the previous interpretation of Article 11 of the Protocol by pronouncing its justiciability under Article 26 of the ACHR. Referring to the *Lagos del Campo* judgment mentioned above, the Court extended the protection to the right to a healthy environment, as it is also included among the economic, social and cultural rights that are protected under Article 26.<sup>60</sup> This implies that after the adoption of the Advisory Opinion, Article 26 could be invoked in cases concerning the degradation of the environment, without alleging the violation of the right to life or the right to personal integrity.<sup>61</sup> Therefore, the Court did not pronounce the direct justiciability of Article 11 of the Protocol, but instead the justiciability of the right to a healthy environment as a right pertaining to economic, social and cultural rights, and thus protected under Article 26.

This approach was criticised by two separate opinions. Judge Eduardo Vio Grossi disagreed with establishing the justiciability of the right to a healthy environment under Article 26, and pointed out that Article 26 did not recognise economic, social and cultural rights. Instead, according to the Judge, Article 26 established the States' obligation to adopt measures to progressively ensure the full realisation of the rights implicit in the standards of the Charter of the OAS, which however, does not recognise environmental rights. Furthermore, Judge Vio Grossi highlighted that this right was justiciable at the domestic level if it was established in the domestic laws of States Parties, otherwise there was no consensus about its justiciability at the international level, and thus it was contrary to the principle that 'no State can be taken before an international court without its consent'.<sup>62</sup>

Furthermore Judge Humberto Antonio Sierra Porto pointed out that the request for the advisory opinion did not address the justiciability of the right to a healthy environment under Article 26. In fact, the questions raised concerned the interpretation of state obligations regarding the right to life (Article 4) and to personal integrity (Article 5) in environmental matters. According to the Judge, establishing the justiciability of the right to a healthy environment or any other economic, social and cultural right exceeded the competence of the Court.<sup>63</sup> Such arguments were also presented by both Judges in separate opinions of the *Lagos del Campo* case, which established the precedent of the justiciability of the rights enshrined in the Protocol of San Salvador. Indeed, once the Court pronounced the justiciability of economic, social and cultural rights under Article 26 in *Lagos del Campo*, it would be difficult to justify why this

60 Advisory Opinion OC-17/23, para. 57.

61 Pane, 2024, p. 11.

62 Advisory Opinion OC-17/23, Concurring Opinion of Judge Eduardo Vio Grossi, para. 4.

63 Advisory Opinion OC-17/23, Concurring Opinion of Judge Humberto Antonio Sierra Porto, para. 8.

approach could not be extended to the right to a healthy environment. As Judge Sierra Porto highlighted in the partially dissenting opinion regarding *Lagos del Campo*, the extension of the scope of Article 26 was purely based on the evolutive interpretation method, which is only one method of interpretation among the many others that exist in international law, including literal interpretation, systematic interpretation, and teleological interpretation.<sup>64</sup>

However, it could also be argued that the IACtHR does not merely interpret the ACHR, but plays a crucial role in advancing transformative constitutionalism in the region,<sup>65</sup> aiming to promote deep social change through legal interpretation, which is particularly relevant for Latin America, a region suffering from violence, exclusion, and weak institutions.<sup>66</sup> Hence, the Court tends to emphasise the interdependence between civil and political rights and economic, social and cultural rights, which is, as mentioned above, embraced by the Protocol of San Salvador. Thus, it could be argued that this context justifies the IACtHR's approach to establishing the justiciability of the rights enshrined in the Protocol through Article 26 of the ACHR, even in the absence of an explicit provision on it.

Notwithstanding the fact that advisory opinions are non-binding, the relevance of *Advisory Opinion OC-17/23* is immeasurable in the field of human rights and environmental protection. Its impact surpasses the usual function of an advisory opinion and extends far beyond the scope of the request that arose from Colombia's concerns regarding the construction of new infrastructure projects in the Wider Caribbean Region. For recognising the right to a healthy environment as an autonomous right and establishing States' core substantive and procedural obligations in the matter, the Advisory Opinion has been used as a point of reference for other human rights jurisdictions, including the ECtHR<sup>67</sup> and the UN HRC,<sup>68</sup> and it is expected to be considered in the advisory opinion on climate change pending before the ICJ.<sup>69</sup> At the same time, it has set a precedent in the Inter-American human rights jurisprudence regarding the justiciability of environmental rights under Article 26 of the ACHR, a matter that the Court was later called to address in a contentious case shortly after the adoption of the Advisory Opinion.

64 The Case of *Lagos del Campo v. Peru*, supra 34. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto, paras. 21–25.

65 Mardikian, 2023, pp. 950–951.

66 von Bogdandy and Urueña, 2020, p. 405.

67 See, for instance: *Verein KlimaSeniorinnen and Others v. Switzerland*, Judgment of 9 April 2024, ECtHR, para. 225.

68 See the *Torres Strait Islanders* decision cited above. Supra 15, para. 3.4.

69 Request for Advisory Opinion 'Obligations of States in Respect of Climate Change', 12 April 2023, ICJ. See also: Nedeski et al., 2023, p. 301.

### 3.2. *Lhaka Honhat v. Argentina: Breach of the Right to a Healthy Environment Under Article 26*

On 6th February 2020, the IACtHR handed down a landmark ruling in the case of the *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*. The case was initiated by an association of communities belonging to various indigenous groups within the province of Salta in Argentina, close to the border between Chile and Bolivia. The case concerned illegal logging activities on the ancestral lands of indigenous communities, whose righteous property claims over the lands had not been recognised. These illegal activities resulted in deforestation and the loss of biodiversity, strongly affecting indigenous communities whose traditional way of life is based on hunting, gathering, and fishing.<sup>70</sup>

The claim was presented before the IACtHR in 2019, after the Commission found the State's non-compliance with its earlier report adopted in 2012, declaring the violation of the rights of the communities and ordering the State to provide reparations.<sup>71</sup> The Court's judgment focused on three major aspects: the right to indigenous communal property; the rights to movement and residence, meaning the right to a healthy environment, adequate food, water and to take part in cultural life; and the rights to judicial guarantees and protection.<sup>72</sup> Given the complexity of the judgment, this section will focus on one specific aspect of it, namely, the violation of the rights guaranteed in Article 26 of the ACHR regarding the right to a healthy environment. Notably, the judgment marked the first time the IACtHR analysed the right to a healthy environment in a contentious case.

Allegations of the violation of the right to a healthy environment first arose under Article 22 of the ACHR (the right to freedom of movement and residence). The applicants argued that the installation of fencing, the introduction of cattle, and illegal logging by third parties (non-indigenous settlers) degraded the environment, destroyed the herbaceous and arboreal vegetation, and ruined the irrigation and regeneration capacity of the land. Remarkably, the Court noted that Article 22 was

70 Marciante, 2022, pp. 2994–2995.

71 The environmental aspect of the case was not accentuated in the Commission's report, given that it was adopted in 2012, a few years before the IACtHR established the justiciability of the right to a healthy environment under Article 26 of the ACHR in Advisory Opinion OC-17/23. See: Report no. 2/12, Case 12.094, Indigenous Communities of the Lhaka Honhat (Our Land) Association, Merits, Argentina, 26 January 2012, IACHR.

72 In addition to pronouncing a violation of Articles 21 (right to property), 23(1) (right to participate in government), 26 (progressive development), and 8(1) (right to a fair trial), the Court established various forms of reparations, including the obligation to delimit, demarcate and grant a title of ownership over the territory for the 132 indigenous communities; the obligation to refrain from implementing any actions negatively affecting the indigenous communities; the removal of the criollo population, along with the dismantling of fences and the removal of their livestock from the indigenous territory; and the implementation of actions to provide permanent access to drinking water. See: *The Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Judgment of 6 February 2020, IACtHR, IX. Operative Paragraphs. See also: Carrasco, 2024; Zombory, 2023.

not applicable in the case but accepted the arguments to be considered under Article 21 (right to property) and in relation to the rights contained in Article 26.

In addition to the right to a healthy environment, the Court also addressed the right to adequate food, water, and participation in cultural life under Article 26, building significantly on ‘the international *corpus iuris*’, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the work of the Committee on Economic, Social and Cultural Rights (CESCR), the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and its earlier jurisprudence, particularly *Advisory Opinion OC-17/23*.<sup>73</sup> Interestingly, the Court examined the right to water, even if the representatives of the indigenous communities had not alleged its violation. The Court justified this approach by invoking the *iura novit curia* principle which empowers it to examine the potential violations of provisions not explicitly raised by the parties.<sup>74</sup> This ensures that the Court can consider relevant legal aspects even when the parties may not have had the opportunity to articulate their position regarding the supporting facts. This practice is extensively applied in the Inter-American system for various reasons,<sup>75</sup> primarily because the Inter-American human rights doctrine aims to promote compliance with the full range of human rights through the case system, meaning that there is a strong emphasis on the interrelation between the rights enshrined in the ACHR and the Protocol, as well as rights pertaining to the international *corpus iuris* often recalled in the judgments.

Regarding the right to a healthy environment, the Court noted that States did not only have the obligation to respect it, but also the obligation to adopt positive measures, also including the prevention of violation.<sup>76</sup> This obligation also extends to third parties or non-State actors, as illustrated in *Lhaka Honhat*, given that the environmentally harmful activities had been carried out by private parties, the so-called ‘criollos’, namely non-indigenous farmers who had settled on the indigenous lands in the early twentieth century. To determine the attributability of the environmental harm to the State, the Court assessed whether the State had been aware of the activities performed by the third parties and concluded that the State had taken certain actions, however ineffective. This established the State’s responsibility for the harm that had occurred and pronounced the violation of the right to take part in cultural life related to cultural identity, a healthy environment, adequate food and water, established in Article 26 of the ACHR, in relation to Article 1(1), establishing the obligation to respect rights.<sup>77</sup>

This finding represents the most controversial aspect of the judgment, as it was decided by a three vs three vote, with the President of the Court casting the deciding vote.<sup>78</sup> Judges Eduardo Vio Grossi, Humberto Antonio Sierra Porto and Ricardo Pérez

73 Ibid., paras. 202–254.

74 Ibid., para. 200.

75 Shelton, 2013, pp. 199–202.

76 Supra 72, para. 207.

77 Supra 72, para. 370(3).

78 The Court was composed of six judges, as Judge Eugenio Raúl Zaffroni, an Argentine national, did not take part in the procedure according to Article 19 of the Rules of Procedure of the Court.

Manrique contested the justiciability of environmental rights under Article 26 and expressed their concerns in partially dissenting opinions.<sup>79</sup> Judge Vio Grossi argued that the Convention does not explicitly enshrine such a right and cautioned against the Court's expansive interpretation, emphasising adherence to the original text and the established interpretation criteria under the Vienna Convention on the Law of Treaties (VCLT).<sup>80</sup> Judge Sierra Porto reiterated his position regarding the extensive interpretation of Article 26 in *Lagos del Campo* and raised concerns about legal certainty and the limits of such interpretation. According to the Judge, these concerns are illustrated in the Court's application of the *iura novit curia* principle regarding the right to water, as this right is not enshrined in the Charter of the OAS or in the Protocol of San Salvador. Instead, the Court deduced its existence from the international *corpus iuris* consisting of declarations and other soft law documents, which may not justify the extension of the Court's jurisdiction to recognise new rights.<sup>81</sup> Furthermore, Judge Pérez Manrique proposed an alternative solution for the justiciability of environmental rights based on the 'thesis of simultaneity'. Namely, the Judge suggested environmental rights to be addressed under Article 21 (right to property) instead of Article 26, which according to him, would better embrace the indissoluble relationship between the land and the enjoyment of environmental rights.<sup>82</sup>

The dissenting opinions of the *Lhaka Honhat* judgment highlight that the justiciability of the right to a healthy environment is a subject of debate among the Judges, stemming from interpretative dilemmas primarily between evolutive interpretation,<sup>83</sup> and the traditional interpretative methods established in the VCLT. The strongest criticism opposing the justiciability of environmental rights, and economic, social and cultural rights enshrined in the PSS, is articulated by Judges Vio Grossi and Sierra Porto, who argue that the Court's broad interpretation and flexible application of the

79 For an analysis regarding the dissenting opinions, see: Lima, 2020, pp. 516–518.

80 Article 31 of the VCLT ('General rules of interpretation') provides that:

'1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.'

See also: Supra 72, Partially dissenting opinion of Eduardo Vio Grossi, para. 9.

81 Supra 72, Partially dissenting opinion of Judge Humberto Antonio Sierra Porto, paras. 8–10.

82 Supra 72, Partially dissenting opinion of Ricardo C. Pérez Manrique, paras. 13–14.

83 See: De Pauw, 2017, p. 3.

*iura novit curia* principle may undermine legal certainty and the principle of state consent. On the other hand, arguments in favour, as expressed by Judge Pazmiño Freire,<sup>84</sup> emphasise the interdependence and indivisibility of civil and political rights with economic, social and cultural rights that should be interpreted in light of the international *corpus iuris*. Although the justiciability of environmental rights under Article 26 appears to have been settled, with the majority of Judges affirming it in *Advisory Opinion OC-17/23* and *Lhaka Honhat*, a thought-provoking alternative that was proposed by Judge Pérez Manrique, namely addressing environmental concerns through the lens of the right to property. This approach could arguably provide a broader scope and content to States' obligations, while also grounding its jurisdiction on an indisputably justiciable right.

### **3.3. A New Type of Environmental Cases? Recent Developments in the IACtHR's Contentious Case Law**

The Inter-American jurisprudence reached a further milestone on 22nd March 2024, with the adoption of the judgment in the case of the *La Oroya Population v. Peru*, the first case involving the violation of the right to a healthy environment in a non-indigenous context.<sup>85</sup> The claim revolved around the long-standing environmental degradation and health crises in the La Oroya district in Peru, one of the world's most polluted areas due to the operation of the La Oroya Metallurgical Complex, dedicated to the smelting and refining of metals with high levels of lead, copper, zinc and arsenic. The company's activity significantly contributed to the severe contamination of air, water and soil that caused serious alterations in the victims' quality of life, particularly for vulnerable groups such as children, women, and the elderly.

The complexity of the judgment is shown by the declaration of the violation of several rights, including the right to a healthy environment and health under Article 26, the right to life (Article 4), the right to life with dignity and the right to personal integrity (Articles 4 and 5), the rights of the child (Article 19), the rights of access to information and to participate in government (Articles 13 and 23), and the right to judicial protection (Article 25).<sup>86</sup> Thus given the focus of the present chapter, the following paragraphs will be dedicated to the judgment's implications regarding the right to a healthy environment.

Building on *Advisory Opinion OC-17/23* acknowledging the procedural and the substantive aspects of the right to a healthy environment, the Court took an additional step and defined the elements of the substantive dimension of environmental protection, including air, water, food, the ecosystem, and the climate, among others. In this sense, the Court referred to *Lhaka Honhat*, which pronounced that the environment should be protected even in the absence of certainty or evidence of the risk

84 *Supra* 72, Concurring opinion of Judge Patricio Pazmiño Freire, paras. 8–9.

85 Viveros-Uehara, 2024.

86 The Case of La Oroya Population v. Peru, Judgment of 27 November 2023, IACtHR, X. Operative Paragraphs [originally available in Spanish, translated by the author].

to individuals, which, however, did not prevent the violation of other human rights as a consequence of environmental damage. Regarding air pollution, the Court pronounced that the right to breathe air whose pollution levels do not constitute a significant risk to the enjoyment of their human rights, is a matter which the States are obliged to establish laws, regulations and policies that regulate air quality standards that do not constitute health risks; to monitor air quality and inform the population of possible health risks; and to carry out action plans to control air quality that includes the identification of the main sources of air pollution, and implement measures to enforce the standards of the quality of air.<sup>87</sup>

Remarkably, this was the first major pollution case comparable to the ECtHR's vast case law on industrial pollution, including cases referenced in the judgment, such as *Fadeyeva v. Russia*,<sup>88</sup> *Okyay and Others v. Turkey*,<sup>89</sup> or *Cordella and Others v. Italy*.<sup>90</sup> In the absence of any explicit environmental right in the ECHR,<sup>91</sup> the ECtHR developed a 'sub-right of an environmental character'<sup>92</sup> primarily under the right to respect for private and family life (Article 8 of the ECHR). As illustrated by the cases mentioned above, the ECtHR has a well-established practice of considering industrial pollution claims under Article 8<sup>93</sup> until the adoption of *Cannavacciuolo and Others v. Italy* on 30 January 2025, in which the ECtHR, when examining the relevant international law and practice, referred to the *La Oroya* judgment of the IACtHR,<sup>94</sup> and pronounced the violation of Article 2 for a comparably widespread and large-scale pollution phenomenon in the 'Terra dei Fuochi' area of South Italy.<sup>95</sup> While the ECtHR rarely cites the IACtHR's judgments,<sup>96</sup> referencing *La Oroya* certainly underscores its universal relevance in adjudicating environmental cases under human rights law.

In addition to the right to clean air, the IACtHR also examined the right to water in connection with the right to a healthy environment. The Court distinguished between the right to water as a substantive facet of the right to a healthy environment and an autonomous right to water. Regarding the first facet, the Court noted that it protects bodies of water as elements of the environment that have value in themselves as a universal interest, as well as for other living organisms, including humans. The second facet, the right to water as an autonomous right recognises the crucial role of water for humans and their survival, and thus protects its access, use, and exploitation

87 *Ibid.*, paras. 118–120.

88 *Fadeyeva v. Russia*, Judgment of 9 June 2005, ECtHR.

89 *Okyay and Others v. Turkey*, Judgment of 12 July 2005.

90 *Cordella and Others v. Italy*, Judgment of 24 January 2019.

91 Kobylarz, 2025, p. 23.

92 Pavlov and Others v. Russia, Judgment of 11 October 2022, ECtHR, Concurring opinion of Judge Serghides, para. 9.

93 Peters, 2022, p. 189. See also: Kotiuk, Weiss and Taddei, 2022, p. 122.

94 *Cannavacciuolo and Others v. Italy*, Judgment of 30 January 2025, ECtHR, para. 185.

95 *Ibid.*, para. 467.

96 An exception could be *Verein KlimaSeniorinnen and Others v. Switzerland*, supra 67, paras. 225–227.

by human beings.<sup>97</sup> Most importantly, the Court noted that the right to a healthy environment includes both the right to clean air and the right to water, which bears the obligation of States to protect against violation thereof by third parties based on the principle of prevention and precaution. The Court embraced the UN Guiding Principles on Business and Human Rights,<sup>98</sup> the major soft law document establishing recommendations for private parties (businesses) regarding human rights and pronounced that companies themselves also have responsibilities to respect human rights and act with due diligence, regardless of their size, sector, operational context, ownership, or structure.<sup>99</sup>

Lastly the judgment also demonstrates that the IACtHR is in alignment with recent developments regarding environmental protection in human rights by referring to the recognition of the right to a clean, healthy and sustainable environment by the UN General Assembly in Resolution 76/300,<sup>100</sup> and recognising the *jus cogens* nature of the prohibition of illegal and arbitrary conduct that causes serious, extensive, long-lasting and irreversible damage to the environment.<sup>101</sup> The Court therefore considers such obligations at the same level as other *jus cogens* norms in public international law, such as prohibition in the use of force, genocide, slavery, apartheid, crimes against humanity, and forced disappearances, among others. The impact of defining *jus cogens* norms regarding environmental protection constitutes a ground-breaking development not only in human rights law and international environmental law but in public international law in general, as its pronouncement in a binding judgment of a human rights court indisputably strengthens the position of States' international obligations regarding the protection of the environment.<sup>102</sup> According to Judges Pérez Manrique, Ferrer Mac-Gregor Poisot and Mudrovitsch, the *jus cogens* nature of these environmental norms could be deduced from the definition of *jus cogens* norms itself, which based on the International Law Commission's concept, are norms that

reflect and protect fundamental values of the international community. They are universally applicable and are hierarchically superior to other rules of international law.<sup>103</sup>

Furthermore, they are

accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified

97 Supra 86, para. 124.

98 UN Guiding Principles on Business and Human Rights, HR/PUB/11/04.

99 Supra 86, paras. 109–111.

100 A/RES/76/300.

101 Supra 86, para. 129.

102 Environmental *jus cogens* norms had earlier been proposed by scholars, however, it has not been pronounced by any court until the *La Oroya* judgment. See: Kotzé, 2016, p. 241.

103 Ibid., Conclusion 2 [3].

only by a subsequent norm of general international law having the same character [...],<sup>104</sup>

The Judges pointed out in their concurring opinion that the obligation to protect the environment as a form of *jus cogens* crystallises or reflects the fundamental value of the international community of recognising the environment as the support of States and a *sine qua non* for their existence. The Judges referred to a vast number of international legal sources recognising state obligations for environmental protection, including the abovementioned UN General Assembly resolution, which, as pointed out in the concurring opinion, did not create a new right, but rather declared a pre-existing reality, which had previously been developed in multiple international instruments.<sup>105</sup> However, it has to be highlighted that the right to a healthy environment is currently not recognised in binding UN human rights treaties, and even the cited Resolution is a soft law document, which may not establish binding norms for the States. Nonetheless, the Judges argued that the UN General Assembly is the most representative body of the international community and therefore its acts are suitable to be considered for *opinio iure sive necessitatis*.

The arguments for recognising the *jus cogens* nature of States' obligation to protect the environment could be compared with the reasons raised in favour of recognising the justiciability of environmental rights, as both argumentations strongly build on the evolutive interpretation and the principle of systemic integration.<sup>106</sup> The IACtHR's progressive approach significantly advances the doctrine of environmental protection in human rights law and has a growing impact on the jurisprudence of the ECtHR. However, in the author's opinion, certain affirmations extend beyond the scope of competence of the Inter-American system, and require support primarily from the ICJ, particularly in questions revolving around the *jus cogens* nature of certain norms, as they may also carry significant implications towards public international law.

#### 4. Climate Change and the Inter-American Human Rights System

Since the adoption of the Paris Agreement in 2015, there has been a growing emphasis on the development of the climate change jurisprudence of courts at domestic, regional, and international levels.<sup>107</sup> Rights-based climate litigation, a special sub-category of climate change litigation, aims to address the negative impact of climate

104 ILC, Peremptory norms of general international law (*jus cogens*), A/CN.4/L.967, Conclusion 3 [2].

105 *Supra* 86, Concurring opinions of Judges Ricardo C. Pérez Manrique, Eduardo Ferrer MacGregor Poisot and Rodrigo Mudrovitsch, paras. 76–88.

106 Systemic integration as a treaty interpretation method is established in Article 31(3)(c) of the VCLT cited above, that requires the consideration of the relevant rules of international law in interpreting an international treaty. See: Rachovitsa, 2017, p. 557.

107 See: Setzer and Higham, 2024, p. 10.

change on the enjoyment of human rights.<sup>108</sup> Human rights adjudicatory bodies have encountered their first cases of climate litigation, including the UN HRC and more recently, the ECtHR. As pointed out above, the Inter-American Commission on Human Rights was among the first human rights forums to encounter climate change claims, however, the ‘Inuit petition’ was inadmissible based on the standards of the time.

Since then, both the IACHR and the IACtHR have addressed the impact of climate change on the enjoyment of human rights. In the aforementioned *Kawas Fernández* case, the Court acknowledged that the adverse effects of climate change impair the enjoyment of human rights.<sup>109</sup> Although the claim did not involve questions regarding climate change, the fact that the Court mentioned it along with environmental degradation as a factor negatively affecting the realisation of human rights, demonstrated the Court’s complex approach. Furthermore, *Advisory Opinion OC-17/23* reiterated this position and reflected on developments within the United Nations.<sup>110</sup> However, the Advisory Opinion was adopted before the recognition of the right to a clean, healthy and sustainable environment in the UN, and the first landmark climate change cases of human rights adjudicatory bodies, such as *Torres Strait Islanders* and *Verein KlimaSeniorinnen*.

Furthermore, in 2021 the Commission adopted *Resolution 3/2021* titled ‘Climate Emergency: Scope of Inter-American Human Rights Obligations’, which confirmed that the right to a healthy, balanced and pollution-free environment is also applicable in the context of climate change, and based on *Advisory Opinion OC-17/23*, is justiciable before the Court. The *Resolution* addresses the climate emergency in nine titles, namely: (I) the centrality of the rights approach in the construction of climate change instruments, policies, plans, programs, and norms on climate change, (II) human rights in the context of environmental deterioration and the climate emergency in the Americas, (III) the rights of individuals and groups in situations of vulnerability or historical discrimination in environmental and climate matters, (IV) the rights of indigenous peoples, tribal communities, Afro-descendants and peasants or those working in rural areas in the face of climate change, (V) the rights of land and nature defenders, (VI) the rights of access to information, public participation and access to justice in environmental and climate matters, (VII) the extraterritorial obligations of States in environmental and climate matters, (VIII) the responsibility of companies to respect human rights and remedy possible violations thereof in the environmental and climate context, and (IX) the fiscal, economic and social policies for a just transition.<sup>111</sup> The influence of the Escazú Agreement – which entered into force in the same year as the *Resolution* was adopted, is particularly tangible, since the Commission dedicated an entire section to environmental and climate defenders. Additionally, it could also be concluded that the Commission endorsed the obligations deriving from

108 Savaresi and Auz, 2019, pp. 246–249.

109 Supra 32, para. 148.

110 Advisory Opinion OC-17/23, para. 54.

111 Resolution, 3/2021, Climate Emergency: Scope of Inter-American Human Rights Obligations, 31 December 2021, IACHR.

the Paris Agreement and their interrelationship with human rights. The significance of this document is reflected in the ECtHR's jurisprudence as well with the *Verein KlimaSeniorinnen* judgment noting that the Resolution had recognised climate change as a human rights emergency.<sup>112</sup>

The IACtHR has not encountered a contentious case concerning climate change comparable to *Verein KlimaSeniorinnen* in the European human rights jurisprudence. Nonetheless, the Court tends to address climate change as part of the debate regarding environmental degradation in recent contentious cases, such as *Lhaka Honhat* and *La Oroya*. Notably, in the latter judgment the Court explicitly considered the international climate change framework, particularly the Paris Agreement, to assess the violation of children's rights under Article 19 of the ACHR, and referred to General Comment No. 26 of the UN Committee on the Rights of the Child (UN CRC) highlighting the relevance of the concept of intergenerational equity and the consideration of the needs of future generations.<sup>113</sup> The issue of climate change was raised to consideration in the given case by the Court itself, once again demonstrating its extensive approach based on the *iura novit curia* principle.

While the Court has yet to hear its first contentious climate change case, it is currently preparing a new advisory opinion on the climate emergency and human rights. The advisory opinion, requested on 9<sup>th</sup> January 2023 by Colombia and Chile, seeks to clarify the scope of state obligations, in their individual and collective dimension, in order to respond to the climate emergency within the framework of international human rights law, paying special attention to the differentiated impacts of this emergency on individuals from diverse regions and population groups, as well as on nature and human survival on the planet.<sup>114</sup>

The questions submitted to the Court were centred around six key issues, namely (I) state obligations derived from the duties of prevention and the guarantee of human rights in relation to the climate emergency, particularly in light of the Paris Agreement, (II) state obligations to preserve the right to life and survival in relation to the climate emergency in light of science and human rights, considering the rights guaranteed in the Escazú Agreement; (III) the differentiated obligations of States in relation to the rights of children and the new generations in light of the climate emergency, (IV) state obligations arising from consultation procedures and judicial proceedings owing to the climate emergency based on Articles 8 and 25 of the ACHR, (V) convention-based obligations of the prevention and the protection of territorial and environmental defenders, women, indigenous peoples, and Afro-descendant communities in the context of the climate emergency, also in light of Article 9 of the Escazú Agreement, and finally (VI) the shared and differentiated human rights obligations and responsibilities of States in the context of the climate emergency,

112 Supra 67, para. 228.

113 Supra 86, paras. 139–143.

114 Supra 59.

considering that the climate crisis has a greater impact on the Caribbean region, some of the impacts being migration and forced displacement.<sup>115</sup>

The pending advisory opinion has garnered significant attention, as it is one of the three international advisory proceedings concerning climate change, along with requests for advisory opinions from the ITLOS and the ICJ. The ITLOS rendered its Advisory Opinion on 21st May 2024, the first advisory opinion on States' obligations regarding climate change issued by an international tribunal.<sup>116</sup> In the Advisory Opinion, initiated by the Commission of Small Island States on Climate Change and International Law (COSIS), the ITLOS addressed the interpretation of the UN Convention on the Law of the Sea (UNCLOS) in the context of climate change and concluded that

States Parties to the Convention have specific obligations under Article 194 of UNCLOS to take all necessary measures to prevent, reduce, and control marine pollution from anthropogenic GHG emissions and to endeavor to harmonize their policies in this connection.<sup>117</sup>

Such a conclusion will presumably be a reference point for the IACtHR, as according to scientific calculations, the region is likely to be affected by sea level rise and the increase of sea surface temperatures significantly and disproportionately affecting coastal communities. Moreover, the request to the IACtHR also addresses questions of international cooperation and obligations regarding the most affected areas in the region under the theme of shared and differentiated human rights obligations and responsibilities of States in the context of the climate emergency.<sup>118</sup>

Parallel to the pending advisory opinion before the IACtHR, significant attention is devoted to the much-anticipated advisory opinion of the ICJ.<sup>119</sup> The request for an advisory opinion was initiated by the Republic of Vanuatu, a small island State in the Pacific Ocean,<sup>120</sup> and it was embraced by the UN General Assembly on 29th March 2023, at the sixty-fourth plenary meeting. The advisory opinions of the Court are not legally binding yet being the main judicial organ of the United Nations, they carry 'great legal weight and moral authority',<sup>121</sup> and thus contribute significantly to the development of international law. In the present case, the ICJ is requested to deliver its opinion on two main questions: the obligations of States under international law, particularly climate change agreements, human rights conventions, and customary law; and the

115 Ibid.

116 Silverman-Roati and Bonnemann, 2024.

117 Case no. 31, Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, 21 May 2024, ITLOS, para. 243.

118 See: supra 115.

119 Supra 69.

120 On the background of the Vanuatu initiative, see: Mead and Wewerinke-Singh, 2021, p. 294.

See also: Wewerinke-Singh, and Salili, 2020, p. 681.

121 International Court of Justice, Advisory Jurisdiction.

legal consequences under these obligations for States with respect to other (vulnerable) States and peoples and individuals of present and future generations.<sup>122</sup> Given that a strong emphasis is placed on international human rights instruments, such as the ICCPR, the ICESCR, and the Universal Declaration of Human Rights (UDHR), the ICJ's advisory opinion may support the Inter-American Court's earlier affirmations on the customary nature of States' obligations concerning environmental protection, extending it to obligations to address climate change by legal means.

Although the date of the delivery of the advisory opinions of the ICJ and the IACtHR is not yet known, it can be stated with confidence that they will significantly contribute to understanding States' human rights obligations in light of the climate crisis. The IACtHR is likely to build on the key contentious climate change cases, such as *Torres Strait Islanders* and *Verein KlimaSeniorinnen*, and the advisory opinion of the ITLOS, or the ICJ, in case it will be issued prior to the Inter-American one. Additionally, based on the Court's comprehensive approach endorsed in its recent environmental cases and particularly in *Advisory Opinion OC-17/23*, the impact of the advisory opinion on the climate emergency and human rights could extend far beyond the limits of the Inter-American framework, and could serve as a reference point for other jurisdictions, including the ECtHR.

## 5. Conclusion

This chapter was dedicated to an analysis of the environmental jurisprudence of the Inter-American human rights adjudicatory bodies, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, both having a crucial role in developing human rights guarantees against environmental degradation. The analysis shows that the first cases with an environmental dimension were centred around indigenous peoples' claims over their ancestral lands invoking collective property rights. Although the right to a healthy environment was introduced in the Inter-American human rights framework with the adoption of the Protocol of San Salvador in 1988, the lack of direct justiciability hindered the applicants from addressing the violation of this right for nearly three decades.

In parallel with the growing international consensus on the recognition of the interrelationship between human rights and environmental protection, and endeavours to recognise autonomous, self-standing environmental rights, the Court rendered a historical advisory opinion in 2017, pronouncing the justiciability of environmental rights under the obligation of progressive development established in Article 26 of the American Convention on Human Rights. Since then, this approach has been confirmed in contentious cases, namely in *Lhaka Honhat v. Argentina*, pronouncing the violation of the right to a healthy environment as an autonomous right for the first

122 See: A/RES/77/276, Recital 14.

time, and in *La Oroya v. Peru*, the first judgment pronouncing a violation of the right for non-indigenous communities.

In addition to the analysis of the IACtHR's environmental case law, a strong emphasis was placed on the Court's role in the development of the doctrine of the right to a healthy environment in the international context. Examples from other jurisprudences demonstrated that the impact of the Inter-American approach to environmental protection extended far beyond the scope of the specific case, and even beyond the Inter-American framework itself. Notably, the Court's key cases have been cited in recent cases of the UN HRC and the ECtHR, owing to the universal values embraced in them that transcend the borders of the region. Notwithstanding the challenges of Latin America and the Caribbean, including the critical situation of environmental defenders, vulnerable groups such as children, women, elderly people and indigenous communities, as well as the regions' exposure to the adverse effects of climate change, the Inter-American Court of Human Rights remains among the most influential actors worldwide in addressing environmental issues.

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# The Protection of the Environment in Regional Human Rights Systems Outside of Europe II: The African Human Rights System

Cocou Marius MENSAH

## ABSTRACT

The increasing recognition of environmental protection as a human right, as demonstrated by the United Nations General Assembly's 2022 adoption of the right to a clean, healthy, and sustainable environment, reflects the vital connection between environmental sustainability and the fulfilment of basic human rights. This chapter explores the role of the African human rights system in enforcing environment-related human rights, with particular focus on Article 24 of the African Charter on Human and Peoples' Rights (ACHPR). Despite Africa's minimal contribution to global carbon emissions, the continent suffers disproportionately from the impacts of climate change. However, landmark cases concerning environmental protection have been scarce in Africa's regional human rights system, with national and sub-regional courts taking the lead in adjudicating environmental disputes. This research highlights the challenges and opportunities for African human rights institutions in addressing environmental harm and promoting the right to a healthy environment.

## KEYWORDS

African Charter on Human and Peoples' Rights, environmental protection, human rights in Africa, climate change litigation, right to a healthy environment

## 1. Introduction

In recent years, environmental degradation and climate change have garnered increasing attention globally, particularly within the African context. Despite contributing only approximately 3.9% of the world's carbon emissions,<sup>1</sup> Africa suffers disproportionately from the consequences of environmental degradation, such as droughts, floods, and food insecurity. These environmental impacts affect millions

1 Statista, 2024.

Cocou Marius Mensah (2026) 'The Protection of the Environment in Regional Human Rights Systems Outside of Europe II: The African Human Rights System' in Ráisz, A., Krajnyák, E. (eds.) *Human Rights and Environmental Protection from a Central and Eastern European Perspective*. Miskolc–Budapest: Central European Academic Publishing, pp. 345–372. [https://doi.org/10.71009/2026.arek.hraep\\_13](https://doi.org/10.71009/2026.arek.hraep_13)



of people across the continent, causing climate-induced migration<sup>2</sup> and highlighting the urgent need to address environmental protection as a human rights issue. The African Charter on Human and Peoples' Rights (ACHPR), adopted in 1981, enshrines the right to a healthy environment in Article 24. However, the African human rights system has yet to develop significant jurisprudence on this right.

While the UN Human Rights Council's 2021 Resolution 48/13 and the subsequent 2022 UN General Assembly's recognition of the right to a clean, healthy, and sustainable environment marked significant global progress, Africa's regional human rights institutions, such as the African Court on Human and Peoples' Rights (ACtHPR) and the African Commission on Human and Peoples' Rights (ACmHPR), have been slower in addressing environmental rights explicitly. However, national and community courts have led the charge in holding corporations and governments accountable for environmental harm. In this chapter, we will explore the role of the universal and regional human rights systems in environmental protection, examine landmark cases, and analyse the potential of Article 24 of the ACHPR in shaping Africa's environmental future.

## 2. Universal Environmental Rights Instruments

Climate change and its effects contribute to the growing awareness of environmental issues. The connection between environmental protection and human rights has also garnered growing attention in recent years, as environmental challenges have become increasingly urgent, particularly in Africa. According to the Global Climate Risk Index 2021, six of the 10 countries most affected by climate change from 2000 to 2019 were in Africa (Eckstein, Künzel and Schäfer, 2021). Despite contributing minimally to global greenhouse gas emissions, the continent remains highly vulnerable to the effects of climate change<sup>3</sup> and severe environmental impacts, underscoring the critical role of African human rights systems in safeguarding the environment. Extreme environmental degradation, driven by weather events such as floods, droughts, and tropical cyclones, continues to hinder sustainable development across the continent. For instance, Mozambique was the most affected country in 2019, largely due to Cyclones Idai and Kenneth, which resulted in substantial human and economic losses. Similarly, Zimbabwe faced severe devastation from Cyclone Idai in 2019, ranking second in the index. Malawi, which was heavily impacted by flooding, ranked fifth, underscoring the enormous damage caused by climate-related disasters. In this context, the ability of African legal frameworks and human rights mechanisms to address environmental degradation is crucial to ensuring the well-being and dignity of African populations.

2 Kwanhi, T. et al; 2024, p. 10.

3 IPCC, 2022.

When discussing the right to a safe, clean, healthy, and sustainable environment, one might assume that it is explicitly enshrined in the Universal Declaration of Human Rights (UDHR).<sup>4</sup> However, no specific article in the UDHR – the milestone document that sets the standard for the universal protection of fundamental human rights – directly addresses this right. Many authors believe that the connection between environmental rights and UDHR provisions is undeniable.<sup>5</sup> Environmental rights can be interpreted as the adaptation and extension of existing human rights and obligations to incorporate the principles of environmental protection. This concept emphasises the intrinsic human rights approach to climate change and the link between environmental health and various articles of the UDHR, underlining the essential role of a healthy environment in realising fundamental human rights.<sup>6</sup> However, this gap in explicit recognition has prompted calls to integrate environmental rights into international law and human rights instruments.

Numerous studies underscore the connection between a healthy environment and the realisation of essential rights, such as the right to life, health, and well-being.<sup>7</sup> Recognising and formalising these connections is essential for advancing comprehensive human rights protections in an increasingly vulnerable ecological landscape. For instance, the right to life (Article 3 of the UDHR) cannot be fully realised without a healthy environment, as environmental degradation can endanger survival by compromising air quality, water availability, and overall health. This right also aligns with Sustainable Development Goal (SDG) 3, which focuses on ensuring healthy lives and promoting well-being for all. Similarly, the right to health and well-being (Article 25) directly relates to environmental factors, as it underscores access to clean air, safe water, and adequate sanitation, all of which are crucial components of SDG 6 (Clean Water and Sanitation) and SDG 3. The right to food, also included in Article 25 of the UDHR, mirrors SDG 2 (Zero Hunger), as agriculture relies on sustainable environmental conditions such as fertile land and clean water – principles tied to SDG 15 (Life on Land). Without healthy ecosystems, the ability to produce sufficient and nutritious food is jeopardised. The state of the environment directly influences people’s ability to exercise their right to employment (Article 23, the Right to Work), which is intrinsically linked to SDG 8 (Decent Work and Economic Growth).

Environmental degradation poses a significant threat to livelihoods, particularly in sectors such as agriculture, fishing, and other industries that heavily rely on natural resources. Moreover, Article 21, which guarantees everyone the right to participate in the government of their country, is also at risk if environmental disasters or rising sea levels destabilise nations or lead to the disappearance of territories. Without a stable and safe environment, the rule of law and democratic participation are undermined. This demonstrates that environmental protection is a cornerstone of effective human

4 United Nations, 1948.

5 Akyüz, 2021; Habiba, 2023.

6 Shelton, 2017; Udo, 2020.

7 UN, 2021; IPCC, 2022.

rights implementation. The UDHR's provisions cannot be fully realised without a healthy environment, as human rights and environmental sustainability are deeply interconnected.

Although the UDHR does not explicitly mention the right to a healthy environment, we have demonstrated that its provisions can be interpreted as supporting such a right. Key articles of the UDHR (mentioned above) implicitly encompass elements of environmental protection. However, the lack of explicit recognition in the UDHR highlights the need for more focused international instruments to guide African countries in implementing environmental provisions. One such legally binding treaty is the International Covenant on Economic, Social and Cultural Rights (ICESCR), which elaborates on the rights outlined in the UDHR and is widely ratified globally, including by the vast majority of African countries. Adopted by the United Nations General Assembly (UNGA) on 16 December 1966, through Resolution 2200A (XXI), the ICESCR came into force on 3 January 1976.<sup>8</sup> As of September 2024, the ICESCR has 71 signatories and 172 state parties.<sup>9</sup> This multilateral treaty binds countries to respect and implement economic, social, and cultural rights, thereby significantly expanding on the principles outlined in the UDHR. African states are significant participants in this covenant, with the notable exceptions of Botswana and Mozambique. Newly independent states such as Eritrea (which acceded in 2001) and South Sudan (which acceded in 2024) are also parties, reinforcing the continent's commitment to upholding these critical rights. Among the rights enshrined in the ICESCR are labour rights (Articles 6, 7, and 8), the right to health (Article 12), the right to education (Articles 13 and 14), and the right to an adequate standard of living (Article 11).<sup>10</sup> Crucially, the ICESCR explicitly addresses environmental concerns that are essential for the realisation of these rights. Article 12 highlights the right to 'the enjoyment of the highest attainable standard of physical and mental health', linking environmental protection to human well-being. Specifically, Article 12(2)(b) mandates the 'improvement of all aspects of environmental and industrial hygiene'. This recognition of environmental health as integral to human rights sets a clear legal obligation for state parties to provide and maintain an environment conducive to both physical and mental health.

For African nations that are parties to the ICESCR, this means they are legally bound to ensure environmental sustainability as a prerequisite for the realisation of fundamental human rights. As environmental degradation – through pollution, deforestation, or climate change – threatens the health and livelihoods of millions on the continent, the ICESCR serves as a critical framework for addressing these challenges. By committing to this treaty, African states are expected to take tangible steps to improve environmental hygiene, reduce industrial pollution, and ensure that their citizens live in an environment that supports both health and sustainable development. In this context, the ICESCR plays an essential role in bridging the gap

8 United Nations, 1966.

9 United Nations Treaty Collections, 1966.

10 United Nations, 1966.

between human rights and environmental protection. It offers a more robust and legally binding structure than the UDHR in terms of environmental rights, particularly in Africa, where environmental degradation directly threatens the enjoyment of economic, social, and cultural rights. Thus, the treaty not only strengthens the protection of labour rights, health, and education, but also ensures that these rights are realised within the framework of a sustainable and healthy environment.

### **2.1. The UN Human Rights Council's Recognition of the Right to a Clean, Healthy, and Sustainable Environment<sup>11</sup>**

All 54 African countries are currently members of the UNGA, positioning them well to engage with and implement the principles advocated by the United Nations Human Rights Council (HRC)<sup>12</sup>. In October 2021, the HRC made a landmark political statement (Resolution 48/13) recognising the right to a clean, healthy, and sustainable environment.<sup>13</sup> This significant move paved the way for a global legal understanding of environmental rights.<sup>14</sup> Despite opposition and abstentions from countries such as India, Russia, China, and Japan, the UNGA overwhelmingly adopted the resolution in July 2022, with 161 votes in favour, demonstrating wide international support. Many African countries, aware of their environmental challenges such as deforestation, pollution, and climate change, endorsed the resolution. For African nations, recognising the right to a healthy environment is not merely a symbolic political act but a moral and legal imperative. Environmental degradation threatens the livelihoods and well-being of millions of people across the continent, where the impact of climate change is particularly severe.

Although the HRC's 2021 resolution is not legally binding, it is an essential step towards the global recognition of the connection between human rights and environmental protection. While the resolution has not been incorporated into any formal international or regional human rights convention, it operates as a powerful form of soft law. Soft law, which encompasses non-binding resolutions, declarations, and guidelines, plays a crucial role in shaping national and international policies, despite lacking the enforceability of formal treaties.<sup>15</sup> Resolutions such as the HRC's recognition of the right to a clean, healthy, and sustainable environment are pivotal in advancing global and regional human rights agendas. Although this resolution lacks the binding power of treaties, it influences states' behaviour, sets norms, and guides policy development. As members of both the UNGA and HRC, African nations are familiar with these developments and often respond positively to them. Such resolutions help shape national environmental policies, align national laws with global environmental standards, and foster cooperation on sustainability.

11 United Nations General Assembly, 2022.

12 Permanent Observer Mission of the African Union to the United Nations, n.d.

13 Limon, 2024.

14 The Office of the High Commissioner for Human Rights, UNEP and UNDP, 2023.

15 Assenza, 2024.

The HRC's recognition reinforces the growing understanding that environmental degradation has direct implications for the enjoyment of fundamental human rights. As key players in global sustainability and climate change discussions, African nations are politically motivated to align their national environmental laws with these international soft law standards. Regional bodies in Africa, such as the African Union (AU) and the ACmHPR, can leverage the HRC resolution to further develop regional commitments to environmental sustainability, adding to existing regional conventions.<sup>16</sup> Moreover, this alignment is further supported by the AU's foundational legal framework, which embeds environmental protection within its institutional mandate.<sup>17</sup> The Constitutive Act of the African Union, the organisation's founding treaty, indirectly acknowledges environmental concerns through key provisions: (1) Article 3 outlines AU objectives that are directly relevant to environmental protection, including sustainable development (j), the promotion of human and peoples' rights (h), and the prevention of diseases linked to environmental harm (n); (2) Article 13(e) tasks the Executive Council with functions such as environmental protection, humanitarian action, and disaster response, while Article 14(d) establishes the Committee on Industry, Science and Technology, Energy, Natural Resources, and Environment, institutionalising environmental governance.

Regional bodies, such as the AU and the ACmHPR, can leverage the HRC's resolution to strengthen regional commitments to environmental sustainability, building upon existing frameworks, including the African Convention on the Conservation of Nature and Natural Resources. By harmonising continental policies (Article 3(l)) and advancing climate-resilient development, Africa can translate soft law standards into binding regional action, ensuring that environmental protection remains central to its human rights and economic advancement agenda.

## ***2.2. The Paris Agreement and the Protection of the Environment in Africa***

When it comes to globally impactful legal frameworks for environmental protection, the Paris Agreement stands as a key reference point.<sup>18</sup> As a groundbreaking international treaty, it plays an essential role in addressing climate change and mitigating its widespread effects. The agreement unites nations around a shared goal of limiting global warming, making it a cornerstone in the fight against climate change and a model for international environmental cooperation. Although it is a global framework and not a specific regional instrument for Africa, it has been ratified by all 54 African

16 In her article "No Longer Hard Law's 'Poor Relative': The Growing Respect for Soft, Non-Binding Legal Instruments in the International Order", Tan Hsien-Li highlights the growing use and influence of soft law in many regimes of international law, including environmental law, using the example of the Asia-Pacific region. See: Hsien-Li, 2025. No Longer Hard Law's 'Poor Relative': The Growing Respect for Soft, Non-Binding Legal Instruments in the International Order. Blog of the European Journal of International Law.

17 African Union, 2000.

18 United Nations Framework Convention on Climate Change, n.d.

countries.<sup>19</sup> This commitment reflects the continent's recognition of the critical need to mitigate and adapt to climate change, as Africa remains one of the regions most vulnerable to its effects. Adopted in 2015 at COP21 in Paris, the agreement aims to limit the global temperature rise to below 2°C, with efforts to cap it at 1.5°C. To achieve these goals, countries must reduce their greenhouse gas emissions by 43% by 2030, with emissions peaking no later than 2025.

Despite Africa contributing minimally to global emissions, the region suffers disproportionately from the impacts of climate change, including extreme weather events, desertification, and rising sea levels. The Paris Agreement provides African nations with a framework to address these challenges, while offering them financial and technical support. African countries have submitted their Nationally Determined Contributions (NDCs), outlining their commitments to both reducing emissions and enhancing resilience to climate change. Through these NDCs, Africa can align its development goals with environmental sustainability, particularly in the agriculture, water management, and renewable energy sectors. The Paris Agreement's financing mechanisms are particularly beneficial for African nations. Developed countries are committed to providing financial assistance to developing nations, with a pledge of at least \$100 billion annually starting from 2025.<sup>20</sup> This financial assistance is critical for African countries to implement both mitigation and adaptation measures, including transitioning to low-carbon technologies and developing climate-resilient infrastructure. The funding also helps combat climate-induced challenges such as droughts, floods, and food insecurity, while simultaneously fostering sustainable industrial growth with minimal emissions. The focus on adaptation is especially vital for Africa, given the continent's heightened vulnerability to the adverse impacts of climate change.

On 29 May 2024, the OECD released its seventh assessment of progress towards the United Nations Framework Convention on Climate Change (UNFCCC), with the goal of mobilising USD 100 billion annually for developing countries.<sup>21</sup> In 2022, developed nations surpassed this target for the first time, mobilising USD 115.9 billion in climate finance. Although this achievement came two years later than initially planned for 2020, it exceeded prior projections made before COP26. Key findings indicate that public climate finance accounted for nearly 80% of the total, with bilateral and multi-lateral contributions from developed countries increasing from USD 38 billion in 2013 to USD 91.6 billion in 2022, demonstrating substantial growth in climate investments. Adaptation finance experienced a notable recovery after a brief decline in 2021, reaching USD 32.4 billion in 2022, tripling the 2016 level, although mitigation continued to dominate, comprising 60% of total finance. Additionally, private finance mobilisation rose by 52%, driven by public climate finance, signalling a growing role for the private sector in advancing climate action, which is essential for achieving long-term goals.

19 USAID, n.d.

20 Munang and Mgendi, 2016.

21 OECD, n.d.

For African countries and other developing nations, surpassing the USD 100 billion target marks a significant milestone in global climate efforts, particularly for those most vulnerable to climate change impacts. This increase in climate finance will enable these nations to implement vital adaptation and mitigation strategies, from building resilient infrastructure to reducing their carbon footprints. This surge in adaptation funding reflects the international community's growing recognition of the urgent need to protect vulnerable regions from climate-related disasters.

While the financial target has been met, according to the OECD, the challenge now lies in ensuring that this funding is used effectively to reduce emissions and build climate resilience in developing nations. The rise in private finance, driven by public sector efforts, highlights the growing importance of public-private partnerships in sustaining climate action. This collaboration will maintain momentum and ensure continued progress in the years to come. For example, the implementation of the Paris Agreement in Africa was strengthened by international partnerships, such as the United States Agency for International Development's (USAID) commitment to supporting African countries in reaching their climate goals.<sup>22</sup>

Although the Paris Agreement is not specifically tailored to Africa, its implementation remains vital for the continent's sustainable development. The agreement establishes a global framework that enables African countries to address their distinct climate challenges while benefiting from international support for mitigation and adaptation strategies, which are essential for building a resilient and sustainable future.<sup>23</sup> Financial and technical assistance under the agreement has enabled African nations to mitigate climate impacts and enhance their resilience. By aligning with global goals, Africa is not only protecting its environment but also advancing human rights and equitable development. African countries continue to periodically update their climate plans, ensuring their relevance in the face of an evolving crisis. This iterative process fosters sustainable development by integrating emerging opportunities for adaptation and mitigation. Thus, the Paris Agreement remains a critical tool for Africa's climate action, safeguarding environmental rights and advancing towards a healthy and sustainable future, even as the landscape of international partnerships evolves.

### ***2.3. The End of an Era and Africa's Path to Self-Reliance***

For decades, USAID has been the cornerstone of American aid to developing nations, addressing poverty, health crises, and climate-related vulnerabilities. Founded in 1961, it played a pivotal role in global humanitarian efforts before its closure in 2025.<sup>24</sup> Its partnerships, such as those with the African Union Commission (AUC), strengthened climate adaptation, institutional capacity, and policy localisation, aligning with the Paris Agreement's goals. Yet, while USAID's departure marks the end of an era,

22 USAID, n.d.

23 Adhikari, 2024.

24 Faguy, 2025.

the author of this chapter believes that it also presents Africa with an opportunity in the form of an urgent imperative: self-reliance is no longer a choice but a necessity.

As African Development Bank (AfDB) President Akinwumi Adesina declared in a recent address, ‘The era of aid or free money is gone.<sup>25</sup> Africa must overhaul its approach toward achieving fast-paced development’ (AfDB, 2025). Speaking at Nigeria’s National Open University, Adesina warned that foreign aid, restrictive global policies, and undervalued natural resources demand a radical shift in strategy. ‘The dismantling of USAID and similar anti-aid measures in Europe means the old development models Africa relied on will no longer work,’ he asserted. ‘Benevolence is not an asset class.’ The author of this chapter shares President Adesina’s vision that Africa must pivot from aid dependency to investment discipline, leveraging its vast resources and intracontinental trade. The African Continental Free Trade Area (AfCFTA) offers a blueprint: ‘Produce local, buy local, trade more locally’, while strategic alliances and value-added industrialisation can unlock sustainable growth. The challenges are undeniable: climate injustice, tariff wars, and systemic undervaluation of Africa’s natural capital. However, as mentioned above, they are also opportunities to ‘chart Africa’s future, not on the benevolence of others, but on self-reliance and smart global positioning.’<sup>26</sup>

Moreover, the closure of USAID calls for a critical reassessment of traditional aid structures, their effectiveness, long-term impacts, and inherent limitations. Rather than lamenting its departure (doing so will bring nothing positive), Africa must seize this moment to leverage its untapped potential: its skilled workforce, diaspora, knowledge, and vast natural resources. The path forward demands strong governance, zero tolerance for corruption, and policies that unapologetically centre African interests in multilateral partnerships, regional cooperation, and climate finance models built on equity, not dependency. This chapter supports the opinion that such a shift presents a transformative opportunity: placing Africa’s climate resilience and development agenda firmly in African hands. By prioritising homegrown solutions backed by strategic alliances and sustainable investment, the continent can move beyond aid-driven stagnation. The goal is clear: a self-determined future in which external support acts as an enabler rather than a lifeline.

#### ***2.4. The Impact of the Rio Conventions on Environmental Protection in Africa***

The loss of biological diversity is another critical global environmental challenge and an urgent issue in Africa.<sup>27</sup> Biodiversity is essential for providing fundamental resources, such as food and water, and delivering crucial ecosystem services, such as climate regulation, pollination, disaster resilience, and nutrient cycling. Recognising these critical functions, the international community established the Convention on Biological Diversity (CBD), a treaty aimed at protecting biodiversity and ensuring

25 African Development Bank, 2025.

26 Ibid.

27 Saliu, Komolafe, Bamidele and Raimi, 2023, pp. 269–294.

sustainable development. All African nations are signatories to the CBD, reflecting the continent's understanding of the importance of biodiversity in supporting economic growth, sustainable development, livelihoods, and overall well-being.<sup>28</sup> Biodiversity is also crucial for Africa's strategic goals, contributing directly to the achievement of both the AU Agenda 2063 and the 2030 Agenda for Sustainable Development. African nations are committed to the CBD's key objectives, including the equitable sharing of benefits derived from the use of genetic resources. This sharing promotes fairness and equity, ensuring that the use and valuation of biological resources benefit all stakeholders, especially those from resource-rich but economically disadvantaged regions.

Since its inception in 1992, the CBD has achieved near-universal membership, with South Sudan being the last African state to join in 2014.<sup>29</sup> The widespread adoption of this convention by African countries is a testament to their collective commitment to conserving biodiversity, using natural resources sustainably, and ensuring the fair distribution of benefits derived from these resources. Like their global counterparts, African countries have incorporated the principles of the CBD into their regional and national legislation, demonstrating their dedication to environmental protection.

The CBD was officially opened for signature at the Rio Earth Summit on 5 June 1992, alongside two other significant environmental treaties: the UNFCCC, which at that time already highlighted the importance of adaptation laws<sup>30</sup> in addressing climate change, and the United Nations Convention to Combat Desertification.<sup>31</sup> These three treaties, collectively known as the Rio Conventions, symbolised a universal initiative to tackle the world's most critical environmental challenges. For African nations, adopting these conventions significantly strengthened their global environmental commitments and bolstered efforts to incorporate solutions for desertification, climate change, and biodiversity protection into national and regional policies. This integration allows African states to address these interconnected issues holistically, ensuring sustainable development while aligning with international frameworks. These treaties not only guide African countries in combating environmental degradation but also facilitate access to global resources and technical support, which are crucial for implementing effective environmental protection strategies to tackle the profound impacts of climate change and global warming across Africa, particularly in sub-Saharan countries where the effects are felt most acutely.<sup>32</sup> These impacts extend to both the environment and the economy, affecting livelihoods, agricultural productivity, and overall development. In response, African nations are actively implementing various strategies and international frameworks to mitigate these negative effects. These strategies aim to reduce vulnerabilities, enhance resilience, and foster sustainable development to ensure that both the natural environment

28 AUDA-NEPAD, 2020.

29 Convention sur la diversité biologique, 1992.

30 Verschuuren, 2022, pp. 14–30.

31 Food and Agriculture Organization, n.d.

32 Adenuga, Mahmoud, Dodo, Albert, Kori and Danlami, 2021, pp. 393–409.

and economic systems can adapt to and withstand the changing climate. In terms of implementation, the AU Development Agency–NEPAD (AUDA–NEPAD) plays a crucial role in advancing the objectives of the CBD across Africa. Various programmes, such as the AFR100 (African Forest Landscape Restoration Initiative), TerrAfrica, and the African Biosafety Network of Expertise (ABNE), are helping member states integrate the principles of biodiversity conservation into broader policies on agriculture, infrastructure, and trade.<sup>33</sup> For instance, initiatives such as the Comprehensive Africa Agriculture Development Programme (CAADP), the Programme for Infrastructure Development in Africa (PIDA), and the AfCFTA are integrating biodiversity protection as a core part of their strategies. These initiatives are driving the transition to sustainable practices by applying nature-based solutions that enhance long-term environmental sustainability. AUDA–NEPAD also works closely with a range of stakeholders, including local communities, the private sector, development partners, and government ministries, to ensure that biodiversity is an integral part of Africa’s development model. This holistic approach promotes biodiversity conservation, ensuring a meaningful contribution to improving livelihoods and promoting sustainability for future generations.

By aligning national policies with the objectives of the CBD and other international frameworks, African countries are making significant strides towards balancing development with environmental conservation. The CBD continues to serve as a vital instrument for ensuring the protection of Africa’s rich biological diversity, with a strong focus on sustainable development and the fair sharing of resources. Through regional programmes, African nations are actively working towards a future in which economic progress and environmental protection go hand in hand.

### 3. Regional Environmental Rights Instruments

#### ***3.1. African Union Climate Change and Resilient Development Strategy and Action Plan (2022–2032)***<sup>34</sup>

The AU’s Climate Change and Resilient Development Strategy and Action Plan (2022–2032) outlines a comprehensive roadmap for addressing the continent’s escalating climate vulnerabilities while advancing human rights, environmental sustainability, and economic development. This 10-year strategy aligns with Africa’s broader vision, particularly the AU Agenda 2063, which seeks to build climate-resilient economies and societies. By integrating global frameworks such as the Paris Agreement and the UN Agenda 2030 for Sustainable Development, the strategy demonstrates Africa’s proactive stance in balancing climate change adaptation and mitigation while focusing on social equity and environmental protection.

33 AUDA-NEPAD, 2020.

34 African Union, 2022.

As already mentioned in this chapter, Africa's contributions to pollution are minimal. In 2021, Africa contributed only 3.9% of the world's total CO<sub>2</sub> emissions from fossil fuels and industry, the smallest share among all global regions. Over the past two decades, Africa's contribution to global greenhouse gas emissions fluctuated between 3.4% and 3.9%, highlighting its relatively minimal impact compared to other regions.<sup>35</sup> However, the continent is disproportionately vulnerable to the adverse impacts of climate change, including droughts, floods, and extreme weather events.<sup>36</sup> This strategy highlights the significant socio-economic impacts of these changes on food security, water resources, infrastructure, and livelihoods, exacerbating poverty and inequality across the continent. With 105 million internal migrants expected by 2050 due to environmental degradation, the strategy acknowledges that climate change is both a human rights and development issue.

As African countries continue to face these immense challenges, their commitment to international human rights frameworks is critical. By implementing a Climate Change Strategy and Action Plan, African countries are working to ensure environmental protection and safeguard fundamental human rights, such as the right to life, health, and adequate living conditions, as emphasised in various international environmental conventions and frameworks ratified by African states. This strategy highlights the importance of effective governance in coordinating climate action at all levels – national, regional, continental, and international – across key sectors such as agriculture, energy, and water management. According to the AU Climate Change and Resilient Development Strategy and Action Plan,<sup>37</sup> promoting inclusive governance ensures that local communities, including marginalised groups such as women and youth, are actively involved in climate decision-making processes. This participatory approach advocates for coherent climate policies aligned with national socio-economic goals, focusing on strengthening the institutional capacity to monitor and implement these policies regionally.

Key policy measures include promoting renewable energy, improving agricultural productivity through climate-smart practices, and enhancing water management systems. These initiatives aim to foster climate-resilient infrastructure, which is crucial for addressing the continent's climate challenges while safeguarding human rights and promoting sustainable development. The strategy provides a blueprint for creating resilient economies that prioritise environmental protection through enhanced governance, low-carbon development pathways, resource mobilisation, and international cooperation. The focus on human rights, equitable resource use, and international climate commitments underscores Africa's pivotal role in global climate action and environment-related human rights. Regional flagship initiatives, such as the Great Green Wall Initiative<sup>38</sup> and TerrAfrica, demonstrate how nature-based

35 Statista, 2024.

36 United Nations Framework Convention on Climate Change, n.d.

37 African Union, 2022.

38 United Nations Convention to Combat Desertification, n.d.

solutions can address both climate resilience and sustainable development while advancing the implementation of environment-related human rights.

### ***3.2. Agenda 2063: The Africa We Want***<sup>39</sup>

The AU Agenda for the continent's sustainable development highlights Africa's focus on the intersection of socio-economic progress, political stability, and environmental resilience. While Agenda 2063 is not specifically a framework for combating climate change or a regional convention on environmental rights, it aligns with international treaties. The agenda underscores Africa's commitment to tackling climate challenges, protecting human rights, and promoting sustainable development. It stresses the importance of integrating environmental protection into national, regional, and continental policies. Moreover, the agenda envisions climate-resilient economies based on sustainable natural resource management, ensuring food security, access to clean water, and renewable energy development. This holistic approach to sustainability promotes nature-based solutions, as exemplified by initiatives such as the Great Green Wall and AFR100, which focus on restoring degraded lands and enhancing biodiversity. These initiatives are critical for protecting environment-related human rights, such as the right to health, clean water, and adequate living conditions.

The agenda further stresses the need for climate action across key sectors, such as agriculture, energy, and water management, and emphasises the importance of institutional capacity-building to ensure that environmental sustainability aligns with broader socio-economic goals, particularly at the regional level. Addressing climate change mitigation and adaptation aligns with global climate strategies and international commitments that are crucial for realising the right to a clean, healthy, and sustainable environment.

### ***3.3. Africa Sustainable Development Report 2024***<sup>40</sup>

While Agenda 2063 is the AU's strategic vision for the continent's sustainable development, the SDGs provide a global template, including environmental and human rights priorities, which African nations, as members of the UNGA, are committed to implementing. The AU Agenda 2063 and the SDGs form a coherent and intertwined framework for addressing Africa's environmental challenges and human rights. Both frameworks integrate environment-related human rights, highlighting the responsible management of natural resources and a commitment to climate resilience (p. 15), SDG 13 (Climate Action), and SDG 6 (Clean Water and Sanitation), emphasising environmental protection, which is critical to upholding the human rights to life, health, and adequate living conditions. African countries, being bound by both regional and international frameworks, strive to address environmental degradation as part of their human rights obligations.

39 African Union, 2015.

40 The African Union, African Development Bank, United Nations Development Programme and the United Nations Economic Commission for Africa, 2024.

The 2024 Africa Sustainable Development Report highlights how African countries are progressing in implementing environmental policies. However, the pace is often hindered by external shocks such as economic crises, political instability, and, more significantly, climate change. For instance, African nations continue to face significant challenges in integrating climate adaptation strategies into national development plans, which is essential for both the SDG and Agenda 2063 goals. Nonetheless, countries such as Ethiopia, Kenya, and South Africa have made notable strides in embedding climate resilience into their national policies.

In terms of climate finance, the report notes that Africa receives a small portion of global climate finance, which is far below what is needed to meet its climate action commitments. This is a critical challenge, as approximately USD 2.8 trillion is needed to implement Africa's NDCs by 2030, but only USD 29.5 billion has been mobilised annually as of 2020 (p. 31). Agenda 2063 and the SDGs are closely linked in their pursuit of environmental protection and the safeguarding of human rights. Through their UNGA membership and ratification of international agreements, African nations are bound by global climate action commitments, which play a key role in shaping the global environmental agenda. The Africa Sustainable Development Report 2024 reflects ongoing efforts to align regional goals with global targets, ensuring that Africa's development trajectory remains sustainable while protecting its rich biodiversity and upholding environment-related human rights.

### ***3.4. Kampala Ministerial Declaration on Migration, Environment and Climate Change (KDMECC-AFRICA)<sup>41</sup>***

Another important step in addressing climate change challenges and upholding environment-related human rights in Africa is the signing of the Kampala Ministerial Declaration on Migration, Environment, and Climate Change (KDMECC-AFRICA). Several bilateral agreements and ministerial declarations aim to enhance climate action among African countries. However, the Kampala Declaration stands out as it reflects a clear commitment to developing a coordinated and integrated approach for managing the growing displacement of people caused by climate change. This declaration highlights a unified effort to address the increasing environmental challenges that drive migration and to ensure a more sustainable and collaborative response across the continent. With environmental crises such as droughts, floods, and food insecurity, projections estimate that up to 105 million people will be internal migrants in Africa by 2050, making this declaration crucial for protecting vulnerable populations and ensuring their human rights. The KDMECC-AFRICA has a continental scope, engaging African countries in their collective struggle against climate change. It aligns with their obligations under international agreements such as the Paris Agreement, SDG 13, the CBD, and the ICESCR. These frameworks emphasise the protection of vulnerable populations and the sustainable use of natural resources. By

41 International Organization for Migration, 2023.

signing this declaration, African nations reaffirm their commitment to both human rights and environmental sustainability.

Additionally, the KDMECC-AFRICA highlights the importance of international cooperation in addressing global environmental challenges such as climate-induced migration. The agreement underscores African leadership in developing innovative solutions for managing climate migration while providing a platform for international collaboration. This includes access to global climate finance, such as the Green Climate Fund and partnerships with international organisations. The declaration also emphasises that climate mobility is not solely a domestic issue, but rather requires cross-border collaboration and regional integration. When managed effectively, migration can serve as a strategic adaptation mechanism, and the declaration emphasises the need for host countries to receive adequate support to manage and integrate displaced populations. By recognising the interconnectedness of migration, environmental degradation, and human rights, African countries are positioning themselves to lead in addressing the root causes of displacement and ensuring that sustainable development is achieved across the continent. The Kampala Declaration serves as a reminder that addressing the consequences of climate change, including migration, is essential for safeguarding environment-related human rights and achieving long-term social stability across Africa.

### ***3.5. The African Charter on Human and Peoples' Rights (ACHPR)***

The ACHPR, also known as the Banjul Charter, stands as a cornerstone of the African human rights system.<sup>42</sup> This legal framework emerged from Africa's historical context, particularly its colonial past and the subsequent creation of the Organisation of African Unity (OAU) in 1963.<sup>43</sup> The OAU, established to support anti-colonial movements, played a crucial role in shaping the ACHPR, which was unanimously approved at the OAU's 18th Assembly held in Nairobi, Kenya, in June 1981. Officially coming into force on 21 October 1986, the Charter established the foundation for human rights in Africa, with 21 October designated as "African Human Rights Day".

### ***3.6. The Role of the OAU and Transition to the African Union***

The OAU, established by 32 African governments on 25 May 1963, played a pivotal role in promoting human rights, particularly through its support for the anti-apartheid and anti-colonial movements. Once these missions were accomplished, the OAU gradually shifted its focus to addressing more complex challenges, such as globalisation and regional integration. The organisation began to emphasise the importance of human rights within its broader agenda. By 26 May 2001, the OAU had transitioned into the AU, an expanded entity focused on political unity and addressing contemporary social, economic, and environmental challenges. The AU was officially launched

<sup>42</sup> African Union, n.d.b.

<sup>43</sup> African Union, n.d.a.

in Durban, South Africa, on 9 July 2002, with its core mandate including human rights and sustainable development.

### ***3.7. ACHPR: A Milestone in Africa's Human Rights Framework***

The ACHPR is Africa's primary regional human rights treaty. It outlines a wide spectrum of civil, political, economic, social, and cultural rights for both individuals and peoples. Among the rights enshrined are the rights to life, a healthy environment, liberty, education, and freedom of expression. The ACHPR stands out as a comprehensive document that protects individual rights while emphasising collective rights, such as the right to self-determination and development (Article 22). One particularly notable provision is Article 24, which enshrines the right to a healthy environment, placing a collective responsibility on African states to safeguard the well-being of their populations by protecting the environment. This provision remains especially important today in the context of the fight against climate change and its negative impacts on the continent.

### ***3.8. The African Commission and the Court on Human and Peoples' Rights***

The ACHPR has two main monitoring bodies: the ACmHPR and the ACtHPR. Established on 2 November 1987, the ACmHPR is headquartered in Banjul and acts as a quasi-judicial body tasked with protecting and promoting human rights.<sup>44</sup> Although its recommendations are not legally binding, they hold significant moral and political weight, pressuring states to comply with their human rights obligations.

The ACtHPR, on the other hand, has binding authority. Established through a 1998 Protocol to the ACHPR, the Court began its operations after the Protocol came into effect on 25 January 2004.<sup>45</sup> The Court's decisions are enforceable by states that have ratified the Protocol, which has been signed by 34 AU Member States. Notably, eight countries have recognised the Court's jurisdiction to accept complaints from individual citizens and NGOs: Burkina Faso, Malawi, Mali, Ghana, Tunisia, The Gambia, Niger, and Guinea-Bissau.<sup>46</sup> Although four countries have withdrawn their declaration of support for the African Court to hear cases from citizens – Rwanda (2016), Tanzania (2019), Benin (2020), and Côte d'Ivoire (2020) – it is important to mention that the rulings of the Court are binding for all AU Member States, offering an additional layer of protection when national legal mechanisms fall short.<sup>47</sup>

### ***3.9. Jurisdiction and Admissibility***

Before hearing cases, the African Court assesses whether the case meets the necessary jurisdictional criteria. These include material jurisdiction, which examines whether the allegations involve violations of rights covered by the African Charter or any other

44 African Commission on Human and Peoples' Rights, n.d.

45 African Court on Human and Peoples' Rights, n.d.

46 Ibid.

47 Adjolohoun and Nantulya, 2024.

applicable human rights instrument. The Court also ensures personal jurisdiction by verifying whether the complainant belongs to a recognised group permitted to submit cases. Furthermore, the Court ensures temporal jurisdiction, determining whether violations have occurred after the state's ratification of the relevant protocol. Finally, territorial jurisdiction considers whether alleged violations occurred within the state's territory.

### ***3.10. Implementation of Environment-Related Human Rights***

A key aspect of the ACHPR is its commitment to environment-related human rights. As articulated in Article 24, the right to a healthy environment is collective, requiring states to take the necessary measures to protect and preserve the environment for their citizens.<sup>48</sup> This aligns with the broader human rights discourse on sustainable development, which is increasingly important given Africa's environmental challenges, including deforestation, climate change, and biodiversity loss. The AU's agenda includes initiatives such as the Great Green Wall and other nature-based solutions to combat desertification, preserve biodiversity, and ensure sustainable development, all of which relate directly to the right to a healthy environment.

### ***3.11. African Human Rights Institutions***

In addition to the Commission and the Court, several other institutions promote human rights and environmental sustainability within the African system. These include the AU Advisory Board on Corruption (AUABC), the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), and the AU Commission on International Law (AUCIL). Collectively, these institutions form an essential part of Africa's broader governance and human rights framework, ensuring that human rights, including environmental rights, are upheld.

Based on the above, the ACHPR and its associated institutions reflect Africa's strong commitment to human rights protection, grounded in regional values and international obligations. The ACmHPR and the ACtHPR together serve as pillars of the continent's human rights framework, ensuring that both individual and collective rights – including the right to a healthy environment – are recognised and upheld. As environmental degradation poses increasingly challenging threats to the continent, the ACHPR's focus on environmental rights is more critical than ever, ensuring that African nations are legally and morally obligated to protect their populations from environmental harm. Through these frameworks, the continent continues to build a future grounded in human dignity, sustainability, and justice.

48 OAU, 1981.

#### 4. Case Studies

Environmental human rights-related cases are gaining increasing recognition on the global stage. This momentum is unlikely to slow, particularly following the UNGA's 2022 adoption of the right to a clean, healthy, and sustainable environment as a fundamental human right. This is supported by the UN HRC Resolution 48/13, which highlights the undeniable impact of environmental degradation on the enjoyment of basic human rights, such as the rights to life, health, and adequate living conditions. With its vast environmental resources, Africa is acutely affected by environmental challenges, positioning the continent at the forefront of addressing them.

Despite the growing global recognition of environmental rights, landmark decisions specifically addressing the right to a healthy environment have yet to emerge from the ACtHPR or the ACmHPR. By contrast, national and sub-regional courts, such as the Court of the Economic Community of West African States (ECOWAS), have proactively adjudicated environmental cases. This gap was already noted in 2003 by Ebeku, Van Der Linde, and Louw, who observed the limited regional jurisprudence on Article 24 of the African Charter, which enshrines the right to a satisfactory environment. More recent studies, such as those by Jegede (2024) and Suedi and Fall (2024), continue to highlight this deficiency. The ongoing absence of significant regional case law points to a disconnect between Africa's pressing environmental challenges and the legal responses available through its regional human rights mechanisms.

In recent years, the rising trend of climate change litigation has mirrored global developments, with an increasing number of lawsuits addressing the environmental impact of corporate activities. According to Setzer and Higham (2021), the number of climate-related cases has more than doubled since 2015. This surge in litigation reflects increasing recognition that environmental harm is inherently linked to human rights violations. Lawsuits against companies for environmental damage are progressively addressing both pollution concerns and their broader impacts on human rights. This shift is pushing corporations to adopt more environmentally conscious practices.

Although the African Court and Commission have received environmental cases, procedural shortcomings and insufficient evidence often hinder their success, particularly those involving Article 24. One example is the *Front for the Liberation of the State of Cabinda v. Republic of Angola* (2013), in which the African Commission dismissed environmental rights claims due to insufficient evidence. Similarly, the *AFTRADE-MOP and Global Welfare Association v. Cameroon* (2013) case was struck out due to a lack of diligent prosecution, revealing the procedural challenges that often obstruct environmental litigation in Africa.<sup>49</sup> While African countries heavily rely on their natural resources for development, the author of this chapter believes that courts must strike a balance between these economic interests and the protection of human rights and environmental sustainability. As more litigation cases arise, regional bodies are

49 Open Society Justice Initiative, 2015.

expected to play a more decisive role in safeguarding environmental rights. Article 24 will increasingly come to the forefront of regional judicial decisions, particularly as the influence of climate change activism and the global push for environmental justice grows.

#### **4.1. Landmark Cases Addressing Environmental Rights in Africa**

One of the most significant environmental rights cases in Africa is the *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria (155/96)*.<sup>50</sup> In this case, the ACmHPR found the Federal Republic of Nigeria in violation of several articles of the ACHPR, specifically Articles 2, 4, 14, 16, 18(1), 21, and 24. These violations stemmed from the Nigerian government's involvement, alongside oil companies, in activities that severely damaged the environment, health, and livelihoods of the Ogoni people in Ogoniland. The Commission made several key recommendations to the Nigerian government, including: (1) Halting all attacks on Ogoni communities and ensuring free access for citizens and independent investigators to the affected areas; (2) Conducting thorough investigations into the human rights abuses by security forces, the Nigerian National Petroleum Corporation (NNPC), and related agencies, and prosecuting those involved; (3) Providing adequate compensation to the victims, offering resettlement assistance, and undertaking a comprehensive cleanup of the lands and rivers damaged by oil operations; (4) Ensuring that environmental and social impact assessments are carried out for future oil developments and establishing independent oversight for the safe operation of the petroleum industry; (5) Offering health and environmental risk information to affected communities and providing meaningful access to regulatory and decision-making processes related to oil operations.

Additionally, the Commission urged the Nigerian government to keep it informed of the progress made by various national bodies, including the Federal Ministry of Environment, the Niger Delta Development Commission (NDDC), and the Judicial Commission of Inquiry, which were set up to address human rights violations. This ruling underscored the African Commission's stance on linking environmental protection with human rights, making it a landmark case for environmental justice in Africa.

Another pivotal case in the African human rights landscape is the *Ogiek Indigenous Peoples v. Kenya* (Ogiek Case), heard by the ACtHPR.<sup>51</sup> This case centred on the Ogiek community's struggle to protect their land rights and cultural heritage in the face of an eviction notice issued by the Kenya Forestry Service, which ordered them to vacate their ancestral lands in the Mau Forest. The Commission argued that the eviction notice overlooked the critical role the Mau Forest played in the survival of the Ogiek people, leading to violations of several articles of the African Charter, including Articles 1, 2, 4, 8, 14, 17(2) and (3), 21, and 22. While Article 24, which pertains to the

50 ACHPR, 2001.

51 ACtHPR, 2012.

right to a healthy environment, was not directly cited in the judgment delivered on 26 May 2017, the case's focus on land rights and environmental protection highlighted its underlying principles. The Ogiek's ability to maintain their cultural practices and way of life was intrinsically linked to their access to a healthy environment, including the preservation of their ancestral lands and natural resources. Consequently, even though Article 24 was not explicitly mentioned, its essence was considered in the Court's decision, making the Ogiek Case a broader affirmation of the right to a healthy environment.

Another landmark case in which the Court specifically mentioned Article 24 is *Ligue Ivoirienne des Droits de l'Homme (Lidho) & Others v Côte d'Ivoire*, in which the ACtHPR addressed the State's failures in protecting its citizens from corporate environmental harm.<sup>52</sup> The facts of the case state that on 19 August 2006, the cargo ship Probo Koala, chartered by the multinational company Trafigura Ltd., arrived at the port of Abidjan, Côte d'Ivoire, carrying 528 cubic meters of highly toxic waste. This waste was unloaded and dumped at various locations across Abidjan and its surrounding suburbs, none of which had proper facilities for treating chemical waste.

Following the dumping, the surrounding areas experienced widespread air pollution and an overpowering stench. On the same day, thousands of residents sought medical help, reporting symptoms such as nausea, vomiting, headaches, rashes, and nosebleeds. According to official Ivorian sources, the incident led to the deaths of 17 people due to toxic gas exposure, while hundreds of thousands more were adversely affected. Environmental assessments also confirmed significant contamination in the impacted areas.

The Court's examination revealed several critical failures. In its landmark ruling, the ACtHPR identified violations of five key Charter provisions: (1) Article 4 (right to life) through failure to prevent deaths from toxic exposure; (2) Article 16 (right to health) due to inadequate medical response; (3) Article 24 (right to a healthy environment) by permitting uncontrolled hazardous waste dumping; (4) Article 9(1) (right to information) due to a lack of transparency about risks; (5) Articles 1 & 7 (access to justice).

The Court's remedial orders established important precedents, including: (1) Comprehensive medical rehabilitation programmes; (2) Legislative reforms on hazardous waste management; (3) Strengthened corporate accountability mechanisms; (4) Victim compensation funds.

Significantly, while declining to order a public apology, the judgment emphasised that monetary settlements cannot substitute for proper accountability (paragraph 228). The ruling's broader importance lies in its explicit linkage between environmental protection and human rights obligations under Article 24, which this author believes builds on the Ogiek case's implicit recognition of this connection. In this case, it is clear that the Court intended to highlight the need for states to proactively

52 See *Lidho v. Côte d'Ivoire*, 2023.

regulate corporate actors to prevent environmental harm, rather than merely reacting to disasters after they occur.

As mentioned earlier, the author of this chapter believes that the increasing global awareness raised by civil society efforts, along with the emergence of domestic laws and policies aimed at mitigating climate change, will likely lead to more environmental litigation in the future. The previous case, *Ligue Ivoirienne des Droits de l'Homme (Lidho) & Others v Côte d'Ivoire* provides a good example. The impact of such regional rulings clearly influences domestic justice systems. This assumption is supported by the fact that, at the domestic level, national frameworks such as South Africa's Carbon Tax Act (Act No. 15/2019), Nigeria's Climate Change Act 2021, Kenya's Climate Change Act (Act No. 11/2016), and Uganda's National Climate Change Act 2021 are examples of legislative tools designed to address climate change and protect environmental rights. A notable case in South Africa was brought by the Centre for Environmental Rights against the South African Minister of Environmental Affairs in 2019. The plaintiffs argued that poor air quality in the Highveld Priority Area violated residents' constitutional rights to health and dignity. The High Court ruled in favour of the plaintiffs, finding that the Minister had unreasonably delayed the preparation of necessary air quality regulations. The Court ordered that these regulations be developed within 12 months, focusing on factors such as improved air quality reporting and emission controls.<sup>53</sup>

In Uganda, *Mbabazi and Others v. The Attorney General and National Environmental Management Authority* (2012) also stands out as a landmark decision on environmental rights, in which the Court addressed the government's responsibilities in managing environmental resources to safeguard citizens' rights to a healthy environment.

These cases underscore the growing intersection between environmental protection and human rights in Africa, with courts increasingly ruling that environmental harm can infringe upon fundamental human rights. This recognition is critical as Africa confronts economic development and environmental sustainability challenges, particularly in resource-rich regions.

An example of this is the natural resource-rich nation of Nigeria. According to the International Energy Agency (IEA), Nigeria is home to vast oil reserves.<sup>54</sup> The environmental impact of oil exploitation has led to significant legal battles. While climate-change litigation in Nigeria is still in its infancy (Etemire, 2021), notable progress has been made. In the landmark case *Centre for Oil Pollution Watch (COPW) v. Nigerian National Petroleum Corporation (NNPC)*, the Nigerian Supreme Court established an important precedent for environmental rights in 2021.<sup>55</sup> COPW sued NNPC over an oil spill in Abia State, alleging that NNPC's negligence had led to the contamination of

53 For additional environmental protection cases in South Africa, see: *EarthLife Africa Johannesburg v. Minister of Environmental Affairs*, 2017. For Kenya, the case on the importance of Environmental Impact Assessments is highlighted in *Save Lamu v. National Environmental Management Authority and Amu Power Co Ltd*, 2019.

54 International Energy Agency, n.d.

55 See *Centre for Oil Pollution Watch v. NNPC*, 2018.

local water sources and environmental harm. Initially dismissed by the lower courts due to a lack of standing, the Supreme Court overturned these rulings, affirming that NGOs have the right to sue in the public interest. More significantly, the Court recognised the right to a clean and healthy environment as a fundamental human right under Nigeria's Constitution and the African Charter, specifically under Article 24. It is worth noting that under Article 20 of the 1999 Constitution, updated by the 1st, 2nd, and 3rd Alterations (2010), 4th Alteration (2017), and 5th Alteration (2023), it is stated that the 'State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria'. This decision affirmed the enforceability of the ACHPR within national legal systems, strengthening the link between environmental protection and human rights in Africa.<sup>56</sup>

A similar case addressing environmental rights in Nigeria is *Gbemre v. Shell Petroleum Development Company of Nigeria Ltd. and Others*.<sup>57</sup> In this case, the applicant argued that the gas-flaring activities conducted by Shell, with the endorsement of the Nigerian government, violated the community's rights to life and human dignity, as enshrined in Sections 33 and 34 of the 1999 Nigerian Constitution. Additionally, the claim referenced Articles 4, 16, and 24 of the ACHPR, which had been ratified and domesticated in Nigeria under Cap. A9, Laws of the Federation of Nigeria (2004).

This case specifically challenged the decades-long gas flaring in the Iwherekhan Community, arguing that the activity posed severe health and environmental hazards. The Federal High Court of Nigeria ruled in favour of the applicant, finding that gas flaring violated the community's constitutional rights to life, dignity, and a healthy environment. The Court ordered the Nigerian government and Shell to cease gas-flaring operations immediately. Moreover, it urged the strengthening of legislative reforms to prevent future violations and ensure environmental protection in line with human rights principles. This decision marks another landmark, linking environmental degradation with the violation of fundamental human rights in Africa and setting a legal precedent for environmental justice.

In addition to national courts, sub-regional courts such as the ECOWAS Court of Justice have played an important role in enforcing environmental rights. The ECOWAS Court, established under Article 15 of the Revised Treaty of ECOWAS, has addressed cases in which environmental degradation has violated human rights, underscoring the need for collective regional action to address these issues. This court guarantees the promotion and protection of human and peoples' rights in accordance with the African Charter, and ensures that individuals have recourse when their environmental rights are violated.

Overall, while Africa's regional human rights institutions (the African Court and the African Commission) have yet to make substantial landmark rulings on Article 24, national and community courts are increasingly addressing the connection between environmental degradation and human rights. The growing trend of climate change

<sup>56</sup> Federal Republic of Nigeria, 1999.

<sup>57</sup> See *Gbemre v. Shell Petroleum Development Company Nigeria Limited and Others*, 2005.

litigation, particularly against corporations, reflects the realisation that human rights cannot be fully protected without safeguarding the environment. Africa's human rights system will likely play a pivotal role in driving corporate accountability and promoting sustainable development, ensuring that economic growth and human dignity are prioritised across the continent. This evolution in environmental jurisprudence is critical for protecting Africa's natural resources and upholding the human rights of its people.

## 5. Conclusion

The right to a clean and healthy environment has emerged as a critical component of international human rights law, particularly in the context of global climate change. However, Africa's human rights system has not fully exploited its potential to enforce this right. The ACHPR explicitly guarantees the right to a satisfactory environment under Article 24, recognising its interdependence with other fundamental rights, such as life, health, and livelihood.

However, prior to the landmark 2023 decision in *Ligue Ivoirienne des Droits de l'Homme (LIDHO) v. Côte d'Ivoire*, neither the African Court nor the Commission had consistently developed robust jurisprudence linking environmental harm to human rights violations. The LIDHO case marked a turning point, with the Court explicitly addressing state obligations for corporate-driven environmental damage under Article 24. Earlier, the African Commission's ruling in *SERAC and CESR v. Nigeria (155/96)* set a precedent by holding Nigeria accountable for the oil-related devastation in Ogoniland, tying environmental degradation to violations of the Charter. Despite these victories, such cases remain rare at the regional level, with most environmental litigation confined to national or sub-regional courts.

Among the challenges highlighted in this chapter are domestic remedies and the shrinking of jurisdiction. A critical barrier is the exhaustion of domestic remedies, a requirement emphasised by the UN HRC, which continental courts, such as the ACHPR, often cite to declare a complaint inadmissible for non-compliance. This procedural hurdle often delays or blocks access to regional justice. Compounding this issue, some African states (mentioned in this chapter) are increasingly withdrawing their jurisdictional declarations under Article 34(6) of the African Court Protocol, limiting citizens' and civil society's ability to hold governments accountable for environmental rights violations. This trend risks weakening the enforcement of ratified regional and international instruments, including those related to environmental protection.

Nevertheless, states face competing pressures. African governments must demonstrate a commitment to environmental governance and human rights to attract foreign investment and maintain credibility with international financial institutions. Even as some withdraw from the Court's jurisdiction, they may still implement environmental rights domestically to avoid scrutiny from monitoring bodies, such as

the African Commission's State Reporting Mechanism and the African Peer Review Mechanism. These voluntary and self-regulatory tools ensure that African States and the AU adopt relevant policy and legislative frameworks to promote and protect the right to a clean and healthy environment and to prevent violations and enforce accountability for infringements or sanctions from global partners.

While the UN's recognition of the right to a healthy environment is a milestone, Africa's regional system must accelerate its jurisprudence to match this progress. National and sub-regional courts – such as the ECOWAS Court's rulings on extractive industry abuses – have led the charge in holding polluters accountable. However, the African Court and Commission must clarify state obligations under Article 24, streamline admissibility rules, and confront jurisdictional withdrawals to ensure that environmental rights are fully entrenched in Africa's human rights framework. Only then can the continent bridge the gap between its vast legal potential and the urgent realities of climate injustice.

To conclude this chapter, it is essential to note that on 2 May 2025, the ACtHPR received a request for an advisory opinion regarding the obligations of states in the context of climate change. This landmark development, coupled with growing civil society pressure, could counterbalance the trend of jurisdictional withdrawals by compelling states to align their domestic climate policies with their regional obligations. As Suedi (2025) noted, the ACtHPR has sufficient time to carefully study its forthcoming advisory opinions from the International Court of Justice (ICJ) and the Inter-American Court of Human Rights (IACtHR) and position its own opinion accordingly, marking a historic milestone in the pursuit of climate justice.

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