The European Convention for the Protection of Human Rights and Fundamental Freedoms: A Fertile Ground for the Protection of the Environment?

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Abstract

Although the European system for the protection of human rights still does not explicitly recognize the right to a healthy environment as a human right, in recent decades, there has been an increasing trend of using the European Convention for the Protection of Human Rights and Fundamental Freedoms to solve environmental protection issues. In this regard, analyzing and applying the standards created by the European Court of Human Rights in environmental cases is necessary to strengthen national legislation, to practice, and face growing environmental challenges. The authors analyze the relationship between environmental and human rights, arguing the need to establish a normative link between both to systematically implement the United Nations Sustainable Development Goals for future generations. The central part of the paper is dedicated to research, analysis and assessment

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of the condition and status of environmental rights that have developed based on the jurisprudence of the European Court of Human Rights. The relationship between environmental protection and human rights as a synergistic conception in general international law has also found a place in this study, since the European regional legal system in this regard cannot be adequately explored without proper perception and understanding of the universal system of the protection of human rights and the environment, which is conceptually well reflected in multiple Sustainable Development Goals. In order to continue finding the most efficient international institutional protection mechanisms, it is essential to consistently detect and present the international normative framework that recognizes the right to a healthy, clean, and sustainable environment as a human right. Relying on the latter, the authors present and problematize the issue of recognizing the right to a healthy environment as a human right in adopting the 2021 United Nations Human Rights Council Resolution that prescribed the right to a healthy environment as a human right.

Keywords: Right to a Healthy Environment, Environmental Rights, Human Rights, European Court of Human Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms, UN Human Rights Council

A. Introduction

In recent decades, environmental issues such as air pollution, water pollution, ozone depletion, and the endangerment of rare plant and animal species have been increasing, and environmentalists around the world have been trying to raise awareness of the importance of a clean and healthy environment.[1] The lack of an adequate attitude towards the environment has brought humanity almost to the brink of the abyss. In addition to numerous environmental issues, climate change is also a consequence of anthropocentric human behavior, as Earth requires human cooperation with the environment. The consequences of global pollution and environmental degradation have a detrimental effect on the quality of human life, as they interfere with and limit the full enjoyment of human rights.[2] Experts warn that humanity has

1 For example, see *Office of the Commissioner for Human Rights*, *Council of Europe*, Environmental Rights Activism and Advocacy in Europe: Issues, Threats, Opportunities, Report, 18 December 2021. Also see *Saura-Freixes*, UNIO – EU Law Journal 2022/8, pp. 53–79.

2 See forecasts of the consequences of climate change 15 years ago in *Kurukulasuriya/Robinson/Kerlin*, p. 301, and compare it with research today, for example with the United Nations Environment Program, Greening the Blue Report 2021: The UN System's Environmental Footprint and Efforts to Reduce it. Geneva; IPCC, 2018: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty, UNEP/UNECE, 2016. GEO-6 Assessment for the pan-European region (rev. 1). United Nations Environment Program, Nairobi, Kenya.

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a 50 percent chance of exceeding the temperature threshold of 1.5°C in the coming decades.[3]

An alarming situation, which is reflected in large amounts of air pollution, water pollution, ozone depletion, and the endangerment of rare plant and animal species. It is also the primary reason for launching a debate on states' attitude towards the environment and the right of individuals to be surrounded by a healthy, clean and sustainable environment. The abovementioned circumstances raised the question of the existence, and substantial content of the latter, which has become subject to numerous international debates.

Environmental protection and human rights have influenced each other in many ways, even if, as can be taken from previous statements, conflicts stemming from the protection of human- and environmental rights have occurred. As noted by *Dupuy/Viñuales*, "[o]ne underlying condition for the full respect of at least some human rights is an environment of sufficient quality to avoid significant impacts on human health and living standards",[4] particularly taking into consideration "the devastating impact that water or air pollution can have on health or even on the lifespan of humans in many regions of the world".[5] The synergistic conception between environmental protection and human rights "has deeply influenced international practice ever since, not only in the adoption of new international instruments but also in the context of adjudicatory and quasi-adjudicatory proceedings",[6] which is understandable and supported "given that the values protected by these bodies of international law are closely interconnected".[7]

B. Environmental Rights and Human Rights[8]

At the very beginning of the discussion, it should be emphasized that the literature uses different names for the concept of environmental rights.[9] For the purposes of this paper, the term "right to a clean and healthy (and sustainable) environment" will be used and discussed. In international scientific discourse, there is no unified opinion on the legal nature and the concept thereof.[10] Regarding human rights, the

3 Emissions Gap Report 2021: The Heat Is On, United Nation Environment Programme (UNEP) and UNEP DTU Partnership, XV, 2021.
4 *Dupuy/Viñuale*s, p. 297.
5 Ibid.
6 Ibid., p. 298.
7 Ibid. On the relationship between human rights and environmental protection as purely synergistic as the importance of environmental parameters for human life and health has been acutely perceived for a long time, see *Dupuy/Viñuales*, pp. 358–361, particularly pp. 362 et seq.
8 Some parts of this chapter are parts of research within the master's thesis titled „Right to a clean and healthy environment in the jurisprudence of European Court of Human Rights and European Court of Justice", which was submitted by Lejla Zilić to the Marmara University, Faculty of Law in July 2018 and published in: Republic of Turkey Council of Higher Education, National Thesis Center.
9 See *Zilić*, Annals of the Faculty of Law, University of Zenica 2019/23, p. 54.
10 Ibid., p. 55.

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right to a clean and healthy environment is often ranked under human rights of the third generation, though some authors consider it to not fall under a sole category of human rights, but spread throughout all three generations of rights.[11] Arguments supporting the view that the right to a clean and healthy environment extends across all three generations of rights are based on the fact that existing civil and political rights can be leveraged to provide individuals with access to environmental information.[12] In that way, individuals or non-governmental organizations are able to participate in decision-making processes on important environmental issues.

With regard to the human rights of the second generation, the right to a clean and healthy environment can be treated as an economic and social right that emphasizes the quality of the environment as a value that needs to be protected. Under the third generation, the advocates of the above-mentioned theory consider that the right to a clean and healthy environment can be treated as a group or collective right that provides the collective or community with guarantees of protection and preservation of the environment.[13]

Shelton believes that the right to a clean and healthy environment is recognized in practice as a human right, as it derives from existing human rights.[14] There are three main segments to the relationship between human rights and environmental rights. The first segment views environmental rights, i.e., environmental protection, as a prerequisite for the enjoyment of human rights, as a state's obligation to protect the environment to ensure full enjoyment of human rights on its territory. The second segment of the relationship, namely that certain rights, such as the right to information or the right to remedy, are essential in the decision-making process on environmental issues. The third segment is comprised of the fact that the right to a clean and healthy environment has found its place as a human right in the constitutions of many countries, as well as in two regional instruments for the protection of human rights.[15] This practice is not yet globally supported.

The past years have brought the development of several principles of environmental law that are directly or indirectly incorporated into international environmental instruments as well as national legislation. Based on national law and case law, as well as the case law of regional human rights courts, we notice that environmental rights and protection are broadly recognized as prerequisites for the enjoyment of human rights and as a precondition for sustainable development. Therefore, it is necessary to work on strengthening the normative link between

11 *Kiss*, in: Brown Weiss (ed.), p. 199.

12 The first generation includes civil and political rights, the second generation includes economic, social and cultural rights while the third generation includes the rights of solidarity and collective rights of the people. See more at *Wallace/Martin-Ortega*, p. 243.

13 *Boyle*, Fordham Environmental Law Review 2016/18, p. 1.

14 For example, see *Shelton*, Journal of Human Rights and the Environment 2010/1, p. 89.

15 African Charter on Human and Peoples' Rights (signed 27 June 1981, entered into force 21 October 1986) CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) and Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural rights – "Protocol of San Salvador" (adopted by Eighteenth regular session of the General Assembly, San Salvador, 1988) OAS Treaty Series No. 69; 28 I.L.M. 156.

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human rights and environmental protection, to take appropriate measures to reduce climate change, and work on sustainable development goals for future generations.[16] If national laws were examined in this context, it would be noticed that a large number of countries have already recognized the right to a healthy environment as a constitutional right.[17]

C. Protecting the Environment Globally

Despite "the rejection by some of international minimum standards for the protection of the environment"[18], "recent years have seen an appreciable growth in the level of understanding of the dangers facing the international environment and an extensive range of environmental problems is now the subject of serious international concern".[19] Notably, the International Court of Justice in 2018, for the first time, decided an environmental compensation case.[20] The Court, in 1993, established a special Chamber to handle environmental questions which has, as of now, heard no cases.[21] The Inter-American Court of Human Rights adopted an Advisory Opinion on human rights and the environment in 2017, "in which it held that in the case of large-scale transboundary infrastructure projects, the state parties to the Inter-American Convention on Human Rights can exercise extraterritorial jurisdiction under certain circumstances and so be responsible for the human rights in the territory in question".[22] Article 26 of the latter calls for the progressive development and realization of economic, social and cultural rights which, according to this regional Court, undoubtedly includes an autonomous right to a healthy environment.[23]

It has been argued that there now exists an international human right to a clean environment,[24] which is well connected with a large number of Sustainable Devel-

16 Read more in: *Tang/Spijkers*, Cjel, 2022/6, p. 104.
17 For example Spain, Portugal, Sweden, France, Switzerland, Finland, Norway, Brazil, Chile, Ecuador, etc. For more see *Zilić*, (fn. 8).
18 *Dixon*, p. 1.
19 *Shaw*, p. 739. For the evolution of international environmental law see generally *Amstrong/Farrell/Lambert,* pp. 259 et seq.
20 See ICJ, *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua),* Compensation, Judgment, [2018] ICJ Rep 15, p. 15. This was the second judgment of the Court following its judgment in the merits of the case rendered in 2015 (*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica),* Judgment, [2015] ICJ Rep 665, p. 665.
21 *Shaw*, p. 739.
22 Ibid., p. 742. Although it might seem that this Opinion does not fit into a section on global developments, this surely has important and relevant contemporary international implications.
23 However, the Court's approach to justify that it has jurisdiction to refer to Article 26 was highly problematic.
24 *Shaw*, p. 741. See generally *Shelton*, Yearbook of International Environmental Law 1992, p. 75. For more recent legal literature, see *Maguelonne/Pallemaerts*, pp. 11 et seq.

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opment Goals[25]. The 1972 Stockholm Declaration[26] introduced the concept of the right to a healthy environment and thus emphasized the deep synergies between environmental protection and human rights. The then-adopted Declaration states that the fundamental goals of environmental development are the reduction of risks in terms of living conditions, and the improvement of the quality of life, with particular attention to the protection of the environment in achieving these goals.[27]

So far, there are various general human rights provisions that may be relevant in the context of the protection of the environment.[28] However, for a new human right to have practical significance, some might opt for a new article to be added to the Universal Declaration of Human Rights,[29] although "amending" it does not seem to make sense and to be an adequate procedure, as the Declaration is not a binding treaty. On the other hand, it could be considered that the right to a healthy environment already represents customary international law, knowing that many states have had some formal domestic responses to environmental human rights claims.[30] Particularly, if Article 24 of the 1989 United Nations (UN) Convention on the Rights of the Child is perceived as ensuring that a child enjoys the highest attainable standard of living and that, among others, risks of environmental pollution will be taken into consideration when implementing this right. Moreover, at the regional level, two human rights instruments already guarantee the right to live in a healthy and clean environment: The 1981 African Charter on Human and Peoples' Rights (Article 24),[31] and the 1988 Protocol of San Salvador to the 1969 American Convention on Human Rights (Article 11),[32] which provides a more

25 Particularly with Clean Water and Sanitation, (*Blankenbach*, in: Negi et al.); Affordable and Clean Energy (*Degan*, pp. 50, 165); Climate Action (*Dernbach/Mintz*, Sustainability 2011/3, pp. 531–540); Life Below Water (*Dumberry*); Life on Land (*Eisenmenger* et al.). Compare with *Pinninti*, pp. 5–37.

26 Stockholm Declaration on the Human Environment, in Report of the United Nations Conference on the Human Environment, UN Doc. A/CONF.48/14, 5-16 June 1972, at 2 and Corr. 1. See United Nations General Assembly, United Nations Conference on the Human Environment, A/RES/2994, 15 December 1972.

27 Principle 1 thus 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." Compare with *Henriksen*, pp. 190–192.

28 The protection of the environment has gained a lot of attention in international investment law as well. See, for example, *Danic*, in: Leben, pp. 531–577.; See also, *Benedetto*, pp. 9 et seq., pp. 83 et seq.

29 *Meškić/Albakjaji/Jevremović/Omerović/Adams*, IOP Conf. Ser.: Earth Environ. Sci. 1026, p. 6.

30 See *Hancock*; Also, *Dumberry*, pp. 14 et seq.

31 "All people shall have the right to a general satisfactory environment favourable to their development."

32 "Everyone shall have the right to live in a healthy environment. The States Parties shall promote the protection, preservation and improvement of the environment."

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precise formulation than the African Charter.[33] Two international covenants of 1966 (International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights) and other human rights conventions, including codification conventions, play, in customary process, either the role of a pure codification of law already in force or crystallization into a new positive law.[34] Furthermore, the Convention on Environmental Impact Assessment in a Transboundary Context from 1991 calls for "the establishment of an environmental impact assessment procedure that permits public participation".[35] In the Rio Declaration on Environment and Development from 1992, human rights concerns were not the center of interest, the focus at the UN Conference on Environment and Development "was rather upon States and their sovereign rights than upon individuals and their rights".[36]

In the 1994 final report on Human Rights and the Environment[37] delivered to the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Draft Principles on Human Rights and the Environment were formulated stating, *inter alia*, that human rights, an ecologically sound environment, sustainable development, and peace, are interdependent and indivisible, and that all persons have the right to a secure, healthy, and ecologically sound environment.[38] Although legally non-binding, the *Institut de Droit International* adopted a resolution on the environment in 1997[39] that was the prelude to a new, more effective phase in the substantive and procedural development of the above described human right, which was represented in the 1998 conclusion of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. Therein, an explicit link of human rights and the environment is depicted, as it recognizes that "adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself".[40]

33 *Meškić/Albakjaji/Jevremović/Omerović/Adams*, IOP Conf. Ser.: Earth Environ. Sci. 1026, p. 6; *OAU,* African Charter on Human and Peoples' Rights (Banjul Charter), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982); *OAS*, American Convention on Human Rights, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), 16 November 1999, A-52.

34 Ibid., p. 7.

35 Espoo Convention, Art. 2(2).

36 *Shaw*, p. 742.

37 *Ksentini,* final report, Human Rights and the Environment, E/CN.4/Sub.2/1994/9, 6 July 1994.

38 In relation to this expression, compare the European Charter on Environment and Health from 1989 as well as the Dublin Declaration on the Environmental Imperative adopted by the European Council in 1990.

39 Art. 2 of which stipulates that "every human being has the right to live in a healthy environment".

40 Preamble of the Aarhus Convention. Art. 1 further provides that „[…] each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters […]".

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Notwithstanding that 80 percent of the UN member states already recognize the right to a healthy environment through national law, the events of 8 October 2021, when the UN Human Rights Council[41] adopted Resolution 48/13, which recognized the right to a healthy environment as a human right, represent perhaps a turning point in history.[42] It recalls the UN General Assembly Resolution 70/1 of 25 September 2015, in which the Assembly adopted a broad and complete set of universal Sustainable Development Goals and targets (Preamble), and further recognized climate change and threats to the environment and sustainability as the most serious threats to human rights (Preamble).[43] Moreover, the recent UN General Assembly Resolution A/76/L.75 of 28 July 2022, which acknowledged the human right to a clean environment for the first time, signals a significant shift in the global environmental discourse. It is noteworthy that the Council resolutions as well as the most UN General Assembly resolutions are non-binding international documents and therefore do not represent an international treaty, which is legally binding international law instrument that contains rights and duties for state parties.

The Resolution recognizes further that the right to a clean, healthy and sustainable environment as a human right is of great importance for other human rights, and emphasizes the full implementation of the multilateral environmental treaties (Resolution, points 1, 2, and 3).[44] Accordingly, the UN Human Rights Council recognized for the first time that having a clean, healthy and sustainable environment is indeed a human right.[45] States have been encouraged by this document to take decisive action to ensure that the right to a healthy environment is protected effectively and without delay (Resolution, point 4).[46]

The Council also adopted a resolution establishing the function of the Special Rapporteur on the promotion and protection of human rights in the context of climate change,[47] thus strengthening its focus on the impact of climate change on human rights.[48] The main task of the Special Rapporteur is to assess the effects

41 The Human Rights Council, composed of 47 member states, "is an intergovernmental body within the UN system responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and making recommendations on them." See https://www.ohchr.org/en/hr-bodies/hrc/about-council (30/5/2024).

42 *HRC*, The human right to a clean, healthy and sustainable environment, UN Doc. A/HRC/RES/48/13, 18 October 2021. See also *Meškić/Albakjaji/Jevremović/Omerović/Adams*, IOP Conf. Ser.: Earth Environ. Sci. 1026, p. 6.

43 Ibid.

44 Ibid.

45 See also *Report of the Special Rapporteur*, on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc. A/73/188, 19 July 2018. Read more in: *Ebbesson,* pp. 90–92.

46 *Meškić/Albakjaji/Jevremović/Omerović/Adams*, IOP Conf. Ser.: Earth Environ. Sci. 1026, p. 6.

47 *HRC*, Mandate of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, UN Doc. A/HRC/48/L.27, 4 October 2021.

48 https://news.un.org/en/story/2021/10/1102582 (30/5/2024); See *Meškić/Albakjaji/Jevremović/Omerović/Adams*, IOP Conf. Ser.: Earth Environ. Sci. 1026, p. 6.

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of climate change on human rights and to recommend measures to fight them. (Resolution, point 2(a)).[49]

Based on the above, one can claim that the right to a clean, healthy and sustainable environment is a human right, which entered the catalog of rights on the basis of customary international law. Consequently, it is not excessive to determine that this right has already become part of those international human rights that are guaranteed to every individual. Parallel thereto, it imposes obligations on all states, on a customary international law basis. The right has been developed and formulated, in the above-mentioned international documents, as a substantive right with a substantive scope,[50] each of which, to their extent, recognize the enjoyment of this right by individuals. In the next section, it will be assessed whether this right is protected by the European system of human rights protection, primarily through the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: Convention or ECHR)[51] and through the practice of the European Court of Human Rights (hereinafter: ECtHR).

D. Protecting the Environment through the European Convention for the Protection of Human Rights and Fundamental Freedoms

Although the ECHR does not recognize the right to a clean and healthy environment as a specific human right, the ECtHR has been examining violations of prescribed human rights under the Convention under a wide range of environmental issues.Due to the extensive interpretation of the Convention,[52] and the broad definition of the term "environment",[53] the ECtHR has ruled on 300 environment-

49 Ibid.

50 To compare, see *Maguelonne/Pallemaerts*, pp. 19 et seq.

51 European Convention for the Protection of Human Rights and Fundamental Freedoms (opened to signature 4 November 1950, entered into force 3 September 1953) 213 UNTS 222.

52 The ECtHR in its rich case law has developed „the living instrument doctrine" as a method of the Convention in the light of present-day conditions. The doctrine originated from the case ECtHR, *Tyrer v. United Kingdom,* Judgment of 25 April 1978, App.-No. 5856/72, in which the ECtHR stated that the Convention is "A living instrument which must be interpreted in the light of present-day conditions [...] It follows that these provisions cannot be interpreted in accordance with the intentions of their authors as expressed more than forty years ago. In addition, the object and purpose of the Convention as an instrument for the protection of individuals requires that its provisions be interpreted and applied so as to make its safeguards practical and effective."

53 In international law there is no standard definition of the environment. However, the Framework of the Council of Europe, Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment defines the environment as "natural resources both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors; property which forms part of the cultural heritage; and the characteristic aspects of the landscape." (Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, Lugano, 21.VI.1993., ETS-No. 150, Art. 2, para. 10). Additionally, it is also useful to mention the definition given by the

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related cases.[54] In this regard, the Court has examined cases in which individuals or non-governmental organizations complained that unfavorable environmental factors affected the full enjoyment of their human rights.

Environmental factors can influence the enjoyment of human rights in several ways: air pollution or environmental noise can affect the enjoyment of the right to private or family life; environmental degradation can violate one's right to life; public authorities can violate the right to freedom of expression if they deny access to information relevant to the decision-making process in environmental cases. On the other hand, environmental protection may also be a legitimate aim to justify interference with certain individual human rights. As *Buys* and *Lewis* observe, it is a multi-dimensional relationship between human rights and the environment, which has somewhat been acknowledged by the ECHR/ECtHR.[55]

Regarding substantive and procedural human rights, the ECtHR has so far ruled in several cases relating to (I.) the right to life, (II.) the prohibition of inhuman or degrading treatment, (III.) the right to respect for private and family life, (IV.) the freedom of expression, and (V.) right to an effective remedy. The subject of this contribution will be limited to the research of the judicial practice of the ECtHR within the framework of substantive and procedural human rights, which serve as fertile ground for the protection of the right to a healthy environment.

I. The Right to Life

Article 2(1) of the Convention guarantees "everyone's right to life". Furthermore, "[n]o 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". Based on this provision, one cannot help but wonder about the relationship between the right to life and the protection of the environment. Can any environmental pollution fall under the protection offered by Article 2? Does the ECtHR draw a distinction between pollution causing death and pollution not causing death? How can the expression "[n]o one shall be deprived of his life intentionally" be interpreted in favor of the recognition of the right to a clean and healthy environment as a specific human right *via* the right to life?

In fact, the cases invoking a violation of the right to a clean and healthy environment under Article 2 are not very dense in comparison with Article 8 of the Convention. This seems justified: firstly, by the scarcity of environmental damage that

International Court of Justice in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons: "environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn". (ICJ, *Legality of the threat or use of nuclear weapons*, Advisory Opinion, [1996] ICJ Rep 226, pp. 241–242, para. 29). Thus, the environment or living area is something that encompasses all natural resources that represent the common good of all human beings; and as such requires protection in order to preserve them for future generations.

54 See https://www.echr.coe.int/documents/fs_environment_eng.pdf (30/5/2024).

55 *Elinor/Bridget*, p. 950.

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leads to the death of individuals; then, by the strict interpretation of Article 2 by the judges of ECtHR.[56] Moreover, the ECtHR does not apply Article 2 when it considers that the harm has not reached a threshold of seriousness. For instance, in the case *LCB v. United Kingdom*,[57] the applicant alleged a violation of Article 2, citing the far-reaching consequences of the British nuclear test campaign on Christmas Island in the mid-1950s on his and his child's health. The causal link between the father's exposure to radiation and the subsequent appearance of leukemia in his child has not been established. Although the ECtHR considers that "the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction",[58] it does not exempt the applicant from proving the "dangerous"[59] and "above-average levels of radiation".[60]

On the other hand, in the case *Oneryildiz v. Turkey* the judges extended the interpretation of the right to life[61] under Article 2 of the ECHR to encompass situations where individuals' lives are endangered due to environmental factors, such as the threat posed by a methane explosion near a garbage dump, which resulted in the burial of the applicant's house and the tragic death of his children. The applicant alleged that the deaths of his relatives were the result of gross negligence by the competent authorities. The situation led the ECtHR to consider that Turkey breached Article 2. The Court found that said Article under which "everyone's right to life shall be protected by law", must be interpreted in a broad sense: Article 2 is not exclusively related to deaths resulting from the use of force by agents of the state and imposes an obligation on states to take action to safeguard the right to life of people under its jurisdiction.[62]

In 2008, following the death of a close relative of Ms. Boudaïeva, due to the non-implementation of land-planning and emergency relief policies by the Russian

56 See ECtHR, *LCB v. United Kingdom*, Judgment of 9 June 1998, App.-No. 14/1997/798/1001, paras. 50-70. For more cases, see also *Przetacznik,* Revue des Droits de L'Homme 1976, pp. 585–609; *Guillaume*, in: Pettiti/Decaux/Impert, pp. 143–153.

57 See ECtHR, *LCB v. United Kingdom*, Judgment of 9 June 1998, App.-No. 14/1997/798/1001.

58 Ibid., para. 6.

59 Ibid., para. 41.

60 Ibid., para. 37.

61 In the case *Netherlands v. Urgenda*, Netherlands Supreme Court in its Judgment of 20 December 2019 held that the risks of climate change fell within the scope of the ECHR, particularly Article 2 on the right to life and Article 8 on the right to privacy and determined that these provisions obliged the state to take measures against the risk of dangerous climate change. According to *Shaw*, pp. 742–743.

62 See ECtHR, *Oneryildiz v. Turkey*, Judgment of 30 November 2004, App.-No. 48939/99. See also. *Laurent*, RTDH 2003, pp. 261–297. In this context, it would be useful to note that, sometimes, states cannot solve environmental problems on their own. The protection of the environment may require an international approach, international agreements, and cooperation. At times, unilateral actions of states, and regulations at the national level are not enough. In that case, urgent, systemic, planned, and coordinated action of states at the international level is needed (See *Meškić/Albakjaji/Jevremović/Omerović/Adams*, IOP Conf. Ser.: Earth Environ. Sci. 1026).

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government, despite the known vulnerability of the town of Tyrnauz to mudslides, the ECtHR expanded its interpretation of the right to life under Article 2 of the ECHR.[63] The Court found a substantive violation of Article 2 due to the failure of the Russian authorities to protect the residents of Tyrnauz from mudslides, despite receiving warnings from the District Administration and the Mountain Institute. This case signifies an extension of the scope of Article 2 to include protection from natural disasters. Consequently, authorities may be held liable not only for activities where the right to life is directly at stake but also when lives are threatened by natural calamities. The extension of the scope of Article 2 to natural disasters is significant: in fact, the authorities can see their liability engaged not only when exercising "any activity, whether public or not, in which the right to life may be at stake",[64] but also "when the right to life is threatened by a natural disaster".[65]

The violation of the right to life guaranteed under Article 2 of the Convention has also been examined in various environmental cases such as natural disasters,[66] illegal landfills, and toxic waste.[67] Generally, in order for an individual to prove a violation of the right to life due to the above-mentioned environmental factors, they must prove a causal link between environmental factors and the violation of the right to life *in concreto*. In other words, an individual needs to have sufficient evidence to prove a direct link between the act or omission of state authorities and the effect on the applicant's health to prove a violation of the right to life.[68]

Taking into account the findings and conclusions of the ECtHR in environmental cases related to the right to life, one can summarize as follows: public authorities have the duty to take all appropriate measures to prevent risks in environmental cases; if the risk occurred, the public authority has a positive obligation to protect those at risk; if the risk resulted from an accident and led to human loss, the public authority has a positive obligation to ensure sufficient investigation and penalization. In regard to the substantive aspect of the right to life, the public authority also has a positive obligation to inform the public concerning environmental issues.[69]

63 See ECtHR, *Budaïeva and Others v. Russia*, Judgment of 29 September 2008, App.-No. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02.

64 See ECtHR, *Özel and others v. Turkey*, Judgment of 17 November 2015, App.-No. 14350/05, 15245/05 and 16051/05, not published, para. 170; See also, *Budaïeva and Others v. Russia,* op. cit., para. 128.

65 *Özel and others v. Turkey,* op. cit., para. 170.

66 See ECtHR, *Murilo Saldias and Other v. Spain*, Judgment of 8 November 2005, App.-No. 76973/01; ECtHR, *Viviani and Others v. Italy*, Judgment of 16 April 2015, App.-No. 9713/13.

67 See ECTHR, *Smaltini v. Italy*, Judgment of 4 October 2013, App.-No. 43961/09.

68 For example, compare *LCB v. United Kingdom* with *Öneryıldız v. Turkey.*

69 It should be borne in mind that the list of positive obligations of a state is not exhaustive, and that it depends on the circumstances of each specific case.

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II. The Prohibition of Torture, Inhuman or Degrading Treatment

Article 3 of the Convention guarantees the prohibition of torture. According to this paragraph, "[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment". But can the protection of the environment fall under the prohibition of torture? In the *López Ostra* case, the applicant alleged a violation of Article 3 of the ECHR. According to Ms. López Ostra, the inaction of the municipality of Lorca in the face of the nuisance caused by the sewage treatment plant caused her unrest health and anxiety. Could these facts reasonably pass for degrading treatment prohibited by Article 3?[70] The ECtHR refused to accept any inhuman and degrading treatment due to olfactory pollution under the auspices of Article 3. The conditions in which the applicant and her family lived for a few years were certainly difficult, but they could not, according to the Court's reasoning, amount to degrading treatment within the meaning of Article 3. Therefore, even if it seems unlikely that the ECtHR will accept that the pollution could constitute inhuman and degrading treatment within the meaning of Article 3, it has never concluded that this Article is not applicable to environmental litigation.[71] Thus, does the possibility remain, for Article 3 to go beyond its traditional scope of application reserved for the conditions of detention of prisoners?[72]

Particularly in view of the rigorous criteria governing inhuman and degrading treatment, the answer is not simple. Indeed, to fall under the scope of the abovementioned article, ill-treatment must reach a minimum level of seriousness. The appreciation is casuistical: It "depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim".[73] According to the Court, a treatment is "in-

70 See ECTHR, *Lopez Ostra v. Spain*, Judgment of 9 December 1994, App.-No. 16798/90.

71 See *Frederic*, pp. 755–779; *Haumont*, in: Anderson (ed.), pp. 659–671.

72 Under the auspices of the prohibition of torture, inhuman treatment and punishment prescribed by Article 3 of the Convention, the ECtHR has examined cases of indoor air pollution in prison cells. Given the specifics of a prison sentence, the state has positive obligations to provide prisoners with minimum conditions for humane living, which include clean indoor air in the cells. See for example, ECtHR, *Elefteriadis v. Romania,* Judgment of 25 January 2011, App.-No. 38427/05.

73 See, for example, ECtHR, *Mouisel v. France*, Judgment of 14 November 2002, App.-No. 67263/01, para. 37: "The Court reiterates that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim"; ECtHR, *Naumenko v. Ukraine,* Judgment of 10 February 2004, App.-No. 42023/98, not published, para. 108: "[...]The Court further emphasizes that, to fall within the purview of Article 3, ill-treatment must reach a threshold of severity. The assessment of this threshold is inherently relative; it depends on all the circumstances of the case, including the duration of the treatment, its physical and/or mental effects, and sometimes the gender, age, and health condition of the victim".
ECtHR, *Price v. The United Kingdom,* Judgment of 10 July 2001, App.-No. 33394/96, para. 24:" The Court recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level of severity

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human" when it is applied with premeditation for hours, causing either bodily harm or severe physical and mental suffering. The Court also described the treatment as "degrading" when it "arouse in the applicant feelings of fear, anguish and inferiority that were capable of humiliating and debasing him".[74] In light of this reasoning, exposure to environmental harm may fall under the protection offered by Article 3, as serious health consequences resulting from environmental pollution can reach the level of degrading treatment. However, the harshness of certain requirements such as the need to provide proof of inhuman, degrading treatment and moral harm, such as the victim's distress or state of health, reduces the chances of the victims having their rights recognized *via* Article 3.

Nonetheless, chances to incorporate environmental protection under Article 3 must remain open and viewed optimistically. Thus, in the *Florea v. Romania* case,[75] the applicant, who suffered from chronic hepatitis and arterial hypertension, had to share his prison cell with smokers.[76] This caused the deterioration of his state of health, leading to 3 counts of hospitalization during his three years of imprisonment.[77] In this case, the ECHR identified, under Article 3, a positive obligation on the authorities which consists of ensuring that any incarcerated person is detained in conditions that respect human dignity; and that, with respect to the practical requirements of imprisonment, the health and well-being of the prisoner are adequately ensured.[78] The Court noted that Mr. Florea had never had an individual cell and that he had had to endure the smoking of his fellow prisoners. Accordingly, the applicant's conditions of detention are considered as degrading treatment.

is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim".

74 See ECtHR, *Jalloh v. Germany*, Judgment of 11 July 2006, App.-No. 54810/00, para. 82.

75 See ECtHR, *Florea v. Romania*, Judgment of 14 September 2010, App.-No. 37186/03, not published.

76 It should be noted that the Court emphasized that incarceration does not lead to the loss of the benefit of any human rights guaranteed by the ECHR. On the contrary, the Court considered that the incarcerated person may need enhanced protection because of the vulnerability of their situation.

77 Ibid., para. 46: "The Applicant claims that the degrading conditions he endured during his incarceration, such as overcrowded prison quarters, sharing a bed with multiple individuals, sleeping on the floor, and being exposed to tobacco smoke from fellow inmates in both his cell and the penitentiary hospital, coupled with the inadequate quality of food that was unsuitable for his medical conditions, constituted a humiliating treatment. These factors, in turn, played a role in the deterioration of his health, as evidenced by his need for hospitalization on three separate occasions throughout his three-year imprisonment".

78 Ibid., para. 50: "[...] In this context, Article 3 places a proactive duty on the authorities to guarantee that every prisoner is held in conditions compatible with the preservation of human dignity. The execution of the measure should not subject the individual to distress or hardship beyond the inherent level of suffering that comes with detention. Considering the practical demands of imprisonment, the health and well-being of the prisoner must be adequately ensured".

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III. Right to Respect for Private and Family Life

Most environmental applications have been examined under the right to respect for private and family life as well as home, prescribed by Article 8 of the Convention, as it covers a plethora of issues. There are two preconditions for an environmental issue to arise under the right to respect for private and family life – a direct causal link between the environmental factor and its negative impact on the individual as well as the achievement of a certain threshold of harm.[79]

The right to respect for private and family life may be jeopardized by various adverse factors such as industrial and air pollution,[80] noise pollution, and neighboring noise,[81] rail traffic, waste collection, management, treatment and disposal,[82] and water supply contamination.[83] In the context of the violation of the substantive aspect of Article 8, the ECtHR emphasizes the need for a causal link between negative environmental impacts and consequences for human health and the peaceful enjoyment of private and family life.[84]

The procedural aspects of the right to respect for private and family life arise in the context of public participation in the decision-making process. In this context, the ECtHR put an accent on the duty of the state to ensure the right of the public to participate in the decision-making process concerning environmental issues.[85]

When the issue of family life is raised, the ECtHR applies the principle of balance between interests: the state's and the individual's interest. Here, the Court applies its margin of appreciation doctrine and gives the state certain discretion in determining

79 It is important to point out that an issue may arise under Article 8 in case where the pollution is directly caused by the state but also in case where the state responsibility arises from failure to regulate private-sector activities properly. See ECtHR, *Borysiewicz v. Poland*, Judgment of 1 October 2008, App.-No. 71146/01, para. 50.

80 ECtHR, *Borysiewicz v. Poland*, Judgment of 01 October 2008, App.-No. 71146/01; ECtHR, *Lopez Ostra v. Spain*, Judgment of 9 December 1994, App.-No. 16798/90; ECtHR, *Fadeyeva v. Russia*, Judgment of 9 June 2005, App.-No. 55723/00; ECtHR, *Tatar v. Romania,* Judgment of 5 July 2007, App.-No. 67021/01; ECtHR, *Taşkın v. Turkey*, Judgment of 30 March 2005, App.-No. 46117/99.

81 For example see ECtHR, *Powell and Rayner v. United Kingdom,* Judgment of 21 February 1990, App.-No. 9310/81; ECtHR, *Hatton and others v. United Kingdom,* Judgment of 8 July 2003, App.-No. 36022/97; ECtHR, *Fägerskiöld v. Sweden,* Inadmissible decision of 26 February 2008, App.-No. 37664/04; ECtHR, *Oluic v. Croatia*, Judgment of 20 May 2010, App.-No. 61260/08; ECtHR, *Moreno Gomez v. Spain*, Judgment of 16 November 2004, App.-No. 4143/02; ECtHR, *Dees v. Hungary*, Judgment of 9 November 2010, App.-No. 2345/06.

82 See ECtHR, *Branduse v. Romania*, Judgment of 7 April 2009, App.-No. 6586/03.

83 See ECtHR, *Dzemyuk v. Ukraine*, Judgment of 4 December 2014, App.-No. 42488/02.

84 See for example *Fadeyeva v. Russia*, para. 133 and ECtHR, *Oluic v. Croatia*, Judgment of 20 May 2010, App.-No. 61260/08.

85 Enabling public participation in the environmental decision-making process helps to strike a balance in the conflict of different interests, most often the economic interest of the state and the interests of individuals in terms of protecting their human rights. In this context see ECtHR, *Hatton and others v. United Kingdom,* Judgment of 8 July 2003, App.-No. 36022/97, para. 128 and ECtHR, *Lemke v. Turkey*, Judgment of 5 June 2007, App.-No. 17381/02, para. 41.

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the appropriate balance. However, the Court rewards the applicants if it finds out that the state margin of appreciation had been exceeded.[86] The case of *Mrs. Ostra v. Spain* is a good example of this. Here, Mrs. Lopez Ostra and her daughter were living in an area where a waste treatment factory was operating. That site was generating fumes from a tannery that caused health problems for the people who lived nearby. The national Supreme Court denied the applicant's remedies for infringement of her fundamental rights. The Constitutional Court dismissed the case as it did not rely on the right basis.

Later on, other applicants (two sisters-in-law of Mrs. Lopez Ostra) brought administrative proceedings on a different basis. They claimed the site was used without the required license. The local court passed a decision to close the site until the latter would be obtained. They also filed a suit where a local judge issued a criminal proceeding against the site, based on an environmental health offense.

The ECtHR held that although the pollution generated from the site affected the private and family life of individuals who lived nearby, it did not seriously endanger their health. As mentioned above, the Court applied the balance of interest test between different and conflicting interests: the economic interest of the town, and the applicants' interests. However, it was found that the margin of appreciation given to the state was exceeded. Thus, the Court covered Mrs. Lopez' costs of damages, the court case, and attorney fees.[87]

When it comes to substantive human rights, such as the right of respect for private and family life and the right to life, we must mention the recent judgment in the case of *KlimaSeniorinnen*[88], which represents the first judgment in the context of climate change and human rights. The Report of the UN Intergovernmental Panel on Climate Change (IPCC) states that the world is facing climate change, and it is likely that the threshold of dangerous temperature rise will be exceeded in the next 10 years unless countries around the world drastically transform their economies and immediately start reducing the use of fossil fuels.[89] This is one of the reasons for the recent applications before the ECtHR advocating the idea that climate change threatens the enjoyment of human rights enshrined in the Convention.[90] In fact, the goal of these applications is very clear: to urge governments to act against global warming through legislative mechanisms and the implementation of mechanisms for enforcing legislative measures to reduce carbon dioxide emissions.

In the *KlimaSeniorinnen* case, elderly female activists filed an application before the ECtHR against Switzerland, arguing that Switzerland had violated their right to

86 ECtHR, *Lopez Ostra v. Spain*, Judgment of 9 December 1994, App.-No. 16798/90, paras. 17–22.
87 Ibid., paras. 65, 69–71.
88 ECtHR, *Case of Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, Judgment of 9 April 2024, App.-No. 53600/20.
89 United Nations Intergovernmental Panel on Climate Change (IPCC), Climate Change 2023 Synthesis, p. 12.
90 For example ECtHR, *Duarte Agostinho and Others v. Portugal and 32 Other States*, Judgment of 9 April 2024, App.-No. 39371/20; *Greenpeace Nordic and Others v. Norway*, Judgment of 10 January 2022, App.-No. 34068/21.

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life and their right to private and family life because the state had failed to fulfill its obligations to reduce the effects of climate change. This judgment opened several significant questions regarding the endangerment of human rights due to the impact of climate change. What we want to highlight here is the issue of causal link of the effects of climate change on the enjoyment of human rights, as well as the issue of the positive obligations of states in the context of climate change. As the ECtHR points out, it is already evident that there is an anthropogenic impact on climate change and that it represents a serious threats to the human rights enshrined in the Convention.

In earlier environmental cases, the Court has taken the position that there must be a causal link between the cause, which stems from a specific environmental problem, and the impaired health of the applicant when it comes to activating the right to life and the right to respect for private and family life. That is, there must be a negative effect on an individual's private or family sphere, which the Court assesses based on criteria established in its case-law in the context of each individual case.

The issue of causality is not problematic when we have environmental pollution that has specifically impaired someone's health or enjoyment of private or family life. However, the question of causality is very interesting in the case of the impact of climate change on the enjoyment of human rights. In this regard, the Court emphasizes that in cases of climate change, Article 8 must be seen as encompassing a right for individuals to effective protection by state authorities from serious adverse effects of climate change on their life, health, well-being, and quality of life.[91] In fact, in this type of cases, the causal link is different from classic environmental cases - the cause of the impairment of human rights is the global problem of climate change. This still does not mean that *actio popularis* is allowed before the ECtHR, the applicant must be directly affected by the alleged violations. However, it seems that the ECtHR has significantly broadened the concept of being "directly affected". It must be recognized here that the applicants are a specific category – elderly women who have demonstrated various health problems due to climate change.

Another key question in this case was whether states have positive obligations to prevent and mitigate the effects of climate change. The ECtHR answered this question affirmatively and sets out a series of minimum requirements that the state must implement for the climate change regulatory framework to be compatible with human rights requirements and with the requirements adopted in the Paris Agreement[92]. The measures must be incorporated into a binding regulatory framework at the national level, followed by adequate implementation. In this context, the Court very precisely mandated measures to be undertaken: (a) set out intermediate GHG emissions reduction targets and pathways (by sector or other relevant methodolo-

91 See *Case of Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 544.

92 The Paris Agreement is a legally binding international treaty on climate change. It was adopted at the UN Climate Change Conference (COP21) in Paris in 2015 and entered into force in 2016.

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gies) that are deemed capable, in principle, of meeting the overall national GHG reduction goals within the relevant time frames undertaken in national policies; (b) provide evidence showing whether they have duly complied, or are in the process of complying, with the relevant GHG reduction targets (see sub-paragraphs (a)-(b) above); (c) keep the relevant GHG reduction targets updated with due diligence and based on the best available evidence; and (d) act in good time and an appropriate and consistent manner when devising and implementing the relevant legislation and measures.[93] The question of the method of implementing measures falls within the domain of each state's margin of appreciation.

Some authors consider this judgment as transformative and expect it to have indirect effects on the legislation of European countries in the context of climate change.[94] However, the question remains whether this judgment will be a sufficient reason for changes in climate laws, considering that in June 2024, the Swiss parliament voted to reject the ECtHR ruling, suggesting that it does not "ignore" it, as some critics claimed, but that Switzerland does not need to react because it already has an effective climate change strategy.[95] The following question arises: if Switzerland, a wealthy country, is not ready to implement strategies for climate neutrality, what about countries that are poor and technologically underdeveloped?

This judgment is truly a milestone in the ECtHR's environmental jurisprudence, as it clearly states that states can be held responsible for anthropogenic climate change. It also establishes that failing to take concrete steps to prevent and reduce climate change can violate human rights guaranteed by the Convention. Such an approach in decision-making will have significant implications for all future climate change cases that come before the ECtHR and domestic proceedings in the member states of the Council of Europe.

IV. The Right to Have Access to the Court in Environmental Matters, the Right to Have Access to the Environmental Information and the Right to an Effective Remedy

In addition to the fact that negative factors from the environment can influence the enjoyment of the right to life, the right to private and family life, home and correspondence, or the right to property of each individual, the various life situations that individuals face in the struggle to realize their environmental rights before national courts can lead to violations of certain guarantees of fair procedure, access to information, or the right to an effective remedy.

Access to information and participation in the decision-making process concerning the environment are one of the key guarantees of a democratic society. Some of the key environmental principles have developed directly in the practice of the

93 *Case of Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, para. 550.
94 See https://verfassungsblog.de/what-does-the-european-court-of-human-rights-first-climate-change-decision-mean-for-climate-policy/ (8/7/2024).
95 Read more at https://www.reuters.com/world/europe/swiss-parliament-considers-snubbing-european-court-climate-ruling-2024-06-12/ (8/7/2024).

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ECtHR under the framework of the right to freedom of expression, the right to a fair trial, the right to an effective legal remedy, and the extensive interpretation of the procedural part of Article 8 of the ECHR.[96]

In this regard, in its judgments in which it has decided on procedural guarantees in environmental cases, the Court often referred to already established principles of international environmental law, as well as to international documents from the same field. For example, in the case of *Taskin v. Turkey*, the Court referred to the Rio Declaration on Environment and Development,[97] and the Aarhus Convention.[98] In the case of *Demir and Baykara v. Turkey*, the ECtHR also referred to the Aarhus Convention. In *Mangouras v. Spain*, the ECtHR referred to Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage. In the case of *Tatar v. Romania*, the Court recalled the precautionary principle. One of the most recognizable principles of international environmental law was also invoked in a judgment of the International Court of Justice, in the *Gabcikovo Nagymaros* case (*Hungary v. Slovakia*),[99] and in EU Directives 2006/21/CE and 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damages, as well as in the Rio Declaration, the Stockholm Declaration, and the Aarhus Convention.

In *Zander v. Sweden*, the applicant claimed he had been denied a remedy for threatened environmental harm.[100] In this case, the applicant owned a property near a waste treatment site that affected the water wells which were contaminated by the cyanide coming from the dump side. The supervising company applied for a renewal of the license. Applicants raised the issue of the contaminated water and argued that the company should provide free drinking water. The authority renewed the company license, but it denied the applicants' request. The ECtHR held that Article 6 was violated, and that it is applicable to this case as related to the environmental condition of the property. It is worth mentioning here that the application of Article 6 depends on the recognition of the right to remedy by the law of the state concerned. Based on this, the Court relied on Swedish law which ensures the protection of neighboring areas against waste dump activities.[101] The ECtHR has extended the right to remedy to include the right to compensation

96 See *Zilić*, Annals of the Faculty of Law, University of Zenica 2019/23, p. 54.
97 Rio Declaration on Environment and Development (adopted 13 June 1992) UN Doc. A/CONF.151/26 (vol. I); 31 ILM 874 (1992).
98 Convection on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 28 June 1988, entered into force 3 October 2001) 2161 UNTS 447; 38 ILM 517 (1999).
99 ICJ, *Gabčikovo-Nagymaros Project (Hungary/Slovakia),* Judgment, [1997] ICJ Rep 7, p. 7.
100 ECtHR, *Zander v. Sweden*, Judgment of 25 November 1993, App.-No. 14282/88, paras. 6–11.
101 Ibid., para. 24.

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for the pollution, especially for any harm caused by noise or air pollution from a nearby airport[102].

The judicial development regarding the right to a healthy environment was noticed on 30 November 2004, when the ECtHR decided on the *Oneryildiz v. Turkey* case. In this case, the applicant argued that the authority ignored its duties in protecting neighbors who lived nearby waste dumps around Istanbul. The applicant, among other rights, relied on Article 6 of the Convention. The Grand Chamber accepted the applicant's claims and raised the liability of the Turkish authority for negligence. This negligence led to the death of people due to the methane explosion generated from the site.

In its judgment, the ECtHR argued that the state has not only a negative obligation to punish actions against the law, but also a positive obligation to take preventative steps to safeguard the lives of people who live within their territories.[103] In an analysis of the Court ruling, the Court was not satisfied with the punitive measures taken by the Turkish government against the violators, but referred to the concept of the dangerous effects of the activities. Moreover, it stated that states must adopt strict regulations when practicing such activities, starting from the stage of licensing to supervision to regulation, and then imposing strict penalties for violation. In addition, the Court found that the Turkish authority failed to take the fundamental measures stipulated in Article 2. This measure is called "an adequate response", which is required when facing such accidents. According to the Court, the state has a duty to conduct an official investigation in order to collect comprehensive information on the incident[104] and also the prosecution may be required[105]. One of the Court's findings is that the Turkish authorities acted promptly to investigate the accident and its consequences. However, it was found that the Turkish criminal justice system did not include accountability that ensures an effective domestic law implementation. Thus, the lack of deterring functions of criminal law led to a violation of the procedural aspect of Article 2. Moreover, the Court found that there was a link between the property loss suffered by the applicants and gross negligence of the state.

102 ECtHR, *Zimmermann v. Switzerland*, Judgment of 13 July 1983, App.-No. 8737/79, para. 32.

103 "[I]n which the right to life may be at stake, and a fortiori in the case of industrial activities, which by their very nature are dangerous, such as the operation of waste-collection sites." ECtHR, *Oneryildiz v. Turkey*, Judgment of 30 November 2004, App.-No. 48939/99.

104 Ibid., para. 93.

105 Where it is established that the negligence attributable to state officials or bodies on that account goes beyond an error of judgment or carelessness, in that the authorities in question, fully realizing the likely consequences and disregarding the powers vested in them, failed to take measures that were necessary and sufficient to avert the risks inherent in a dangerous activity... the fact that those responsible for endangering life have not been charged with a criminal offence or prosecuted may amount to a violation of Article 2, irrespective of any other types of remedy which individuals may exercise on their own initiative. This is amply evidenced by the developments in relevant European standards. Ibid, para. 93.

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According to the right to an effective remedy from Article 13, the right to pecuniary, and non-pecuniary compensation should be safeguarded when needed. In this case, the Court found that the pecuniary compensation that had been awarded by the domestic proceedings had never been paid. This made the right to remedy seem ineffective. Therefrom resulting, the ECtHR awarded both pecuniary and non-pecuniary compensation.[106]

In terms of environmental protection, the ECtHR has used Article 10 of the ECHR to guarantee the right to have access to information.[107] Different rules have been adopted by the ECtHR in this regard. Firstly, in the case of *Guerra v. Italy,* the European Commission – by a large majority – concluded that Article 10 imposes on states an obligation not only to disclose to the public any available information on the environment, but also the positive duty to collect, collate, and disseminate information which would otherwise not be directly accessible to the public or brought to the public's attention.[108] From another point of view, the ECtHR considered that Article 10 is not applicable here, but rather Article 8 which provides for the right to family, home and private life. The Court held that freedom cannot be construed as imposing on a state, in circumstances such as those of the present case, positive obligations to collect and disseminate information of its own motion.[109]

Moreover, in the case of *Bladet Tromso v. Norway*, the Court argued that states cannot extend the defamation law to restrict the freedom of access to important information about the environment.[110] The Court claimed that the state's decision on withholding news on illegal seal hunting is considered as a violation of Article 10 because the newspaper's coverage of the controversial seal hunting issue, is a matter of public interest.[111] Hence, the freedom and the right to access to environmental information should be guaranteed and respected by the state members as an obligation to make it available to the public.

106 Ibid., paras. 166–175.

107 The European community also recognized the right to information. Lots of rules have been adopted in this regard. The environmental computability of the industrial processes and products have been guaranteed, where projects and industries should inform the public of their environmental compatibility. Such as Council Directive 85/337 Concerning the Assessment of the Effects of Certain Public, the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters. Moreover, the right to be informed of the possible risks is also guaranteed where vulnerable categories who are exposed to risks such as employees are protected and should be informed of possible risks. The Council Directive (EU) No. 89/391 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183 of 29/6/1989, Art. 1 is the main legal framework of this issue.

108 *Guerra v. Italy*, App. No. 14967/89, Judgment of 19 February, 1998, para. 61.

109 A Grand Chamber of the European Court of Human Rights, in a Judgment of February 19, 1998, reversed the Commission on its expanded reading of Art. 10. Ibid. at para. 34.

110 ECtHR, *Bladet Tromso v. Norway*, Judgment of 20 May 1999, App.-No. 21980/93, paras. 61, 71–73.

111 Ibid., paras. 51, 59.

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It is notable that the ECtHR has used Article 10 in deciding on cases in the field of freedom of speech if the case has an environmental dimension. This issue is interesting in the context of environmental organizations' struggles for environmental protection, especially looking at their right to freedom of expression and the right to a fair trial. In this regard, from the landmark case *Steel and Morris v. United Kingdom*,[112] we can conclude that freedom of expression requires procedural fairness and equality of arms especially in cases of litigation between multinational companies and individuals. Thus, procedural guarantees created by court practice represent important guarantees in a democratic society in order to achieve environmental justice.

Thus, it is indisputable that the ECtHR, through its practice so far, has managed to protect various aspects of the environment, and to improve various procedural guarantees within the framework of environmental justice. However, the question arises of whether this type of indirect environmental protection, through the existing human rights protection mechanism, is sufficient to ensure environmental protection for future generations. This is certainly not the case, as, to begin with, the ECHR does not protect the environment *per se*, but limits itself to anthropocentric environmental protection.[113] Regardless, the importance of environmental protection through the European human rights system must not be diminished. In this context, a second question arises of whether the European system for the protection of human rights is fertile ground that can enable the transition from anthropocentric to ecocentric environmental protection? The answer thereto remains negative. The ECtHR does not directly safeguard the environment itself; rather, its focus is on human-centered environmental protection. International environmental law cannot yet provide effective protection of the environment. We believe that the transition to ecocentric environmental protection requires progress in both "green human rights" and international environmental law. What we consider certain is that the ECtHR is fertile ground for the "growth" of an explicit human right to a clean, healthy and sustainable environment.

E. Concluding Remarks

As we have seen and concluded previously, the ECtHR recognizes the importance of the right to a healthy environment and protects various aspects of the environment, indirectly bringing them into line with the rights guaranteed by the Convention. The case law of the Court has suffered significant differences concerning indirect environmental protection compared to the older cases of the Court when deciding that the submissions in this part were unfounded, as the Convention, as previously mentioned, does not guarantee the right to environmental protec-

112 ECtHR, *Steel and Morris v. United Kingdom*, Judgment of 15 February 2005, App.-No. 68416/01.

113 As earlier mentioned when discussing Arts. 8 and 10 of the ECHR where the issue of the environment was indirectly addressed when protecting the human rights.

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tion. Since the 1970s, the Court has significantly changed its practice regarding indirect environmental protection, mainly by changing its interpretation of the Convention's provisions regarding the right to life, the prohibition of inhuman or degrading treatment, the right to respect for private and family life, the right to privacy, the right to have access to environmental information, and the right to remedy. The Court also considered petitions for endangering the human rights of individuals with state measures aimed at protecting the environment, including natural resources. The Court emphasized the predominant interest in environmental protection over the individual's interest.[114] Hence, it could be asserted that *López Ostra v. Spain* was the first judicial review of human rights violations due to environmental damage.[115]

This European movement in favor of the protection of the environment has significantly led to positive actions and determination of the international community as a whole to provide for the close devotion of acknowledging the right to a healthy, clean and sustainable environment as a substantial human right. In a globalized, interconnected world, and having in mind the fact that no state can solve the environmental issues and damages on its own, this protection fully and justifiably "requires an international approach and international cooperation and agreements".[116] As noted by *Amstrong et al*., "[a]lthough environmental issues have become increasingly prominent in international law and politics since 1945",[117] only "since the early 1970s, there has been increasing concern for the environment and a realization that protection, to be effective, must be based on international co-operation".[118] However, given that all the rights and freedoms provided for in these conventions are prescribed in a general and normative manner, if a convention is concluded for an indefinite period, and if the vast majority of states in the world (or in a region) are bound by it, this may provide a basis for state parties to argue that these rules are, in a customary manner, binding on all states.[119] Taking the latter into consideration, international organizations and other international bodies (primarily various international courts, UN Charter-based bodies and treaty-based human rights committees), have the right to demand respect for these legal obligations from all states of the world – thus, the obligation to respect human rights and freedoms is considered an obligation *erga omnes*.[120] Practically oriented, it is important that

114 See *Meškić/Albakjaji/Jevremović/Omerović/Adams*, IOP Conf. Ser.: Earth Environ. Sci. 1026, p. 6.
115 Ibid.
116 *Shaw*, p. 862.
117 *Amstrong/ Farrell/Lambert*, p. 253.
118 *Wallace/Martin-Ortega*, p. 223.
119 *Meškić/Albakjaji/Jevremović/Omerović/Adams*, IOP Conf. Ser.: Earth Environ. Sci. 1026, p. 7.
120 Ibid. The genesis of the term *erga omnes* in contemporary international law dates back to 1945 with the adoption of the UN Charter. Articles 55 and 56 of the Charter proclaim the promotion of universal respect for human rights and fundamental freedoms as a program of the UN, so that Article 56 of the Charter can reasonably be connected with its Article 1, which contains provisions on the objectives of this Organization, so that, in this connection, para. 3. of the latter Article stipulates, *inter alia*, the realization

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international treaties are properly implemented, not only in law but also in fact – as with human rights treaties, implementation can vary greatly in practice.[121]

If the previously elaborated Human Rights Council Resolution from 2021 contained a legally recognized right, another question would arise – whether the solitary proclamation of this right is enough to legally regulate relations between states, i.e., states and individuals, and other participants in international relations?[122] For a right to be applicable in practice and valuable to individuals, it must be applied to allow an individual to sue a state party.[123] For now, there is no universal, multilateral international treaty that *expressis verbis* recognizes the enjoyment of this right by every human being.[124] Therefore, amendments to the Universal Declaration of Human Rights will clearly not be enough in this regard but states would either need to amend the international covenants from 1966, or conclude a new multilateral international convention which would legally regulate the matter. At the European level, this right can be included in the European catalog of human rights and freedoms by supplementing the Convention, i.e., by adopting a new protocol to the Convention.[125] This has been the practice of the state parties to this treaty whenever a new right was needed to be included in the catalog so far. When concluding agreements related to human rights or the environment, it is necessary to involve all the actors in these fields respectively, such as individuals, academics, professionals, and non-governmental organizations. Those actors are the ones who will have a significant role when discussing any issue related to human rights and the environment.

The proclamation of a new human right is futile, but pointless if the entities' duties and financial obligations that should ensure it worldwide are not specified.[126] International obligations of states have to be accurately specified since the state's

of international cooperation by developing and encouraging respect for human rights and fundamental freedoms for all (*Karl*, p. 2). The implementation of the provisions of the UN Charter regarding respect for human rights and fundamental freedoms began with the conclusion of multilateral international agreements. The UN decided to choose multilateral conventions as a kind of mechanism for implementing the program of the UN Charter, and since many conventions in the field of international human rights and humanitarian law have been adopted within the UN system, it is rational to claim that there has been a "conventional creation" of *erga omnes* obligations. (Ibid., p. 3–6). For the concept of *erga omnes* obligations in the practice of the International Court of Justice, consult ICJ, *Barcelona Traction, Light and Power Company,* Limited, Judgment, [1970] ICJ Rep 3, p. 3; as well as ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* Advisory Opinion, [2004] ICJ Rep 136, p. 136. For more, see: *Omerović*, pp. 49 et seq.

121 *Aust*, p. 328.

122 *Meškić/Albakjaji/Jevremović/Omerović/Adams*, IOP Conf. Ser.: Earth Environ. Sci. 1026, p. 7.

123 Ibid.

124 Ibid.

125 Ibid.

126 *Degan*, p. 395.

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obligations should match every human right simultaneously.[127] Accordingly, "the named "right" should be taken as a distant goal of humanity as a whole",[128] but with the aim to realize the goal. On the other hand, it is currently detectable that the fragmentation of human rights and the environment remains, which is reflected by the continuous overlapping mechanisms, expansion trend, increased legislation, institutionalization by highly informal means with no single international organization dealing with the global environment but through regular meetings of states parties to multilateral treaties,[129] fragile compromises, holistic treaties in international environmental law and different approaches to the environmental protection between developed industrialized countries and less developed nations. Here we cannot say that the matter is unregulated or from a lawless zone. Rather, we find that while new international legislation is being adopted, these agreements still lack mandatory provisions. Moreover, they do not contain clear, explicit and mandatory provisions regarding the responsibility of states. This led to the existence of multiple legal agreements in the field of the environment. They are, however, perceived as useless and ineffective, as they could not achieve the goals for which they were created.

Lastly, though not less important, it seems that states are reluctant and will continue to try to keep their full sovereignty over the implementation of economic, social, and cultural rights, including the right to a healthy, clean and sustainable environment (whatever legal form it will take). It is hard to foresee whether states decide to establish an international judicial forum with the jurisdiction to examine whether a state party to one international treaty violates its international legal obligations by unlawfully and illegitimately interfering with the right to a healthy, clean and sustainable environment (assuming this right is incorporated into a human rights international treaty as an enforceable and self-executing right). As we can currently determine, it is an entirely different approach with civil and political human rights and freedoms. However, when it comes to the protection of the environment and human rights, it will take comprehensive and effective international judicial protection before the right can take effect.

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