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**The Road from Stockholm: Individual Litigation and State
Responsibility for Violations of Environmental Rights in
Europe**

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LIST OF ABBREVIATIONS

ACCC Aarhus Convention Compliance Committee

ACHPR African Commission on Human and Peoples' Rights

AG Advocate General

ARSIWA Articles on Responsibility of States for Internationally Wrongful Acts

CDDH-ENV Drafting Group on Human Rights and the Environment

CFR Charter of Fundamental Rights

CJEU Court of Justice of the European Union

CM Committee of Ministers

CoE Council of Europe

CRC Convention on the Rights of the Child

CSD Commission on Sustainable Development

DG Directorate-General

EAP Environmental Action Programme

ECHA European Chemicals Agency

ECHR European Convention of Human Rights

ECI European Citizens' Initiative

ECSC European Coal and Steel Community

ECSR European Committee of Social Rights

ECtHR European Court of Human Rights

EEB European Environmental Bureau

EEC European Economic Community

EHDRs Environmental Human Rights Defenders

EIA Environmental Impact Assessments

EIB European Investment Bank

ESC European Social Charter

EU European Union

GMOs Genetically Modified Organisms

HEAL Health & Environment Alliance

IACHR Inter-American Commission on Human Rights

IACtHR Inter-American Court of Human Rights

ICCPR International Covenant on Civil and Political Rights

ICESCR International Covenant on Economic, Social, and Cultural Rights

ICJ International Court of Justice

IPCC Intergovernmental Panel on Climate Change

ITLOS Tribunal on the Law of the Sea

MoP Meeting of the Parties

NDCs Nationally Determined Contributions

NGO Non-Governmental Organisation

OLAF Office Européen De Lutte Antifraude/ European Anti-Fraud Office

PACE Parliamentary Assembly of the Council of Europe

QMV Qualified Majority Voting

SEA Single European Act

TEC Treaty establishing the European Community

TEU Treaty on the European Union

TFEU Treaty on the Functioning of the European Union

UDHR Universal Declaration of Human Rights

UN United Nations

UNCED United Nations Conference on Environment and Development

UNECE United Nations Economic Commission for Europe

UNEP United Nations Environment Program

UNGA United Nations' General Assembly

UNHCR United Nations High Commissioner for Refugees

WCED World Commission on Environment and Development

WECF Women in Europe for a Common Future

INTRODUCTION

The entrenchment of environmental concerns within the field of law marks one of the most profound evolutions of the last half of the century. What initially appeared as a primarily political or scientific matter has progressively acquired a legal dimension, capable of shaping both individual rights and State obligations. This transformation reflects the growing awareness that environmental degradation is not only an ecological issue but also a fundamental human rights concern. The enjoyment of rights such as life, health, private and family life, and property depends, to a significant extent, on the existence of a safe, clean, and sustainable environment.

At the same time, the climate crisis, with its systemic and cross-cutting impacts, already represents one of the major sources of global instability. As Andrew Harper, Special Adviser to the United Nations High Commissioner for Refugees (UNHCR) on Climate Action, has stressed, global warming directly fuels forced migration and displacement, underlining the vital importance of immediate and timely action.¹ This heightened sense of urgency has also spurred institutional developments: in 2022 the United Nations General Assembly (UNGA) formally recognised, through Resolution 76/300, the human right to a clean, healthy, and sustainable environment, and more recently, on 23 July 2025, the International Court of Justice (ICJ) issued its long-awaited Advisory Opinion on climate change, affirming that States bear positive obligations under international law to combat global warming and mitigate its consequences.

These developments confirm that environmental protection, and particularly climate change, can no longer be viewed as a secondary or derivative issue, but must be understood as central to the contemporary human rights agenda and to the stability of the international legal order.

Within this framework, individual litigation mainly functions as the keyway for people who believe their fundamental rights have been violated to seek justice before national

¹ Andrew Harper, *‘Il cambiamento climatico è la crisi che caratterizza il nostro tempo e colpisce in particolare le persone costrette alla fuga’*, UNHCR (15 January 2021).

or international courts. In human rights law, this type of litigation enables victims to file claims directly against public authorities or, in specific cases, against private entities whose actions have violated rights protected by international or regional agreements. Its purpose is twofold: first, to provide a legal avenue for individuals and communities harmed by environmental damage; second, to help develop legal standards and clarify the obligations of States in environmental protection. However, despite its increasing significance, access to environmental-related individual litigation remains inconsistent and often limited, with notable differences depending on the institutional setup and procedural rules for standing in various courts and tribunals. The present thesis analyses, through a comparative inquiry into the approaches of the European Convention on Human Rights (ECHR) and the European Union (EU) legal order, whether environmental law should continue to prioritise human-centred interests or whether it is time to acknowledge the environment as a rights-bearing subject in its own right, situating this debate within the broader question of what role human rights play in the protection of the environment. To this end, the analysis is structured around three main chapters.

Chapter 1 examines the emergence of environmental rights in international law. The first section introduces the foundational instruments of international environmental law, showing how, even in these early texts, one can already trace references to human rights concerns and the interdependence between environmental protection and the enjoyment of fundamental rights. The second section examines the first of the two legal approaches: the protection of environmental interests through the broad interpretation of existing human rights guarantees. Here, environmental rights are situated within the traditional categorisation of human rights, before outlining the process of the so-called ‘greening’ of human rights. This approach has progressively extended beyond substantive protections to encompass procedural rights, such as the rights of access to information, public participation, and access to justice. The third and final section of Chapter 1 focuses on the second approach: the recognition of a standalone right to a healthy environment. It retraces the legal and conceptual developments that culminated in its acknowledgment by the UNGA in 2022, a milestone that consolidates the link between environmental protection and human rights and reflects the growing urgency of addressing the global climate crisis.

Chapter 2 examines the contribution of the Council of Europe (CoE) system. Despite the absence of an explicit environmental right in the ECHR, the European Court of Human Rights (ECtHR) has developed an extensive body of case-law integrating environmental protection into the interpretation of existing provisions, most notably Articles 6, 8, and 10 of the Convention, and Article 1 of Protocol No. 1. The chapter also addresses the legal hurdles that applicants face, including admissibility criteria and the notion of ‘victim’ under Article 34 ECHR, which poses particular challenges in climate change litigation. The analysis highlights key recent judgments, such as *Verein KlimaSeniorinnen Schweiz v. Switzerland* (2024) and *Cannavacciuolo and Others v. Italy* (2025), which illustrate the Court’s increasing engagement with the systemic risks posed by environmental degradation. Alongside the ECHR, the European Social Charter (ESC) emerges as a complementary instrument capable of reinforcing environmental protection through socio-economic rights, most notably the right to health. Thanks to its collective complaints’ mechanism, particularly suited to addressing widespread harms such as environmental degradation, the ESC has progressively revealed itself as institutionally well-positioned to accommodate a right to a healthy environment. Although its provisions do not expressly enshrine such a right, the European Committee of Social Rights (ECSR) has developed an interpretive practice that underscores the link between social rights and environmental well-being, and even proposals for an additional protocol on the right to a healthy environment have been advanced, though ultimately stalled by political opposition.

Chapter 3 turns to the EU, where environmental protection has long been recognised as a core policy objective, yet the possibility for individuals to enforce it through the judicial avenues has remained fraught with difficulties. The chapter begins by recalling the historical evolution of EU competences, culminating in the Lisbon Treaty, which firmly anchored environmental protection within the Union’s constitutional framework. Particular attention is devoted to Article 37 of the Charter of Fundamental Rights (CFR), which affirms that ‘everyone shall have the right to be informed of the quality of the environment and its protection’. Although largely programmatic, this provision reflects the integration of environmental concerns into the EU’s constitutional framework and provides a useful starting point for assessing the role of individual rights in this field. From there, the analysis turns to the persistent challenges

of access to justice, where the restrictive approach to standing developed under the *Plaumann* doctrine has traditionally curtailed the ability of individuals and non-governmental organisations (NGOs) to contest EU measures directly. The implementation of the Aarhus Convention, through the 2006 Regulation and its 2021 reform, has sought to address these shortcomings by strengthening procedural guarantees, but its practical impact remains limited. The enduring tension between ambitious declarations and constrained enforcement emerges clearly from recent jurisprudence of the Court of Justice of the European Union (CJEU). In *Carvalho and Others v. Parliament and Council*, the Court dismissed the first climate action brought by EU citizens on procedural grounds, underscoring the barriers that still hinder individual access. By contrast, in *C.Z. and Others v. ILVA SpA* (Grand Chamber, 2024), the Court reaffirmed that the protection of public health must prevail even in the face of strong industrial and economic pressures. Taken together, these cases illustrate both the limitations of the current system and the potential of EU law, when effectively applied, to confront pressing environmental challenges.

The analysis of these legal frameworks illustrates the centrality and the limits of individual litigation in advancing environmental protection. On the one hand, litigation has proven to be an indispensable tool to mobilise human rights law in the service of environmental justice. On the other hand, procedural barriers, fragmented recognition of rights, and restrictive admissibility criteria continue to undermine the effectiveness of such efforts. Thus, the convergence of human rights and environmental protection stands as a defining dimension of contemporary legal discourse, destined to shape the evolution of international and regional jurisprudence in the years to come.

CHAPTER 1

THE EMERGENCE OF ENVIRONMENTAL RIGHTS IN INTERNATIONAL LAW

1. Introduction

This chapter lays the conceptual foundations for addressing the broader research question that animates this thesis: what role do human rights play in the protection of the environment? To engage with this overarching issue, the chapter focuses on a more specific inquiry, examining the two principal legal approaches through which the relationship between environmental protection and human rights has evolved in international law.

The first approach rests on the idea that environmental degradation can significantly impair the enjoyment of existing human rights, such as the rights to life, health, and private and family life. Instead of creating a new category of rights, this perspective relies on a dynamic interpretation of established legal norms, allowing environmental concerns to be progressively integrated into the framework of civil, political, economic, and social rights. This approach has also fostered the development of procedural environmental rights, including the rights to access information, participate in decision-making, and access to justice.¹

By contrast, the second approach aims to affirm a substantive and autonomous right to a healthy environment, standing as an independent legal entitlement.² This development has been driven primarily by soft law instruments, regional human rights systems, and increasingly explicit United Nations (UN) resolutions, culminating in the UNGA's recognition in 2022 of a universal right to a clean, healthy, and sustainable environment (Resolution 76/300).³

¹ Bridget Lewis, 'Environmental Rights or a Right to the Environment: Exploring the Nexus between Human Rights and Environmental Protection' (2012) 8 *Macquarie J Int'l & Comp Envtl L* 36, 37.

² Lewis (n 1) 39.

³ UNGA, Res 76/300 'The Human Right to a Clean, Healthy and Sustainable Environment' (28 July 2022) UN Doc A/RES/76/300.

The chapter is structured as follows. The first section introduces key environmental law instruments, highlighting how, even within these early legal texts, connections to human rights concerns were already evident. Subsequently, the second section analyses the first of the two legal approaches: the protection of environmental interests through the expansive interpretation of pre-existing human rights. This section begins by situating environmental rights within the traditional categorisation of human rights, then outlines the process of the ‘greening’ of human rights. In addition to substantive guarantees, this evolution has increasingly incorporated procedural rights (e.g., the right to access environmental information, participate in decision-making, and seek remedies), which have become increasingly central in environmental governance. These rights find a particularly clear expression in the Aarhus Convention, which is briefly outlined in this section to illustrate the development of this approach. Although the Aarhus Convention is not, strictly speaking, a human rights treaty, it holds particular significance as it codifies procedural environmental rights. However, given its particular relevance to EU law, the Convention will be analysed in greater detail in Chapter 3. In conclusion, the last section focuses on the second approach: the recent recognition of a standalone right to a healthy environment. It explores the legal and conceptual evolution that led to its acknowledgment by the UNGA in 2022. This paradigm consolidates the relationship between environmental protection and human rights, particularly in the context of the global climate crisis.

The chapter concludes by emphasising that, despite recent normative advancements, the first approach remains the dominant framework through which environmental protection is pursued in the human rights context. While the recognition of a right to a healthy environment has gained momentum, its lack of codification in a binding international treaty severely limits its enforceability before judicial bodies. As a result, individuals seeking redress for environmental harm must still rely on the broad interpretation of existing human rights, particularly in cases of individual litigation.

2. A Historical Approach to the Environmental Issue

This section will explore the historical evolution of the environmental issue in international law, with particular attention to the early normative frameworks and legal

milestones that gradually laid the groundwork for the recognition of environmental protection as a matter of human rights. It will reconstruct the main stages through which the environmental issue came to be increasingly linked to the protection of human rights, even though this linkage was not originally established within instruments explicitly devoted to human rights. At the same time, the section will highlight the political challenges that accompanied this process and shaped the normative development of international environmental law.

2.1 The Recognition and Historical Development of Environmental Rights

One of the most significant developments in international law in the late twentieth century has been the growing convergence between environmental protection and human rights.⁴ This confluence of two initially distinct domains has been driven primarily by the recognition that environmental harm directly impacts the enjoyment of core human rights.⁵ A notable expression of this link can be found in Vice President Christopher Weeramantry's separate opinion in the *Gabčíkovo-Nagymaros* case before the ICJ.⁶ In this context, he highlighted that the protection of the environment is justified on the grounds of its importance to the enjoyment of basic human rights and human survival.⁷ In this view, norms on environmental protection and human rights rest on a shared normative foundation.⁸

This recognition prompted legal scholars and institutions to increasingly treat environmental degradation not merely as a scientific or regulatory issue, but as both a legal and ethical imperative.⁹

⁴ Ole W Pedersen, 'European Environmental Human Rights and Environmental Rights: A Long Time Coming' (2008) 21 *Georgetown Intl Envtl L Rev* 73, 73; Stephen J Turner, 'Introduction: A Brief History of Environmental Rights and the Development of Standards' in Stephen J Turner (ed), *Environmental Rights* (CUP 2019) 1.

⁵ Pedersen (n 4) 75; Turner (n 4) 1; Louis Sohn, 'The Stockholm Declaration on the Human Environment' (1973) 14 *Harv Int'l L J* 423, 451–55.

⁶ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* (Judgment) [1997] ICJ Rep 7, 88.

⁷ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* (Separate Opinion of Vice-President Weeramantry) [1997] ICJ Rep 7, 91.

⁸ Pedersen (n 4) 76–77, Turner (n 4) 1.

⁹ Turner (n 4) 3–4; Aldo Leopold, *A Sand County Almanac – and Sketches Here and There* (OUP 1949) 203–04; Emrah Akyüz, 'The Development of Environmental Human Rights' (2021) 8(2) *IGEO* 218, 218–219.

Especially from the 1970s onwards, various States adopted constitutional provisions, legislative measures, and judicial interpretations that incorporated environmental dimensions. This evolution occurred in parallel with the emergence of what is now referred to as ‘Global Environmental Constitutionalism’, a phenomenon that explores how constitutions engage with environmental rights, responsibilities, and procedures in pursuit of environmental protection and the right to a healthy environment.¹⁰

In addition, numerous States have affirmed this right by ratifying international and regional agreements that enshrine environmental protection.¹¹ Such commitments impose obligations at the international level, including regular compliance assessments conducted by human rights bodies created within the context of the UN.¹² Although there is no centralised global enforcement mechanism, non-compliance can lead to diplomatic consequences, such as reputational damage, public condemnation by international institutions, and pressure from other treaty parties.¹³

Considering this evolution, it becomes evident that the internationalisation of environmental rights has largely originated from domestic and regional legal developments. Indeed, in the 1970s (and still today), core international human rights instruments adopted after WWII, such as the UN Charter, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), did not initially include environmental rights,¹⁴ reflecting the lack of

¹⁰ James R May, ‘The Case for Environmental Rights: Recognition, Implementation and Outcomes’ (2021) 42 *Cardozo L Rev* 983, 988.

¹¹ African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, art 24; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol) (adopted 17 November 1988, entered into force 16 November 1999) OAS Treaty Series No 69, art 11; Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447 (Aarhus Convention); Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) (adopted 4 March 2018, entered into force 22 April 2021) UN Doc CN.195.2018.TREATIES-XXVII.18.

¹² Martha F Davis and Solene Kerisit, ‘The Human Right to a Healthy Environment: A Research Guide and Annotated Bibliography’ (2023) 15 *NE ULR* 701, 705-706.

¹³ Davis and Kerisit (n 12) 705-706; Valentina Carraro, ‘Promoting Compliance with Human Rights: The Performance of the United Nations’ Universal Periodic Review and Treaty Bodies’ (2019) 63 *Intl Stud Q* 1079, 1081 (noting that ‘[t]he international system ... heavily relies on voluntary compliance’).

¹⁴ May (n 10) 985; See generally James R May and Erin Daly, ‘Human Rights Developments in Global Environmental Constitutionalism’ in James R May and Erin Daly (eds), *Encyclopaedia of Human Rights and the Environment: Legality, Indivisibility, Dignity and Geography: Current Global Challenges*

awareness of global environmental challenges at that time.¹⁵ As a result, domestic legal systems and, later, international soft law instruments began to address this normative gap and only slowly made their way into international law.¹⁶

Starting from the 1960s, subsequent international developments, particularly decolonisation, the growth of environmental NGOs, and advocacy from the Global South, helped to elevate environmental concerns on the international legal agenda.¹⁷ While early UN structures lacked a mandate for environmental protection, a more integrated approach began to take shape, linking environmental preservation with development and justice.¹⁸

Despite differences in formulation and enforceability, environmental rights are increasingly seen as essential to the enjoyment of other fundamental rights.¹⁹ Their precise scope, normative strength, and institutional mechanisms remain contested, but their presence in international legal discourse is increasingly undeniable.²⁰

2.2 Early Recognition of Environmental Rights in International Instruments: The Stockholm Declaration (1972)

In the early 1970s, international environmental law was still in its infancy, with fewer than three dozen multilateral agreements in place.²¹ A major turning point occurred in 1972, with the first UN Conference on the Human Environment, held in Stockholm. This conference laid the foundations for modern international environmental law and led to the creation of the United Nations Environment Programme (UNEP),²² which remains the UN's principal body aimed at coordinating environmental issues and

(Edward Elgar 2019) 93; see also Patricia Birnie, 'Environmental Protection and Development' (1995) 20 *Melb U L Rev* 66, 69.

¹⁵ Birnie (n 14) 69.

¹⁶ May (n 10) 984.

¹⁷ Birnie (n 14) 66-68.

¹⁸ Birnie (n 14) 69.

¹⁹ Akyüz (n 9) 219.

²⁰ Turner (n 4) 6, Akyüz (n 9) 218-219.

²¹ Edith Brown Weiss, 'International Environmental Law: Contemporary Issues and the Emergence of a New World Order' (1993) 81 *Geo LJ* 675, 675.

²² Akyüz (n 9) 219; Weiss (n 21) 675; B W Cramer, 'The Human Right to Information, the Environment and Information About the Environment: From the Universal Declaration to the Aarhus Convention' (2009) 14(1) *Comm L & Pol'y* 73, 73-103; Joshua Chad Gellers, 'Greening Constitutions with Environmental Rights: Testing the Isomorphism Thesis' (2012) 29(4) *Rev Pol'y Res* 523, 523-543.

actions at a global level.²³ The conceptual groundwork for integrating environmental concerns into the human rights agenda was laid in the 1968 Tehran Conference on Human Rights,²⁴ which not only affirmed the indivisibility and interdependence of all human rights but also opened this normative space in order to include complex and emerging issues such as environmental protection.²⁵ The Stockholm Declaration marked the moment in which environmental concerns were formally integrated into the UN's broader policy agenda, shaping the policies of both the organisation and its specialised agencies.²⁶ The main objective of the conference was to develop and negotiate a legal instrument that would embody a common international approach to environmental protection.²⁷ On 16th June 1972, the Conference adopted the Declaration of the United Nations Conference on the Human Environment, commonly known as the Stockholm Declaration.²⁸

The famous Principle 1 of the Declaration states as follows:

'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 for present and future generations.'²⁹

This was the first international document to explicitly acknowledge the connection between environmental quality and human rights.³⁰ The Declaration advanced a human-rights-based approach to environmental protection by establishing a conceptual link between the enjoyment of fundamental rights and environmental

²³ Birnie (n 14) 82.

²⁴ Proclamation of Teheran, International Conference on Human Rights (Teheran, 22 April–13 May 1968) UN Doc A/CONF.32/41, Preamble.

²⁵ Dinah L Shelton, 'Human Rights and the Environment: What Specific Environmental Rights Have Been Recognized' (2006) 35 *Env J Int'l L & Pol'y* 129, 129-130.

²⁶ Birnie (n 13) 67; UN Conference on the Human Environment, *Report of the United Nations Conference on the Human Environment* (15–16 June 1972) UN Doc A/CONF.48/14/Rev.1 (1972) and Corr.1 (1972); 11 ILM 1416.

²⁷ May (n 10) 997.

²⁸ United Nations Conference on the Human Environment, *Declaration of the United Nations Conference on the Human Environment* (Stockholm, 16 June 1972) UN Doc A/Conf 48/14/Rev 1; 11 ILM 1416.

²⁹ May (n10) 998; Stockholm Declaration (n 28) Principle 1.

³⁰ Akyüz (n 9) 219; MAA Wisadha and GA Widyaningsih, 'Human Rights and the Environmental Protection: The Naïveté in Environmental Culture' (2018) 2(1) *Udayana J L & Culture* 73; J Jankuv, 'Protection of Right to Environment in International Public Law' (2019) 19(1) *Intl & Comp L Rev* 146; S Ahmetoğlu and A Tanık, 'Management of Carbon Footprint and Determination of GHG Emission Sources in Construction Sector' (2020) 7(2) *Intl J of Environment and Geoinformatics* 191.

protection, more specifically, the quality of both natural and man-made aspects of the environment.³¹ In this sense, the Declaration introduced the novel idea that environmental protection and the respect of basic environmental standards are regarded as preconditions to the enjoyment of human rights.³²

However, despite its symbolic value, the Stockholm Declaration was subject to several criticisms.³³ As feared by a group of dissidents in the days preceding the conferences, the Declaration fails to recognise a distinct solidarity-based right to a healthy environment, nor does it provide a clear conceptualisation of the environment itself.³⁴

Moreover, the non-binding nature of its principles limited their effect to aspirational guidance rather than actionable obligations.³⁵ Nonetheless, as a soft-law instrument,³⁶ the Stockholm Declaration did not aim to establish binding rules, but to guide States and individuals in preserving and enhancing the human environment.³⁷ Secondly, the Declaration does not offer a clear understanding of the relationship between the environment and human beings. In particular, it focuses primarily on human needs, largely overlooking the intrinsic value of the natural world and the importance of its protection.³⁸ Lastly, it may be contended that treating the definition of a ‘safe environment’ as a precondition for the realisation of human rights carries the risk of denying the very existence or applicability of those rights whenever such environmental conditions are not met. Following this, if environmental quality is essential for the enjoyment of human rights, but no binding definition of a ‘safe environment’ is provided, this uncertainty may weaken both their enforceability and normative clarity.³⁹ In contexts marked by severe environmental degradation, such as air or water pollution, this ambiguity may be used to argue that the lack of

³¹ Akyüz (n 9) 219; Stockholm Declaration (n 28).

³² Akyüz (n 9) 219; Damilola S Olawuyi, ‘Recognizing the Intersections between Human Rights and the Environment in Legal Education and Training’ (2014) 1(2) *Asian J Legal Educ* 103.

³³ Akyüz (n 9) 220.

³⁴ Akyüz (n 9) 220; Oliver A Houck, ‘A Case of Sustainable Development: The River God and the Forest at the End of the World’ (2008) 44 *Tulsa L Rev* 275, 305; May (n 10) 997.

³⁵ Akyüz (n 9) 220; Philippe Sands, ‘Enforcing Environmental Security: The Challenges of Compliance with International Obligations’ (1993) 46(2) *J Intl Aff* 367; Don K Anton and Dinah L Shelton, *Environmental Protection and Human Rights* (CUP 2011).

³⁶ Sergio Carbone at al, *Istituzioni di diritto internazionale* (6th edn, Giappichelli 2021) 82–83.

³⁷ Akyüz (n 9) 220.

³⁸ Akyüz (n 9) 220.

³⁹ Akyüz (n 9) 220.

environmental safeguards precludes the enjoyment of human rights. This conceptual gap, left unaddressed by the Declaration, contributes to the broader critique concerning its legal and normative indeterminacy.⁴⁰ Although the Declaration marked progress by recognising the link between environment and human well-being, it failed to offer a clear legal or conceptual framework to articulate their interaction.⁴¹

2.3 The Brundtland Report (1987)

Considering the Stockholm Declaration's limits, the international community undertook renewed efforts to elaborate the concept of sustainable development, a notion that has become central to contemporary environmental discourse. This evolution took a significant step forward with the establishment of the World Commission on Environment and Development (WCED), an independent body established by the UNGA during its thirty-eighth session through a dedicated resolution.⁴² The Commission was tasked with proposing a 'global agenda for change', focusing on long-term strategies that would link environmental protection with social and economic development goals.⁴³ Chaired by Gro Harlem Brundtland, the Commission published its final report in April 1987 under the title *Our Common Future*, widely known as the *Brundtland Report*.⁴⁴ That October, the report was presented at a special plenary session of the UNGA.⁴⁵

In an urgent yet measured tone, the Report emphasised the need to address a 'growing environmental crisis', describing it as a set of interconnected challenges caused by unsustainable development patterns.⁴⁶ The call for immediate and coordinated action is grounded in the newly articulated concept of 'sustainable development', described as:

⁴⁰ Akyüz (n 9) 220.

⁴¹ Akyüz (n 9) 220.

⁴² Ian G McChesney, *The Brundtland Report and Sustainable Development in New Zealand* (Centre for Resource Management, Lincoln University and University of Canterbury 1991) ch 1, p.1; UNGA Res 38/161 'Process of preparation of the Environmental Perspective to the Year 2000 and Beyond' (19 December 1983) UN Doc A/RES/38/161.

⁴³ McChesney (n 42) 1.

⁴⁴ McChesney (n 42) 1; World Commission on Environment and Development, *Our Common Future* (1987).

⁴⁵ McChesney (n 42) 1-2; UNGA Res 42/187 'Report of the World Commission on Environment and Development' (11 December 1987) UN Doc A/RES/42/187.

⁴⁶ McChesney (n 42) 2.

‘development which meets the needs of the present, without compromising the ability of future generations to meet their own needs.’⁴⁷

The Report grounded this concept in two core principles: prioritising the essential needs of the world’s poorest (population and countries) and recognising the environmental limits of existing technological and social structures.⁴⁸ In this way, environmental protection was framed as a prerequisite for long-term economic and social stability.⁴⁹

This report has undoubtedly been a real catalyst for global environmental concerns.⁵⁰ Indeed, one of the Report’s most significant achievements is that it positioned the concept of sustainable development as a universally recognised guiding principle.⁵¹ By firmly integrating it into political discourse and common language, the report made the concept accessible, widely accepted, and politically influential.⁵² This normative shift quickly gained traction among States, civil society, and multilateral institutions, helping to institutionalise sustainability as a core pillar of international cooperation.⁵³ Importantly, the Commission did not present sustainable development as a fixed target, but rather as an ongoing, evolving process that must respond to changing global realities.⁵⁴

However, the Report also has notable weaknesses. While it calls for change, it is fundamentally a political document, shaped by the imperative of consensus among a diverse set of international stakeholders.⁵⁵ As a result, its language is at times vague, particularly on politically sensitive issues such as population control and economic growth, and it avoids deep structural critiques. The absence of a robust theoretical or historical framework further undermines its capacity to address the root causes of environmental degradation. Still, the Brundtland Report played a pivotal role in raising

⁴⁷ *Our Common Future* (n 44) 43.

⁴⁸ *Our Common Future* (n 44) 43.

⁴⁹ McChesney (n 42) 8.

⁵⁰ Tatiana Dănescu, Radu Bogdan Matei and Lavinia Constantinescu, ‘Evolutionary Benchmarks in Sustainability Reporting: Incursion from the Brundtland Report to the Sustainable Development Goals’ (2021) 6(1) *Acta Marisiensis. Seria Oeconomica* 19.

⁵¹ McChesney (n 42) 4.

⁵² McChesney (n 42) 9.

⁵³ McChesney (n 42) 9.

⁵⁴ McChesney (n 42) 4; *Our Common Future* (n 44) 43, 65.

⁵⁵ McChesney (n 42) 8.

global awareness and bringing sustainability to the forefront of international policy discourse.⁵⁶

Following its publication and the enactment of the first objectives,⁵⁷ human rights discourse gradually gained ground within environmental policy, becoming more integrated into the broader framework of sustainability. However, the recognition of a substantive right to a healthy environment at the international level remained an abstract goal.⁵⁸ Nonetheless, even if many of the specific reforms suggested by the Report were not carried through, some laid the groundwork for future multilateral initiatives.⁵⁹

2.4 The Rio Declaration (1992)

Among the key developments driven by the momentum of the Brundtland Report was the 1989 decision by the UNGA to convene a major international conference, leading to the 1992 United Nations Conference on Environment and Development (UNCED), held in Rio de Janeiro. The purpose of this conference was to ‘elaborate strategies and measures to halt and reverse the effects of environmental degradation in the context of increased national and international efforts to promote sustainable and environmentally sound development in all countries’.⁶⁰ Preparations for the meeting were undertaken not only by States and international organisations, but also technical and scientific bodies, business associations, local governments, and voluntary groups.⁶¹

The UNCED meeting attracted enormous international attention, marking the next significant milestone in the international environmental agenda. Following the UNCED, sustainable development became firmly established as a key objective, not

⁵⁶ McChesney (n 42) 8.

⁵⁷ Dănescu and others (n 50) 23.

⁵⁸ May (n 10) 998.

⁵⁹ William M Lafferty and James Meadowcroft, ‘Introduction’ in *Implementing Sustainable Development: Strategies and Initiatives in High Consumption Societies* (OUP 2000) 1-22, 8.

⁶⁰ UNGA Res 44/228 ‘United Nations Conference on Environment and Development’ (22 December 1989) UN Doc A/RES/44/228; Lafferty and Meadowcroft (n 59) 8.

⁶¹ Lafferty and Meadowcroft (n 59) 8.

only for the UN itself, but also for its specialised agencies, numerous international bodies, commissions, and autonomous entities.⁶²

The outcome of the conference was the adoption of the so-called Rio Accords, which comprised two legally binding conventions (the Framework Convention on Climate Change and the Convention on Biological Diversity) and three soft law instruments: the Statement of Forest Principles, Agenda 21,⁶³ and the Rio Declaration on Environment and Development.⁶⁴ The concept of sustainable development lies at the core of all these documents. It appears in twelve of the twenty-seven articles of the Rio Declaration and is explicitly referenced in the texts of the Climate and Biodiversity Conventions as well as in the Statement of Forest Principles.⁶⁵ Nevertheless, sustainable development was never formally defined in any of the UNCED outputs. Its meaning was largely assumed, deriving from the Brundtland Report, and the emphasis was placed on reaffirming its significance and identifying the practical measures needed to achieve it.⁶⁶

Among the Rio outputs, the 1992 Rio Declaration stands out as particularly relevant, even if not legally binding. Approved by 178 countries, it reaffirmed the principles set out in the 1972 Stockholm Declaration while introducing substantial innovations, especially in the recognition of procedural environmental rights.⁶⁷ In contrast to the anthropocentric perspective of Stockholm, which framed the environment as merely instrumental to the enjoyment of human rights, the Rio Declaration emphasised the

⁶² Birnie (n 14) 70-71.

⁶³ Agenda 21 was designed as a 'blueprint for action' for sustainable development into the 21st century. See also Lafferty and Meadowcroft (n 57) 8; Agenda 21 was conceived as an elaborate 'Program of Action for Sustainable Development' which detailed initiatives required to manage environment and development problems into the next century.

⁶⁴ Lafferty and Meadowcroft (n 59) 8; United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107; Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79; United Nations Conference on Environment and Development, *Rio Declaration on Environment and Development* (Rio de Janeiro, 14 June 1992) UN Doc A/CONF.151/26 (Vol I); United Nations Conference on Environment and Development, *Agenda 21* (Rio de Janeiro, 14 June 1992) UN Doc A/CONF.151/26 (Vol II); United Nations Conference on Environment and Development, *Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests* (Rio de Janeiro, 14 June 1992) UN Doc A/CONF.151/26 (Vol III).

⁶⁵ Lafferty and Meadowcroft (n 59) 8.

⁶⁶ Lafferty and Meadowcroft (n 59) 8.

⁶⁷ United Nations, *Report of the United Nations Conference on Environment and Development* (12 August 1992) UN Doc A/CONF.151/26/Rev.1.

responsibilities of individuals and States in safeguarding the environment, though it still remained largely anthropocentric. This shift marked an evolution in the understanding of environmental rights, from being merely instrumental to human well-being to representing obligations towards the environment itself.⁶⁸ Additionally, Principle 10 of the Rio Declaration introduced and codified the three foundational pillars of procedural environmental rights: the right to access environmental information, the right to participate in environmental decision-making, and the right to access justice in environmental matters. Principle 10 states as follows:

‘Environmental issues are best handled with the 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.’⁶⁹

This was the first time these rights were formally recognised in an international instrument, representing a decisive step towards a more transparent, inclusive, and accountable environmental governance.⁷⁰ Not surprisingly, Principle 10 has since inspired numerous legislative and constitutional reforms across a wide range of countries in Africa, Asia, and the Americas.⁷¹ In doing so, the Rio Declaration became a point of reference for States, policymakers in constructing governance frameworks grounded in participation, transparency, and accountability.⁷²

Nevertheless, the Declaration has drawn criticism, chiefly for its lack of legal enforceability. Its non-binding nature leaves implementation to the discretion of States, thereby limiting its capacity to compel compliance.⁷³ Moreover, the absence of

⁶⁸ Akyüz (n 9) 220.

⁶⁹ *Rio Declaration on Environment and Development* (n 64) Principle 10.

⁷⁰ Akyüz (n 9) 221.

⁷¹ Akyüz (n 9) 221. Principle 10 served also as the basis for the Aarhus Convention, which codified procedural rights in international environmental law.

⁷² David Banisar, Sejal Parmar, Lalanarh de Silva and Carole Excell, ‘Moving From Principles to Rights: Rio 2012 and Access to Information, Public Participation, and Justice’ (2011) 12(3) *Sustainable Dev L & Pol’y* 8.

⁷³ Akyüz (n 9) 221.

a distinct right to a healthy environment is seen as a significant shortcoming.⁷⁴ While the Declaration's emphasis on procedural rights is commendable, some argue that without recognition of a substantive right, environmental protection remains legally fragmented and conceptually incomplete. Others, however, contend that if procedural rights are effectively implemented, they may functionally serve the same protective aim, rendering a distinct substantive right redundant. This remains a point of contention in international legal debate.⁷⁵ Putting aside those objections, the Conference's culmination in a globally visible forum, where world leaders committed to tackling pressing environmental and developmental challenges, helped consolidate sustainable development as the guiding paradigm for international action.⁷⁶ Indeed, following the Rio Summit, the UN took concrete institutional steps to operationalise this vision. In December 1992, the UNGA established the Commission on Sustainable Development (CSD) to monitor the implementation of Agenda 21 and coordinate responses to emerging environmental and developmental challenges.⁷⁷ In the years that followed, the CSD contributed to reviewing global progress, notably coordinating the five-year review of Agenda 21 during a 1997 Special Session of the UNGA, which reaffirmed international support for the Agenda and set new strategic priorities.⁷⁸ Thus, by the end of the 1990s, the concept of sustainable development became a cornerstone of international discourse, extending beyond environmental and developmental matters to serve as a normative framework guiding global development discourse as a whole.⁷⁹ These developments have contributed to the gradual recognition of a linkage between sustainable development and the human right to a clean and healthy environment. The Rio Declaration advanced mainly procedural rights, while leaving the substantive content of the human right to a clean and healthy environment largely undefined and contested. This tension continues to shape international legal debate and has more recently been taken up within the UN, whose evolving practice will be examined in the following sections.

⁷⁴ Akyüz (n 9) 221.

⁷⁵ Akyüz (n 9) 221.

⁷⁶ Lafferty and Meadowcroft (n 59) 8-9.

⁷⁷ Lafferty and Meadowcroft (n 59) 9.

⁷⁸ Lafferty and Meadowcroft (n 59) 9.

⁷⁹ Lafferty and Meadowcroft (n 59) 9.

3. The First Approach: Supporting Human Rights-Based Environmental Protection

This section examines the derivative approach to environmental protection, which is grounded in the broad interpretation of pre-existing human rights, such as the right to life, the right to health, and the right to private and family life.

Rather than recognising a standalone right to a healthy environment, this perspective incorporates environmental concerns within the scope of established civil, political, and socio-economic rights. The section first considers where environmental rights may be situated within the broader human rights' traditional categorisation. It then explores the process known as the greening of human rights, through which environmental dimensions have been progressively integrated into traditional rights categories. Procedural environmental rights as defined in the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, commonly known as the Aarhus Convention, are also explored in this section.

3.1 The Generations of Human Rights: The Place of Environmental Rights

The evolution of human rights is commonly conceptualised within a tripartite framework of three generational categories.⁸⁰ The first generation, rooted in Enlightenment ideals and liberal political philosophy, concerns civil and political rights. These include core entitlements such as the right to life, liberty, and personal security; freedom from slavery, torture, or arbitrary arrest; the right to a fair and public trial; freedom of thought, conscience, and religion; and the right to own property without arbitrary deprivation. Such rights are articulated in Articles 2–21 of the UDHR and are further elaborated in the ICCPR and in the ECHR. They are typically considered negative rights, as they require the State to refrain from undue interference in individual freedoms.⁸¹

⁸⁰ Jim Ife, *Human Rights and Social Work* (CUP 2001) 24–42.

⁸¹ Ife (n 80) 25–26; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, opened for signature 4 November 1950, entered into force 3 September 1953) ETS No 5.; Prudence E. Taylor, 'From Environmental to

The second generation encompasses economic, social, and cultural rights, shaped by socialist and social-democratic traditions.⁸² These positive rights include access to education, health care, housing, and employment. Unlike the first generation, they require active State intervention to be fulfilled. These rights are primarily articulated in Articles 22–27 of the UDHR and the ICESCR.⁸³ Originally championed by socialist-communist regimes, they have since become central to the demands of developing States seeking to overcome structural inequalities and improve standards of living.⁸⁴ The third generation, more recent and less firmly embedded in international law, refers to collective or solidarity rights. These rights reflect post-colonial aspirations and global justice concerns, particularly those emerging from the Global South. They include the rights to development, peace, cultural identity, and most notably, the right to a healthy environment. Third-generation rights shift the focus from individuals to communities and peoples, and they call for international cooperation and a rebalancing of global power and resources.⁸⁵ However, from a legal point of view, these rights are problematic, as their codification in treaties and conventions remains at a very preliminary stage and legal or constitutional mechanisms for their protection are still embryonic.⁸⁶ This explains why such rights, including the right to a healthy environment, are less firmly recognised in binding international law.

Environmental rights do not conform easily to the traditional generational model of human rights. Rather than fitting neatly into one category, they can be viewed from at least three perspectives, straddling all the various categories or generations of human rights.⁸⁷ First, existing civil and political rights can be used to give individuals, groups, and NGOs access to environmental information, judicial remedies, and political processes. Under this perspective, their role is one of empowerment: facilitating participation in environmental decision-making and compelling governments to meet

Ecological Human Rights: A New Dynamic in International Law' (1998) 10 *Geo Int'l Envtl L Rev* 309, 318.

⁸² Ife (n 80) 25-26.

⁸³ Ife (n 80) 26-27; UNGA, *Universal Declaration of Human Rights* (10 December 1948) UNGA Res 217 A(III); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

⁸⁴ Ife (n 80) 27.

⁸⁵ Ife (n 80) 27-28; Taylor (n 81) 330.

⁸⁶ Ife (n 80) 27.

⁸⁷ Alan Boyle, 'Human Rights or Environmental Rights – A Reassessment' (2007) 18 *Fordham Envt'l L Rev* 471.

minimum standards of protection for life, private life, and from environmental harm.⁸⁸ This aligns with one of the prevailing theoretical approaches to conceptualising the nexus between human rights and environmental protection. Indeed, international environmental law may incorporate specific human rights protections, such as freedom of association or access to information, necessary to ensure effective environmental governance.⁸⁹ This approach foregrounds procedural rights (central to instruments like the Aarhus Convention) and their potential to improve accountability, even though many environmental agreements lack binding complaint mechanisms.⁹⁰ Another perspective is to consider the right to a decent and healthy environment as an economic or social right, comparable to those whose progressive attainment is promoted by the 1966 ICESCR.⁹¹ This understanding also underpins the approach of the ESC, which will be examined in detail in the following chapter. From this angle, environmental quality is framed as a value, giving it comparable status to other economic and social rights, such as development, and priority over non-rights-based objectives. Like other economic and social rights, it would be programmatic and, in most cases, enforceable only through relatively weak international supervisory mechanisms.⁹² Accordingly, environmental degradation is seen not as a separate issue, but as a factor that directly impedes the fulfilment of existing socioeconomic rights.⁹³

Finally, environmental rights can be presented as collective or solidarity rights, entitlements held by communities or ‘peoples’ rather than individuals. This model underscores the significance of shared control over environmental resources and acknowledges the collective nature of ecological protection, particularly in the context of Indigenous peoples and cultural minorities. Though less widely embraced, this perspective finds expression in several international instruments that affirm collective rights over natural resources and self-determination.⁹⁴ This corresponds to the articulation of a distinct, substantive right to a healthy and safe environment, recognised not only for the benefit of individuals, but also for communities and

⁸⁸ Boyle (n 87) 471- 472; Shelton (n 25) 129-130.

⁸⁹ Shelton (n 25) 129-130.

⁹⁰ Shelton (n 25) 130-131.

⁹¹ Boyle (n 87) 472.

⁹² Boyle (n 87) 472.

⁹³ Shelton (n 25) 130.

⁹⁴ Boyle (n 87) 472.

ecosystems. Here, the environment is framed as a legal good worthy of protection in its own right.⁹⁵

While the reinterpretation of existing rights has been the dominant pathway for integrating environmental protection into human rights law, scholars have advocated for the explicit recognition of an autonomous right to a healthy environment.⁹⁶ However, this perspective, which departs from the interpretative approach examined in this section, will be addressed starting from paragraph 4 of this chapter.⁹⁷

Finally, a contrasting view flips the rights-based narrative by emphasising responsibilities, advocating an ‘ecocentric’ ethic, recognising the intrinsic value of nature, and the interdependence of human and ecological systems.⁹⁸

What emerges from these various approaches is a fundamental tension between anthropocentric and ‘ecocentric’ paradigms in the conceptualisation of environmental rights. While the latter recognises the environment as inherently valuable, deserving protection independently of its utility to humans, the anthropocentric perspective (the dominant one and examined in this section) views environmental protection primarily as a tool to safeguard human interests, thereby treating the environment as instrumental to human well-being. As Alan Boyle has noted, the human rights system is not structurally designed to accommodate the complex and often conflicting interests that arise in relation to the environment, particularly those involving non-human elements. While it may be theoretically possible to define environmental rights in a way that minimises their anthropocentric character, institutional realities make it difficult to move beyond a human-centred approach.⁹⁹ This is the central issue from a legal perspective: human rights law, by definition, is anthropocentric, protecting human

⁹⁵ Shelton (n 25) 132.

⁹⁶ Boyle (n 87) 472-473.

⁹⁷ See from page 29.

⁹⁸ Shelton (n 25) 162-163.

⁹⁹ Alan Boyle, ‘The Role of International Human Rights Law in the Protection of the Environment’ in Alan Boyle and Michael Anderson (eds), *Human Rights Approaches to Environmental Protection* (Clarendon Press 1996) 43.; see also Bridget Lewis, *Environmental Human Rights and Climate Change: Current Status and Future Prospects* (Springer 2018) 89; Bill Devall and George Sessions, *Deep Ecology* (Gibbs Smith, 1985); Judith Koons, ‘Earth Jurisprudence: The Moral Value of Nature’ (2008) 25 *Pace Environmental Law Review* 263; Judith Koons, ‘What is Earth Jurisprudence? Key Principles to Transform Law for the Health of the Planet’ (2009) 18 *Penn St Law Review* 47; Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice* (Chelsea Green, 2nd edn, 2011).

interests rather than recognising nature as a rights-holder. Critics from the fields of deep ecology and earth jurisprudence argue that framing environmental protection as a human right risks reinforcing the very instrumental view of nature that has contributed to environmental degradation. Yet, despite these concerns, several scholars acknowledge that a human right to a healthy environment can still serve as a practical tool to advance environmental protection and to foster the emergence of a new environmental ethic.¹⁰⁰

This conceptual divergence raises the following question: should environmental law continue to prioritise human-centred interests or is it time to acknowledge the environment as a rights-bearing subject in its own right? The subsequent section examines how, despite the anthropocentric nature of the human rights system, environmental concerns have increasingly been addressed through the reinterpretation of existing rights, an approach commonly described as the ‘greening’ of human rights.¹⁰¹

3.2 The ‘Greening’ of Human Rights

The increasing number of environmental cases brought before human rights courts and treaty-monitoring bodies reflects the growing relevance of environmental issues within the mainstreaming of human rights discourse.¹⁰² Rather than introducing entirely new categories of rights, this shift, commonly referred to as the ‘greening’ of human rights, entails a reinterpretation of existing legal norms to encompass environmental dimensions. The core focus of related jurisprudence has largely centred on rights such as life, private and family life, and health.¹⁰³ Nonetheless, this interpretative evolution is not limited to Europe. Regional mechanisms such as the Inter-American Court of Human Rights (IACtHR) and the African Commission on Human and Peoples’ Rights

¹⁰⁰ Noralee Gibson, ‘The right to a clean environment’ (1990) *54 Saskatchewan Law Review* 5, 14; Karen Macdonald, ‘A right to a healthful environment - humans and habitats: rethinking rights in an age of climate change’ (2008) *17 European Energy and Environmental Law Review* 213, 216.

¹⁰¹ Alan Boyle, ‘Human Rights and the Environment: Where Next?’ (2012) *23 EJIL* 613, 614.

¹⁰² Boyle (n 101) 614.

¹⁰³ Boyle (n 101) 614.

(ACHPR) have also contributed to this process of cross-fertilisation between environmental and human rights law.¹⁰⁴

As highlighted before in this chapter, at the international level, the so-called International Bill of Rights, which includes the UDHR, the ICCPR, and the ICESCR, has never incorporated an explicit reference to environmental concerns. These foundational texts, however, have served as fertile ground for the interpretive incorporation of environmental concerns into human rights doctrine. The ICCPR, while devoid of explicit environmental language, has been authoritatively interpreted to include such dimensions. General Comments issued by the UN Human Rights Committee serve as a key interpretative tool in this regard, a role that is increasingly reflected in case law. Nonetheless, in General Comment No. 36, the Committee affirmed that environmental degradation, climate change, and unsustainable development pose severe risks to the right to life under Article 6.¹⁰⁵ This signals an important recognition that civil and political rights, such as the right to life, can and must include environmental considerations when threats to ecological integrity undermine human dignity and survival.¹⁰⁶

While the ICESCR also lacks explicit references to environmental protection, it has increasingly been interpreted through an ecological lens. Scholars have argued that this omission weakens the normative status of the environment within the architecture of international human rights law. To rectify this gap, it has been proposed to amend the ICESCR or introduce an additional protocol that would enshrine a substantive right to a healthy environment.¹⁰⁷ Such measures could not only ensure greater coherence with international environmental law but also empower monitoring bodies to balance environmental protection with development goals more effectively.¹⁰⁸ In practice, Articles 11 and 12 of the ICESCR, respectively protecting the rights to adequate housing, water, and food, and the right to health, have been gradually ‘greened’

¹⁰⁴ Boyle (n 101) 614.

¹⁰⁵ UN Human Rights Committee, ‘General Comment No 36: Article 6: Right to Life’ (30 October 2018) UN Doc CCPR/C/GC/36.

¹⁰⁶ Taylor (n 81) 356; Melissa Thorne, ‘Establishing Environment as a Human Right’ (1991) 19 *Denver J Intl L & Pol’y* 301.

¹⁰⁷ Boyle (n 101) 633.

¹⁰⁸ Boyle (n 101) 632-633.

through interpretative instruments. A central example is General Comment No. 14, issued by the Committee on Economic, Social and Cultural Rights on 8 November 2000, which addresses the substantive content of the right to health under Article 12 of the Covenant.¹⁰⁹ This authoritative interpretation explicitly affirms that the right to health must be understood in a broad sense, encompassing not only access to medical care but also the underlying conditions necessary for leading a healthy life, including access to a safe and healthy environment.¹¹⁰ Furthermore, the Comment emphasises the importance of accountability, stating that individuals or groups who are victims of violations of the right to health should have access to effective remedies, both judicial and non-judicial, at national and international levels. This includes the entitlement to adequate reparation in cases where environmental harm has directly impacted health-related entitlements.¹¹¹ Similarly, General Comment No. 12 on the right to adequate food¹¹² introduces the principle of sustainability as a fundamental criterion. It clarifies that the notion of adequacy is closely linked to the availability and accessibility of food, not just in the present, but also for future generations. By doing so, it embeds environmental stability within the legal framework governing food security, thus reinforcing the interdependence between ecological sustainability and the enjoyment of socio-economic rights.¹¹³

This interpretive development finds further support in the Convention on the Rights of the Child (CRC).¹¹⁴ Article 24 of the CRC calls upon States to take appropriate steps to address disease and malnutrition, including through the provision of nutritious food and safe drinking water, explicitly acknowledging the need to consider environmental pollution as a significant health risk. The treaty thus affirms that environmental quality is integral to the fulfilment of children's health rights.¹¹⁵ Further clarification is

¹⁰⁹ Boyle (n 101) 628; UN Committee on Economic, Social and Cultural Rights, *General Comment No 14: The Right to the Highest Attainable Standard of Health* UN Doc E/C.12/2000/4 (2000); see also General Comment No. 15: The Right to Water, UN Doc. E/C.12/2002/11 (2003).

¹¹⁰ Shelton (n 25) 144; General Comment No. 14 (n 109) para 36.

¹¹¹ Shelton (n 25) 144; General Comment No. 14 (n 109) para 59.

¹¹² UN Committee on Economic, Social and Cultural Rights, 'General Comment No 12: The Right to Adequate Food (Art 11 of the Covenant)' (12 May 1999) UN Doc E/C.12/1999/5.

¹¹³ Shelton (n 25) 151.

¹¹⁴ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

¹¹⁵ May (n 10) 999-1000.

provided by the Committee on the Rights of the Child in General Comment No. 7,¹¹⁶ which emphasises that the rights of young children to life, survival, and development cannot be fully realised without a safe and healthy environment. Environmental degradation is framed not merely as an external threat but as a direct impediment to the effective implementation of children's rights. States are therefore urged to adopt integrated policies that ensure environmental security as an essential condition for meeting their obligations under the CRC.¹¹⁷

Taken together, these developments illustrate how the greening of human rights is not simply an aspirational concept but an evolving normative framework. Even where treaties lack explicit environmental provisions, treaty bodies and courts have recognised that environmental protection is a necessary precondition for fulfilling the broader objectives of international human rights law.

A similar interpretative trend can be observed at the European level. Although neither the ECHR nor the ESC expressly recognise a standalone right to a healthy environment (an issue further explored in Chapter 2), the ECtHR has developed a body of case law that addresses environmental concerns through the lens of established rights. To clarify this approach, it is useful to anticipate here the relevance of the 2005 CoE *Manual on Human Rights and the Environment*,¹¹⁸ which synthesises the ECtHR's jurisprudence and outlines key guiding principles. As noted in the *Manual*, even if the ECHR does not provide for an explicit right to a clean and healthy environment, especially Articles 2 and 8, which respectively protect the right to life and the right to private and family life, have been interpreted to cover situations involving environmental harm.¹¹⁹ Landmark rulings such as *López Ostra v. Spain*¹²⁰ and *Öneryıldız v. Turkey*¹²¹ illustrate how the Court has relied on Article 2 and even more on Article 8 to require governments to regulate environmental risks, enforce environmental standards, or

¹¹⁶ CRC (n 114), art. 4; UN Committee on the Rights of the Child, 'General Comment No 7: Implementing Child Rights in Early Childhood' (20 September 2006) UN Doc CRC/C/GC/7/Rev.1, 10.

¹¹⁷ Davis and Kerisit (n 12) 70.

¹¹⁸ Council of Europe, *Manual on Human Rights and the Environment* (Council of Europe Publishing 2006).

¹¹⁹ Boyle (n 87) 485.

¹²⁰ Boyle (n 87) 485.

¹²⁰ *López Ostra v Spain* App no 16798/90 (ECHR, 9 December 1994).

¹²¹ *Öneryıldız v Turkey* App no 48939/99 (ECHR, 30 November 2004).

ensure access to relevant information.¹²² These judgements reflect the principle that such rights not only prohibit State interference, but also impose positive obligations on governments to take active steps to safeguard individuals from environmental harm.¹²³ In this sense, the ECtHR has progressively interpreted Article 8 of the Convention encompassing procedural dimensions in environmental matters.¹²⁴

More specifically, as highlighted by Boyle, ‘procedural rights are the most important environmental addition to human rights law since the 1992 Rio Declaration on Environment and Development’ thus, ‘any attempt to codify the law on human rights and the environment would necessarily have to take this development into account’.¹²⁵

In this context, the institutionalisation of procedural environmental rights finds its most prominent expression in the Aarhus Convention, which marks a pivotal step in formalising these rights at the international level.

3.3 The Recognition of Procedural Environmental Rights: The Aarhus Convention (1998)

A significant milestone in the development of procedural rights under international environmental law occurred with the adoption of the Aarhus Convention. Officially titled the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters,¹²⁶ it was signed on 25 June 1998 in Aarhus, Denmark, under the auspices of the United Nations Economic Commission for Europe (UNECE) and came into force in 2001. Today, it is widely recognised as a landmark in international law, forging a concrete link between environmental protection and the promotion of human rights.¹²⁷

¹²² Boyle (n 101) 615.

¹²³ Boyle (n 101) 624; *Taşkın and Others v Turkey* App no 46117/99 (ECHR, 10 November 2004); *Tătar v Romania* App no 67021/01 (ECtHR, 27 January 2009).

¹²⁴ Ivana Krstić and Bojana Čučković, ‘Procedural Aspects of Article 8 of the ECHR in Environmental Cases – The Greening of Human Rights Law’ (2015) 63(3) *Annals FLB – Belgrade Law Review* 170,172-173.

¹²⁵ Boyle (n 101) 614.

¹²⁶ Aarhus Convention (n 11).

¹²⁷ Veit Koester, ‘The Compliance Committee of the Aarhus Convention – An Overview of Procedures and Jurisprudence’ (2007) 37(2) *Environmental Policy and Law* 83; Michael Mason, ‘Information Disclosure and Environmental Rights: The Aarhus Convention’ (2010) 10(3) *Global Environmental Politics* 10; Walter F Baber and Robert V Bartlett, ‘A Rights Foundation for Ecological Democracy’

More than a regional instrument, the Convention gives legal expression to the procedural dimensions underpinning the relationship between environmental protection and human rights.¹²⁸ Indeed, it gives binding value to the vision previously outlined in Principle 1 of the 1972 Stockholm Declaration and Principle 10 of the 1992 Rio Declaration. Its Preamble affirms the right of every individual to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, along with the responsibility ‘to protect and improve the environment for the benefit of present and future generations’.¹²⁹ The exercise of these rights and responsibilities is contingent on three core procedural guarantees: (i) access to environmental information, (ii) public participation in decision-making, and (iii) access to justice.¹³⁰

These three pillars together provide a comprehensive framework for transparent, inclusive, and accountable environmental governance.¹³¹ In this way, the Aarhus Framework not only institutionalises procedural safeguards at the regional level but also serves as a model for broader normative developments globally, transforming soft-law aspirations into binding commitments.¹³²

Concurrently, the international legal landscape has witnessed the emergence of a substantive right to a healthy environment as an autonomous concept, gradually affirmed through a range of regional and international instruments, as illustrated in the following section.

4. The Second Approach: The Recognition of a Substantive Right to a Healthy Environment

While the progressive incorporation of environmental concerns into established human rights norms has marked a crucial interpretative evolution, the emergence of an

(2020) 22(1) *J Envtl Pol’y & Plann* 72; Nathalie Berny, ‘Failing to Preach by Example? The EU and the Aarhus Convention’ (2018) 27(4) *Environmental Politics* 75; Akyüz (n 9) 221.

¹²⁸ Shelton (n 25) 133.

¹²⁹ *Aarhus Convention* (n 126) Preamble.

¹³⁰ Peter Oliver, ‘Access to Information and to Justice in EU Environmental Law: The Aarhus Convention’ (2013) 36 *Fordham Int’l LJ* 1423, 1426.

¹³¹ Catherine Redgwell, ‘Access to Environmental Justice’ in Francesco Francioni (ed), *Access to Justice as a Human Right* (OUP 2007) 153, 163.

¹³² Redgwell (n 131) 163-164.

autonomous, substantive right to a healthy environment has unfolded.¹³³ Unlike the derivative approach described in the previous section, this second strand of development seeks to establish environmental quality as a standalone legal entitlement.

This section undertakes a critical analysis of the regional and international developments that have culminated in the formal recognition of such a right by the UNGA in 2022. It will chart the normative and institutional path leading to this milestone, while also interrogating the conceptual and operational challenges that arise from its recognition. In doing so, the section reflects on the significance of this development within the broader architecture of human rights and environmental governance, questioning whether the recognition of a substantive right to a healthy environment represents a merely symbolic affirmation or a transformative shift in international legal consciousness.

4.1 Early Recognition of the Right to a Healthy Environment in Regional Instruments

Building upon the foundational procedural guarantees, such as those enshrined in the Aarhus Convention, regional human rights systems have progressively evolved towards recognising the right to a healthy environment as a substantive entitlement. While Aarhus remains primarily focused on procedural mechanisms, other legal instruments, particularly in Africa and the Americas, have taken more explicit steps to affirm environmental rights as part of the broader human rights framework.¹³⁴

One of the earliest and most notable affirmations is found in the 1981 African Charter on Human and Peoples' Rights, which stands as the first international human rights instrument to explicitly guarantee environmental quality. Article 24 of the Charter proclaims:

¹³³ Lewis (n 1) 37.

¹³⁴ Taylor (n 81) 315-316.

‘All peoples shall have the right to a general satisfactory environment favorable to their development.’¹³⁵

Distinctively, the Charter combines this environmental guarantee with broader commitments to health, including the right to the highest attainable standard of physical and mental health, offering a holistic vision in which environmental integrity and human development are mutually reinforcing.¹³⁶

The African Commission on Human and Peoples’ Rights (ACHPR) gave meaningful effect to this right in the landmark *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria case*¹³⁷ (commonly referred to as the *Ogoniland* case). Indeed, the *Ogoniland* decision is particularly noteworthy as it marks the first application of the right of people to freely dispose of their natural resources, as provided by Article 21 of the Charter.¹³⁸ Acting on a petition submitted by two NGOs on behalf of affected communities, the ACHPR found that Nigeria had violated multiple rights under the Charter, including the right to health (Art. 16), the right to property (Art. 14), and the right to a satisfactory environment (Art. 24). It concluded that environmental degradation (such as pollution and destruction of biodiversity) was incompatible with adequate living conditions and sustainable development. The ACHPR emphasised that Article 24 obliges States *inter alia* to take reasonable steps to prevent environmental harm, promote conservation, and ensure ecologically sustainable development. In fulfilling the obligations set forth under Articles 16 and 24 of the African Charter, States are required to implement a range of concrete measures aimed at safeguarding environmental and public health. These include authorising or conducting independent scientific assessments of ecologically threatened areas, mandating and disclosing environmental and social impact evaluations prior to the initiation of major industrial projects, and establishing mechanisms for continuous monitoring of activities involving hazardous

¹³⁵ African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, art. 24.

¹³⁶ Taylor (n 81) 346.

¹³⁷ *Social and Economic Rights Action Center & the Center for Economic and Social Rights v Nigeria* (Communication 155/96) (2001) AHRLR 60 (ACHPR 2001).

¹³⁸ Boyle (n 87) 475.

substances.¹³⁹ Most importantly, affected communities must be granted timely access to relevant information and afforded genuine opportunities to engage in decision-making processes concerning developments in their local environment. In its pronouncement, the ACHPR ultimately called for a full-scale remediation of the contaminated sites, thereby underscoring the fundamental interdependence between environmental sustainability, socio-economic development, and the effective realisation of human rights.¹⁴⁰ The outcome of this case has been described in scholarship as ‘a blueprint for merging environmental protection, economic development, and the guarantees of human rights’.¹⁴¹

A similar reasoning has emerged in the Inter-American system. In the *Maya Indigenous Community of Toledo* case,¹⁴² the Inter-American Commission on Human Rights (IACHR) recognised that large-scale logging operations posed long-term, irreversible damage to the ancestral lands and subsistence practices of the indigenous community. Taking cues from the *Ogoniland* decision, the IACHR found that Belize had infringed upon the property rights of the Maya Indigenous Community by authorising logging concessions that risked causing irreparable environmental harm.¹⁴³ The IACHR ordered not only environmental remediation but also the formal recognition and protection of the community’s land rights through participatory processes. While the ruling was grounded in the particular legal framework surrounding indigenous peoples, it nonetheless reflects a broader interpretive shift towards viewing serious environmental degradation as a breach of substantive human rights.¹⁴⁴

In parallel with the progressive jurisprudence developed in cases such as *Maya Indigenous Community of Toledo*, the protection of the right to a healthy environment has also found formal expression within the Inter-American system through the adoption of the 1988 Protocol of San Salvador, an additional protocol to the American

¹³⁹ *CESR v Nigeria* (2001) (n 137) para 54; Dinah L Shelton, ‘Decision Regarding Communication 155/96 (SERAC/CESR v Nigeria)’ (2002) 96 *AJIL* 937; Boyle (n 85) 474.

¹⁴⁰ Boyle (n 87) 474-475.

¹⁴¹ Shelton, ‘Decision Regarding Communication 155/96’ (n 139) 942.

¹⁴² *Maya Indigenous Communities of the Toledo District v Belize*, Case 12.053, Report No 40/04, Inter-American Commission on Human Rights, OEA/Ser.L/V/II.122 Doc 5 rev 1 (12 October 2004).

¹⁴³ Boyle (n 87) 475.

¹⁴⁴ Boyle (n 87) 475-476.

Convention on Human Rights focused on economic, social, and cultural rights.¹⁴⁵ Article 16, titled ‘Right to a Healthy Environment’, states:

‘Everyone shall have the right to live in a healthy environment and to have access to basic public services. The States Parties shall promote the protection, preservation, and improvement of the environment.’¹⁴⁶

Though the Protocol does not allow individuals to bring direct petitions before the Inter-American Court of Human Rights (IACtHR), the IACHR retains authority to issue observations and recommendations, thus contributing to the evolving jurisprudence on environmental rights.¹⁴⁷

An even more robust development in Latin America is represented by the Escazú Agreement, which entered into force on 22 April 2021. Inspired by Aarhus yet tailored to regional specificities, the Escazú Agreement stands out for its explicit and legally binding commitments, particularly concerning environmental human rights defenders (EHRDs).¹⁴⁸ Indeed, this agreement is the first international treaty to enshrine the protection of EHRDs within its core provisions, thereby acknowledging the crucial role they play in advancing environmental democracy and safeguarding human rights.¹⁴⁹ Article 9 of the Agreement is especially significant, as it obliges State parties to ensure ‘a safe and enabling environment’ for all individuals, groups, and organisations who act to promote and defend human rights in environmental contexts.¹⁵⁰ It adopts an inclusive and non-restrictive definition of EHRDs, emphasising that their protection does not depend on formal status but on their role in promoting environmental justice and democratic participation.¹⁵¹ Given the high levels of violence and intimidation faced by EHRDs in Latin America, statistically the most dangerous region in the world for land and environmental defenders, the Agreement’s provisions go beyond symbolic recognition. Nonetheless, Article 9(2) sets out

¹⁴⁵ Protocol of San Salvador (n 11); Núria Saura-Freixes, ‘Environmental Human Rights Defenders, the Rule of Law and the Human Right to a Healthy, Clean, and Sustainable Environment: Last Trends and Challenges’ (2022) 8(1) *UNIO EU Law Journal* 53, 56.

¹⁴⁶ Protocol of San Salvador (n 145) art. 16.

¹⁴⁷ Protocol of San Salvador (n 137) art 19(7).

¹⁴⁸ Escazú Agreement (n 11); Saura-Freixes (n 145) 64.

¹⁴⁹ Saura-Freixes (n 145) 65.

¹⁵⁰ Saura-Freixes (n 145) 65.

¹⁵¹ Escazú Agreement (n 11) art. 9.

concrete State obligations, including the duty to protect the rights to life, personal integrity, freedom of opinion and expression, peaceful assembly, association, and movement, as well as to facilitate access to information, participation, and justice in environmental matters.¹⁵² Additionally, Article 9(3) requires States to prevent, investigate, and punish any attacks, threats, or intimidation directed at EHRDs, aiming to ensure effective remedies and accountability for such threats.¹⁵³ In essence, the Escazú Agreement embodies a comprehensive and integrated vision of environmental rights protection, linking substantive rights, procedural guarantees, and the protection of those who uphold them. As scholars noted, it serves both as a minimum standard of environmental democracy and as a practical expression of the synergy between environmental rule of law and the human rights framework.¹⁵⁴

In conclusion, like the Aarhus Convention, the Escazú Agreement both emphasises the critical importance of access to environmental information, meaningful public participation, and access to justice. Indeed, in the absence of these pillars, it becomes increasingly difficult to effectively protect environmental rights, uphold human rights, or ensure democratic accountability.¹⁵⁵

Other early recognitions of this right include Article 38 of the 1994 Arab Charter on Human Rights, which affirms that ‘every person has the right to a healthy environment’.¹⁵⁶

These texts underscore a common understanding that the environment is a necessary precondition for the enjoyment of other human rights. In addition, these early regional contributions reflect a growing awareness of the interdependence between human

¹⁵² Escazú Agreement (n 11) art. 9(2); Saura-Freixes (n 145) 65-66.

¹⁵³ Escazú Agreement (n 11) art. 9(3); Saura-Freixes (n 145) 66.

¹⁵⁴ Rocío Parra, ‘Protección de defensores ambientales en el Acuerdo de Escazú: Sinergias entre derechos humanos y medio ambiente’ in N Saura-Freixes (ed), *Derechos Humanos, Derecho Constitucional y Derecho Internacional: Sinergias Contemporáneas / Human Rights, Constitutional Law and International Law: Contemporary Synergies* (Centro de Estudios Políticos y Constitucionales 2021) 51; Lina Muñoz Ávila, ‘Enfoques Para el Abordaje de la Conflictividad Ambiental en América Latina: La Propuesta del Acuerdo de Escazú Sobre Democracia Ambiental’ in M Restrepo (ed), *Interculturalidad, Protección de la Naturaleza y Construcción de Paz* (Editorial Universidad del Rosario 2020) 226; L Muñoz Ávila, ‘Enfoques Para el Abordaje de la Conflictividad Ambiental en América Latina: La Propuesta del Acuerdo de Escazú Sobre Democracia Ambiental’ in M Restrepo (ed), *Interculturalidad, Protección de la Naturaleza y Construcción de Paz* (Editorial Universidad del Rosario 2020) 225; Saura-Freixes (n 145) 66.

¹⁵⁵ Saura-Freixes (n 145) 66-67.

¹⁵⁶ Arab Charter on Human Rights, 22 May 2004, 453 UNTS 313 (entered into force 15 March 2008).

rights and environmental protection and have laid important groundwork for later advances, particularly the progressive efforts undertaken within the UN framework.

4.2 The International Path Towards the Recognition of the Right to a Healthy Environment

At the international level, an early turning point in the recognition of the substantive right to a healthy environment occurred in 1988, when the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted Resolution 1988/26. This resolution denounced the practice of transboundary movement and dumping of toxic and dangerous products as a threat to fundamental rights, including the right to life and the rights of future generations to enjoy a viable environmental heritage.¹⁵⁷

Building upon this foundation, in 1989, the Sub-Commission formally included environmental protection within the broader human rights agenda. The decision to study the interrelation between environmental degradation and human rights was subsequently endorsed in March 1990 by the Commission on Human Rights, which led to the appointment of a Special Rapporteur, whose mandate included the preparation of detailed reports between 1991 and 1994 on the human rights implications of environmental harm.¹⁵⁸

The 1993 progress report by the Special Rapporteur marked the beginning of a broader inquiry into the need for an international instrument specifically dedicated to environmental rights. Although it stopped from proposing the adoption of a new treaty or declaration at that stage, the report recognised the existence of an implicit right to a healthy environment. It framed this right within wider concerns such as sustainable development, the prevention of ecological harm, and the full realisation of all human

¹⁵⁷ UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Res 1988/26 (1 September 1988) UN Doc E/CN.4/Sub.2/1988/26.

¹⁵⁸ UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Human Rights and the Environment: Preliminary Report* (1991) UN Doc E/CN.4/Sub.2/1991/8; UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Human Rights and the Environment: Progress Report* (1992) UN Doc E/CN.4/Sub.2/1992/9; UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Human Rights and the Environment: Second Progress Report* (1993) UN Doc E/CN.4/Sub.2/1993/7; Taylor (n 41) 347; Dinah L Shelton, 'Human Rights, Environmental Rights, and the Right to Environment' (1991) 28 *Stan J Int'l L* 103, 130.

rights.¹⁵⁹ This process culminated in 1994 with the so-called Ksentini Report,¹⁶⁰ which built upon and consolidated the findings gathered over the previous years.¹⁶¹ This report included a detailed annex of Draft Principles on Human Rights and the Environment, which emphasises how environmental degradation poses a direct threat to various human rights, including the rights to life, health, and an adequate standard of living.¹⁶²

By 2001, the UN Commission on Human Rights adopted Resolution 2001/65, which explicitly affirmed that a fair and democratic international order necessarily includes the realisation of the right of every person and all peoples to a healthy environment.¹⁶³

On the basis of these developments and recognising the need for sustained advocacy, the UN Human Rights Council (HRC) appointed first an Independent Expert and later a Special Rapporteur on Human Rights and the Environment. These roles played a pivotal function in advancing legal and policy frameworks, including the formulation of the Framework Principles on Human Rights and the Environment, promoting a potential Global Pact for the Environment, and contributing to international judicial dialogues.¹⁶⁴

This steady trajectory led to two defining moments. First, on 8 October 2021, the HRC adopted Resolution 48/13.¹⁶⁵ This marked the first time, at a global level, that the human right to a clean, healthy, and sustainable environment was formally recognised. However, the full acknowledgement of this right as a universal human right was only

¹⁵⁹ *Second Progress Report* (n 158).

¹⁶⁰ Fatma Zohra Ksentini (Special Rapporteur), 'Review of Further Developments in Fields with which the Sub-Commission has been Concerned: Human Rights and the Environment, Final Report' (6 July 1994) UN Doc E/CN.4/Sub.2/1994/9, para 248; Shelton (n 158) 130; May (n 10) 998-999.

¹⁶¹ Pedersen (n 4) 78.

¹⁶² May (n 10) 999; Ksentini Report (n 160).

¹⁶³ UN Commission on Human Rights, 'The Right to Development' Res 2001/65 (25 April 2001) UN Doc E/CN.4/RES/2001/65.

¹⁶⁴ John H Knox, 'Constructing the Human Right to a Healthy Environment' (2020) 16 *Annual Review of Law and Social Science* 79, 34; UN Human Rights Council, 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' (24 January 2018) UN Doc A/HRC/37/5; UN Human Rights Council, 'Good Practices of State at the National and Regional Levels with Regard to Human Rights Obligations Relating to the Environment' UN Doc A/HRC/43/54 (23 January 2020), para 72(a); UN Secretary-General, 'Gaps in International Environmental Law and Environment-Related Instruments: Towards a Global Pact for the Environment' UN Doc A/73/419 (30 November 2018); May (n 10) 999-1000.

¹⁶⁵ UN Human Rights Council, 'The Human Right to a Clean, Healthy and Sustainable Environment' Res 48/13 (8 October 2021) UN Doc A/HRC/RES/48/13.

achieved later, on 28 July 2022, when the UNGA adopted Resolution A/76/300. With the support of 161 votes and only 8 abstentions, the resolution affirmed unequivocally that the right to a clean, healthy, and sustainable environment is a human right applicable to all.¹⁶⁶

Resolution 76/300 represents a significant normative advancement. It does not merely declare the right to a healthy environment as a human right; it also underscores its hybrid and dual nature: environmental protection is both an autonomous legal obligation and an essential prerequisite for the full enjoyment of all other human rights. Resolution 76/300 emphasises that environmental degradation, climate change, biodiversity loss, desertification, and unsustainable development constitute among the most severe and urgent threats to the ability of present and future generations to enjoy their human rights fully and meaningfully.¹⁶⁷ Despite its strong symbolic and political weight, as in the case of the Stockholm and Rio Declarations, this resolution is not legally binding. Thus, its implementation and effectiveness depend largely on future developments.

4.3 The Recognition of the Human Right to a Healthy Environment: An Approach to its Definition

The UNGA's recent resolution reflects growing global awareness of the inextricable link between environmental degradation and the enjoyment of human rights.¹⁶⁸ As highlighted by John Knox, former UN Special Rapporteur on human rights and the environment, it is difficult to 'imagine that a modern version of the Universal Declaration of Human Rights would omit the right to a healthy environment', given its fundamental role in ensuring human dignity.¹⁶⁹ Although several treaties already incorporate elements of this right, its clear and formal recognition at the international level marks a significant normative step.¹⁷⁰ This formal recognition increased the

¹⁶⁶ UNGA, 'The Human Right to a Clean, Healthy and Sustainable Environment' Res 76/300 (28 July 2022) UN Doc A/RES/76/300.

¹⁶⁷ UNGA Res 76/300 (n 166); Davis and Kerisit (n 21) 705.

¹⁶⁸ Davis and Kerisit (n 12) 705.

¹⁶⁹ John H Knox, '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) para 137.

¹⁷⁰ Davis and Kerisit (n 12) 705.

awareness of the direct connection between environmental harm and core human interests, thereby positioning this right at the forefront of contemporary legal discourse. In this light, the environment is no longer viewed merely as a resource for human exploitation but as a necessary precondition for human dignity and survival. This conceptual shift lays the foundation for legal frameworks that not only safeguard individual rights but also promote ecological equilibrium and affirm the inherent value of nature, dimensions often neglected in traditional, anthropocentric human rights paradigms.¹⁷¹ A core function of international human rights law is to secure the recognition of certain fundamental entitlements and shield them from the fluctuations of political will. Following this, integrating environmental protection into human rights law not only elevates its normative importance but also strengthens its stability against rollback or neglect.¹⁷²

Ultimately, defining this right involves setting clear substantive environmental standards.¹⁷³ It is worth noting that international human rights law frequently relies on evolving and adaptable standards, especially when dealing with economic rights. For instance, rights such as social security or an adequate standard of living are often framed using flexible language. A similar interpretative elasticity can be applied to the definition of the right to a healthy environment. Indeed, given the dynamic nature of environmental threats and the continuous evolution of scientific advancements, this flexibility simply reflects the nature of environmental protection itself, which demands adaptability in response to evolving challenges.

In summary, the human right to a healthy environment must be approached not only in terms of its legal scope but also in relation to its purpose, normative content, and the obligations it imposes on States.

¹⁷¹ Eyman Hekmatpour and Carrie M Leslie, 'Ecologically Unequal Exchange and Disparate Death Rates Attributable to Air Pollution: A Comparative Study of 169 Countries from 1991 to 2017' (2022) 212 *Environmental Research* 113161; Benedetta Cotte, 'What Goes Around, Comes Around? Access and Allocation Problems in Global North-South Waste Trade' (2020) 20 *Int Environ Agreements* 255; Ifesinachi Okafor-Yarwood and Ibukun Jacob Adewumi, 'Toxic Waste Dumping in the Global South as a Form of Environmental Racism: Evidence from the Gulf of Guinea' (2020) 79 *African Studies* 285.

¹⁷² Davis and Kerisit (n 12) 703-706.

¹⁷³ Davis and Kerisit (n 12) 714.

4.3.1 Defining the Substantive Right to a Healthy Environment: Nature, Purpose, and Scope

Although the majority of UN Member States recognise some form of environmental right in their domestic systems, the terminology used varies widely.¹⁷⁴ While national formulations vary (ranging from references to ‘a life of dignity and well-being’ or ‘an ecologically balanced environment’), they converge on the common understanding that the protection of the environment is essential to securing the conditions necessary for human health and survival.¹⁷⁵

The UNGA has endorsed the broad formulation of ‘right to a clean, healthy and sustainable environment’, in order to allow for gradual interpretation through future legal instruments. In defining the purpose of this right, two primary perspectives emerge: the anthropocentric and the ecocentric view.¹⁷⁶

The anthropocentric approach views the environment as essential to the survival and health of human beings. From this standpoint, the right ensures conditions necessary for individuals to lead dignified lives in a supportive ecological context. The ecocentric view, by contrast, recognises the intrinsic value of nature, independent of its utility to humans.¹⁷⁷ These approaches should not be viewed as irreconcilable. Rather, they mark two ends of a normative spectrum that informs contemporary environmental rights discourse. Both perspectives have shaped constitutional provisions, regional human rights instruments, and judicial interpretation.¹⁷⁸ However, the UN’s

¹⁷⁴ Davis and Kerisit (n 12) 705, 719; *Constitution of the Portuguese Republic* (1976,) art 66; *Constitution of Spain* (1978) art 45.

¹⁷⁵ Knox (n 169) 29-36; Yann Aguila, ‘The Right to a Healthy Environment’ (*International Union for Conservation of Nature*, 29 October 2021); Davis and Kerisit 708.

¹⁷⁶ Davis and Kerisit (n 12) 705.

¹⁷⁷ This interpretation underlies legal developments such as the ‘rights of nature’ in Ecuador’s constitution and judicial rulings by the Inter-American Court of Human Rights, which emphasize that natural entities deserve protection in their own right. In particular, the IACtHR stated that the right to environment ‘...protects nature and the environment, not only because of the benefits they provide to humanity or the effects that their degradation may have on other human rights, such as health, life or personal integrity, but [also] because of their importance to the other living organisms with which we share the planet that also merit protection in their own right.’ Nicholas Bryner, ‘A Constitutional Human Right to a Healthy Environment’ in Douglas Fisher (ed), *Research Handbook on Fundamental Concepts of Environmental Law* (Edward Elgar 2016) 10; Davis and Kerisit (n 12) 710-711.

¹⁷⁸ Davis and Kerisit (n 12) 710.

formulation of the right to a healthy environment refrains from prescribing a definitive balance between them.¹⁷⁹

In terms of its scope, this right is commonly recognised in both its individual and collective dimensions. At the national level, it is typically framed as an individual entitlement, thus attributed to persons irrespective of any group affiliation.¹⁸⁰ By contrast, regional legal instruments¹⁸¹ have characterised it as either an individual or a collective right. Collective rights, in this context, are linked to membership in specific groups (such as ethnic communities). Conversely, individual rights are attributed to persons irrespective of any group affiliation.

4.3.2 Defining State Obligations: Substantive and Procedural Components

A defining feature of this right is that it generates positive obligations upon States. In this regard, the IACtHR has outlined a set of core obligations associated with the recognition of this right, including: (i) ensuring universal and non-discriminatory access to a healthy environment, (ii) guaranteeing access to basic public services, (iii) adopting effective measures for environmental protection and conservation, and (iv) actively promoting environmental improvement.¹⁸² While these obligations serve as a valuable benchmark for understanding the types of commitments that may arise under international recognition, they are not explicitly detailed in the current UNGA's resolution, which instead emphasises the need to implement existing multilateral environmental agreements fully.¹⁸³

Clarifying the nature of State responsibilities further requires distinguishing between the substantive and procedural components of the right. Substantively, the right encompasses access to clean air, safe water and sanitation, a stable climate, a non-toxic

¹⁷⁹ Davis and Kerisit (n 12) 710.

¹⁸⁰ Ishrat Jahan, 'Do We Need an International Instrument for the Recognition of the Right to a Healthy Environment?' (2021) 51 *Environmental Policy and Law* 377, 378–79.

¹⁸¹ See paragraph 3.1.

¹⁸² *Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantees 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, Inter-American Court of Human Rights Series A No 23 (15 November 2017) para 60.

¹⁸³ Davis and Kerisit (n 12) 711-712.

environment for living and working, and access to nutritious, sustainably produced food. Procedurally, it hinges upon the principles enshrined in the Aarhus Convention: access to environmental information, public participation in environmental decision-making, and access to justice in environmental matters.¹⁸⁴ In addition, States are expected to bear heightened responsibilities towards individuals and groups in vulnerable situations (e.g., women, children, indigenous peoples, persons with disabilities, older persons, those living in poverty, and ethnic, linguistic, or religious minorities). These populations often suffer disproportionate exposure to environmental hazards and lack adequate legal safeguards. Such vulnerability may also be intersectional, compounding disadvantage, for instance, in the case of elderly indigenous women or displaced persons with disabilities.¹⁸⁵

In conclusion, while the formal recognition of the right to a healthy environment at the international level marks a major advancement, its legal content and mechanisms of implementation remain in development.

4.4 The Way Forward: Possible Paths in the Institutionalisation of the Right to a Healthy Environment

Despite recent advancements, the legal and normative recognition of a right to a decent or satisfactory environment in international human rights law remains highly contested. Indeed, two complementary avenues have emerged as particularly relevant in addressing this challenge. The first involves the potential elaboration of a dedicated, binding international treaty that enshrines the right to a healthy environment as a standalone human right. The second pathway advocates for the continued integration of this right within existing regional human rights frameworks, progressively elevating its normative status from a programmatic principle to a justiciable individual entitlement, a direction notably supported by scholars such as Boyle.¹⁸⁶

¹⁸⁴ *Right to a Healthy Environment: Good Practices* (n 164) paras 14-112.

¹⁸⁵ Knox (n 169) para. 22; Davis and Kerisit (n 12) 713.

¹⁸⁶ Boyle (n 101) 627-629.

Recently, the ICJ took a decisive step.¹⁸⁷ On 23 July 2025, the Court issued an Advisory Opinion concerning States' legal duties on climate change following a request of the UNGA, with Resolution A/77/276.¹⁸⁸

The UNGA resolution specifically posed the following questions:

- (a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?
- (b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:
 - (i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?
 - (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?¹⁸⁹

In its Opinion, the Court declared that climate change represents an 'urgent and existential threat' to humanity¹⁹⁰ and confirmed that greenhouse gas emissions are 'unequivocally caused by human activities'.¹⁹¹ It further affirmed that the obligation to prevent environmental harm arises whenever there is 'a risk of significant harm to the environment'.¹⁹² Consequently, a State's failure to adopt adequate measures to protect the climate system may amount, even if no actual harm occurs, to an internationally wrongful act.¹⁹³ In such cases, proof of damage or causation is not

¹⁸⁷ Daisy Dunne, Josh Gabbatiss e Molly Lempriere, 'ICJ: What the World Court's Landmark Opinion Means for Climate Change' (*Carbon Brief*, 25 July 2025).

¹⁸⁸ *Obligations of States in Respect of Climate Change* (Advisory Opinion [2025] ICJ Rep 2025).

¹⁸⁹ UNGA Res 77/276 *Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in respect of Climate Change* UN Doc A/RES/77/276 (29 March 2023).

¹⁹⁰ *Obligations of States in Respect of Climate Change* (n 188) para. 73.

¹⁹¹ *Obligations of States in Respect of Climate Change* (n 188) para. 80.

¹⁹² *Obligations of States in Respect of Climate Change* (n 188) para. 274.

¹⁹³ *Obligations of States in Respect of Climate Change* (n 188) paras 427, 433.

required; it is sufficient to show that a State has not taken measures commensurate with the risk. When this occurs, the regime of State responsibility is triggered, giving rise to the duties of cessation, reparation, and guarantees of non-repetition.¹⁹⁴

To fulfil this obligation, States must act in accordance with the principle of due diligence, which, according to the Court's view, must be assessed 'objectively' in each situation.¹⁹⁵ In this sense, the Court has identified the elements that are crucial in determining the standard of conduct required.¹⁹⁶ First, the degree of risk must always be taken into account, with risk being assessed on the basis of 'both the probability or foreseeability of the occurrence of harm and its severity or magnitude'. In this regard, the Court endorsed the position expressed by the International Tribunal on the Law of the Sea (ITLOS) in its 2024 Advisory Opinion on Climate Change and International Law,¹⁹⁷ by affirming that 'the precautionary approach forms an integral part of due diligence'.¹⁹⁸ Secondly, the Court stressed that States cannot evade responsibility by claiming that climate risks result from the cumulative actions of many States or private actors. This reasoning echoes the ECtHR's approach adopted in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (see Chapter 2 paragraph 4.1.1), where it held that 'each State remains individually bound to fulfil its obligations within its own jurisdiction'.¹⁹⁹

Furthermore, the Court also underscores that appropriate preventive measures must rely on 'scientific and technological information, as well as relevant international rules and standards', particularly those adopted under the UN climate regime.²⁰⁰ Given the overwhelming scientific evidence of serious risks, the Court characterised the due diligence standard as 'stringent', requiring heightened 'vigilance and prevention'.²⁰¹

¹⁹⁴ *Obligations of States in Respect of Climate Change* (n 188) para. 445.

¹⁹⁵ *Obligations of States in Respect of Climate Change* (n 188) para. 300.

¹⁹⁶ *Obligations of States in Respect of Climate Change* (n 188) para. 136.

¹⁹⁷ *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 Rep 2024.

¹⁹⁸ *Obligations of States in Respect of Climate Change* (n 188) para. 275.

¹⁹⁹ *Verein KlimaSeniorinnen Schweiz v Switzerland* App no 53600/20 (ECHR, 9 April 2024), paras. 442-443; Jutta Brunnée, 'The Advisory Opinion on Obligations of States in Respect of Climate Change: Harm Prevention under Customary International Law' (*Völkerrechtsblog*, 6 August 2025).

²⁰⁰ *Obligations of States in Respect of Climate Change* (n 188) paras. 88-89, 283-288; Brunnée (n 199).

²⁰¹ *Obligations of States in Respect of Climate Change* (n 188) para. 138.

States are thus obliged to do their ‘utmost’²⁰² and adopt measures capable of achieving ‘deep, rapid, and sustained reductions in greenhouse gas emissions’.²⁰³

In this respect, the Court elevated the Paris Agreement’s 1.5°C target from an aspirational political commitment to a binding legal benchmark, guiding States’ due diligence in formulating and implementing their climate policies.²⁰⁴ This line of reasoning stems from the discussions that unfolded during the advisory proceedings on States’ obligations in relation to climate change, where Article 4 of the Paris Agreement was a key point of reference. While some States contended that the obligations under this provision are merely procedural, limited to the preparation and communication of nationally determined contributions (NDCs), the Court’s interpretation supports a more substantive reading. Nonetheless, Article 4 requires States not only to prepare and communicate their NDCs, but also to maintain and pursue domestic mitigation measures aimed at achieving them, and to ensure that successive NDCs embody their ‘highest possible ambition’.²⁰⁵ By tying the due diligence standard to the Paris framework, the Court makes the Agreement a central legal benchmark for assessing whether States fulfil their duty to prevent serious climate harm.

Building on this interpretation, the Court made clear that due diligence obligations encompass both substantive and procedural dimensions. Whereas earlier case law tended to distinguish between them, the Court affirmed that procedural duties are inseparable from the substantive goal of preventing harm.²⁰⁶ The obligation to prevent significant environmental damage must therefore be understood as incorporating both dimensions, since the substantive objective cannot effectively be achieved without the procedural mechanisms that support it.²⁰⁷

In closing this section, the Court affirms that the customary international law duties to safeguard the climate system and to avert serious transboundary harm amount to

²⁰² *Obligations of States in Respect of Climate Change* (n 188) para. 246.

²⁰³ *Obligations of States in Respect of Climate Change* (n 188) para. 282.

²⁰⁴ *Obligations of States in Respect of Climate Change* (n 188) para. 245.

²⁰⁵ Theresa Amor-Jürgenssen and José Daniel Rodríguez-Orúe, ‘From Objectives to Obligations: Unpacking Key ICJ Questions on Climate Obligations’ (*VerfBlog*, 30 December 2024).

²⁰⁶ *Obligations of States in Respect of Climate Change* (n 188) paras. 289, 295, 299.

²⁰⁷ Brunée (n 199).

obligations *erga omnes*. These obligations, ‘by their very nature’, concern all States. As a result, under the law of State responsibility and in particular pursuant to Article 48(1) Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), climate mitigation obligations arising under general international law may be invoked by any State, including those that are not directly injured.²⁰⁸

Yet the significance of this Opinion extends beyond its analysis of due diligence obligations. It also represents, albeit cautiously, the first explicit acknowledgment by the UN’s principal judicial organ of a right to a clean and healthy environment.²⁰⁹ It thereby constitutes a landmark development in the current phase of international law, and in particular in consolidating of this right within the international human rights’ legal framework.

The ICJ’s reasoning on the right to a clean and healthy environment unfolds in several steps. First, it recalled international environmental instruments such as the Stockholm and Rio Declarations to affirm that the link between human beings and the environment is recognised in international law.²¹⁰ It then drew on a 1994 UN Human Rights Commission report to state that human rights cannot be fully enjoyed without a clean, healthy, and sustainable environment.²¹¹ Relying further on regional human rights treaties (namely, the African Charter, the Arab Charter, and the San Salvador Protocol), as well as the fact that over one hundred States have constitutionalised this right,²¹² the Court highlighted its growing recognition. Finally, it referred to the 2022 UNGA Resolution, which expressly recognises the right to a clean, healthy and sustainable environment as a human right and stated:

‘A clean, healthy and sustainable environment is a precondition for the enjoyment of many human rights, such as the right to life, the right to health and the right to an adequate standard of living, including access to water, food and housing. The right to a clean, healthy and sustainable environment results from the interdependence between human rights and the protection of the environment. Consequently, in so far as States parties to human rights treaties are required to guarantee the effective

²⁰⁸ *Obligations of States in Respect of Climate Change* (n 188) paras 440-442 citing International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001), art 48(1).

²⁰⁹ Ramindu Perera, ‘The ICJ’s Recognition of an Autonomous Right to a Clean and Healthy Environment’ (*EJIL: Talk!*, 19 August 2025).

²¹⁰ *Obligations of States in Respect of Climate Change* (n 188) para 388.

²¹¹ *Obligations of States in Respect of Climate Change* (n 188) para 389.

²¹² *Obligations of States in Respect of Climate Change* (n 188) para 391.

enjoyment of such rights, it is difficult to see how these obligations can be fulfilled without at the same time ensuring the protection of the right to a clean, healthy, and sustainable environment as a human right. The human right to a clean, healthy, and sustainable environment is therefore inherent in the enjoyment of other human rights. The Court thus concludes that, under international law, the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights.²¹³

Therefore, as evident from the wording of the Opinion, the Court recognised this right to a clean, healthy and sustainable environment, describing it as ‘inherent in’, a ‘precondition’ to, or ‘essential’ for the effective enjoyment of other human rights. However, despite the relevance of this Opinion which is undeniable, the Court refrained from recognising it as a self-standing right.²¹⁴

By drawing upon multiple sources that acknowledge an autonomous right to a clean and healthy environment, the Court appears to have recognised such a right as a standalone entitlement. Yet, the ambiguity of the language employed leaves its conclusion open to divergent interpretations.²¹⁵ While the two approaches (the recognition of the environment as a prerequisite for other rights and as an autonomous right) may well coexist, as scholars observed, it would have been preferable for the Court to articulate the existence of a self-standing right to a clean and healthy environment, particularly when contrasted with developments at the regional level.²¹⁶ This hesitation is further reflected in the separate opinions of several judges, which reveal the absence of *consensus* as to whether the right has attained the status of customary international law.²¹⁷

Notwithstanding its limitations, as highlighted by Perera, the Advisory Opinion is likely to play a pivotal role in shaping the evolving relationship between international human rights law and environmental protection.²¹⁸ Nonetheless, while the declaratory stage of recognising the right to a healthy environment has now been achieved, the

²¹³ *Obligations of States in Respect of Climate Change* (n 188), para. 393.

²¹⁴ Helen Keller, ‘A Right to a Clean, Healthy and Sustainable Environment: Or Perhaps Not (Yet)?’ (*Völkerrechtsblog*, 5 August 2025).

²¹⁵ Perera (n 209).

²¹⁶ Perera (n 209).

²¹⁷ *Obligations of States in respect of Climate Change*, Separate Opinion of Judge Aurescu 28; Separate Opinion of Judge Bhandari 3; Separate Opinion of Judge Charlesworth 8; Declaration of Judge Tladi 24–27.

²¹⁸ Perera (n 209).

exigency resides in the juridical concretisation of that right. This could occur either through the adoption of binding legal frameworks, capable of imposing positive obligations and enabling judicial enforcement or, alternatively, through the crystallisation of this right as a rule of customary international law, thereby conferring upon it binding legal effect within the international legal order.

5. Concluding remarks

This chapter has traced the gradual integration of environmental concerns within the framework of international human rights law, highlighting two main legal strategies: the interpretative expansion of existing rights and the emerging recognition of a substantive right to a healthy environment. Although the latter has attracted growing international support, its lack of codification in binding treaty law continues to pose serious limitations, particularly in terms of judicial enforceability.

Accordingly, the first approach, anchored in the interpretative expansion of established human rights, remains the most viable route for judicial enforcement. This is especially evident in individual litigation, where environmental claims are consistently framed within this well-established legal structure.

This introductory analysis provides the conceptual grounding for the chapters that follow, which will examine how these dynamics unfold within two key regional legal systems: the CoE and the EU. Particular attention will be paid to the legal instruments available, the relevant case law, and the structural and procedural barriers that still limit the effective implementation of environmental rights in these contexts.

CHAPTER 2

ENVIRONMENTAL PROTECTION WITHIN THE COUNCIL OF EUROPE

1. Introduction

As highlighted in the previous chapter, the right to a healthy environment is increasingly recognised in regional human rights systems, though not always as a standalone entitlement.¹ The ECHR, in particular, was not originally designed, nor later amended, to guarantee general environmental protection or a freestanding right to a healthy environment. Nevertheless, the ECtHR has embraced an approach to environmental protection by expansively interpreting existing rights, a trend known as the ‘greening’ of human rights, as discussed in the previous chapter. Building on this, the ECtHR’s case law has increasingly construed rights such as the right to private and family life (Article 8) and the right to life (Article 2) as encompassing safeguards against serious environmental harm, including risks related to climate change. In the context of climate litigation, the interpretation of Article 34 (jurisdiction *ratione personae*) has evolved to allow legal standing for associations under certain conditions, even in the absence of individually affected victims, despite the general prohibition of *actio popularis*. This broader interpretation of human rights in connection with environmental protection has paved the way for climate litigation, which in turn has led to the emergence of new legal challenges, particularly at the procedural level.

This chapter aims to examine how environmental issues have been addressed within the ECtHR’s case law, with a focus on the evolution of judicial practice and procedural accessibility. It is structured as follows: the first section presents the ECHR’s institutional and legal architecture, outlining the main provisions of the Convention invoked in environmental litigation, with particular emphasis on Article 8. It analyses the interpretative shift brought about by key rulings, such as *López Ostra v. Spain*² and

¹ Margaret DeMerieux, ‘Deriving Environmental Rights from the European Convention for the Protection of Human Rights and Fundamental Freedoms’ (2001) 21 *Oxford J Legal Stud* 521, 525.

² *López Ostra v Spain* App no 16798/90 (ECHR, 9 December 1994).

Guerra and Others v. Italy,³ which introduced procedural duties within the scope of Article 8.⁴

The second section addresses admissibility requirements, with a particular focus on the notion of *victim* status and the criteria for legal standing under Article 34 ECHR. These elements are especially relevant in the context of climate litigation.

The third section provides an in-depth analysis of the most recent ECtHR's environmental judgements, in particular the *Klimaseniorinnen v. Switzerland*⁵ and *Cannavacciuolo and Others v. Italy*⁶ decisions, which exemplify the Court's evolving approach to environmental harm and human rights.

The fourth section shifts the focus to the ESC and the jurisprudence of the ECSR. It considers the complementary role that the Charter, particularly Article 11 (the right to protection of health), can play in reinforcing individual environmental claims.

Finally, the fifth section explores current debates and legal initiatives regarding the potential adoption of an autonomous right to a healthy environment. It critically assesses both the promises and challenges associated with formally incorporating such a right within the ECHR framework, including the obstacles ahead.

2. The European Convention on Human Rights and Environmental Protection: The Absence of a Standalone Environmental Right

The ECHR, adopted in 1950 and entered into force in 1953, contains no explicit reference to environmental protection, reflecting the context of its time, when environmental concerns were not yet part of the international legal agenda.⁷ Rooted in the classical tradition of civil and political rights, the Convention was not designed to provide general protection of the environment or to guarantee an autonomous right to

³ *Guerra and Others v Italy App no 14967/89* (ECHR, 19 February 1998).

⁴ Natalia Kobylarz, 'A World of Difference: Overcoming Normative Limits of the ECHR Framework through a Legally Binding Recognition of the Human Right to a Healthy Environment' (2025) XX *Journal of Environmental Law* 23, 24.

⁵ *Verein KlimaSeniorinnen Schweiz and Others v Switzerland App no 53600/20* (ECHR, 9 April 2024).

⁶ *Cannavacciuolo and Others v Italy, App nos 51567/14 and others* (ECHR, 30 January 2025).

⁷ DeMerieux (n 1) 521.

a healthy environment.⁸ Nonetheless, by applying the ‘living instrument’ doctrine, the ECtHR has dynamically interpreted the Convention and its Additional Protocol.⁹ Following this approach, the Court has consistently interpreted the Convention in light of contemporary conditions and evolving societal values, progressively addressing environmental issues through the lens of existing human rights guarantees.¹⁰ However, it is essential to underscore that the Court’s evolutive interpretation has clear limits: it cannot be used to infer or create a right that was intentionally excluded from the original text of the Convention, particularly in cases where the omission was deliberate.¹¹

In any event, the CoE and the ECHR today undeniably offer meaningful protection to individuals whose enjoyment of civil and political rights is impaired by exposure to pollution, environmental nuisance, or extreme weather events resulting from environmental degradation or climate change.¹²

This approach is consolidated in the CoE’s *Manual on Human Rights and the Environment* (2005),¹³ which reviews the ECtHR’s jurisprudence on environmental matters and outlines a set of general principles derived from the Court’s case law.¹⁴ The Manual clearly affirms that ‘the Convention is not designed to provide general protection of the environment as such and does not expressly guarantee a right to a sound, quiet and healthy environment’.¹⁵ These and the ECtHR jurisprudential developments (which will be further analysed later in this chapter) demonstrate that

⁸ Alan Boyle, ‘Human Rights or Environmental Rights - A Reassessment’ (2007) 18 *Fordham Envtl L Rev* 471, 485.

⁹ *Tyrer v United Kingdom* App no 5856/72 (ECHR, 25 April 1978) para 31; *Demir and Baykara v Turkey* App no 34503/97 (ECHR, 12 November 2008) para 146; *Magyar Helsinki Bizottság v Hungary* App no 18030/11 (ECHR, 8 November 2016) paras 118–22, 125; *KlimaSeniorinnen v Switzerland* (n 5) para 434; *Kobylarz* (n 4) 25.

¹⁰ *Kobylarz* (n 4) 3.

¹¹ *Johnston and Others v Ireland* App no 9697/82 (ECHR, 18 December 1986) para 53; *Austin and Others v United Kingdom* App no 39692/09 (ECHR, 15 March 2012) para 53; *Ferrazzini v Italy* App no 44759/98 (ECHR, 12 July 2001) para 30; *Magyar Helsinki Bizottság v Hungary* (n 9) paras 118–22, 125.

¹² Natalia Kobylarz, ‘The European Court of Human Rights, an Underrated Forum for Environmental Litigation’ in Helle Tegner Anker and Birgitte Egelund Olsen (eds), *Sustainable Management of Natural Resources, Legal Instruments and Approaches* (Intersentia 2018) 99; Frédéric Krenc, ‘La Cour européenne de droits de l’Homme: prétoire pour les contentieux environnementaux et climatique?’ in *Liber Amicorum Robert Spano* (Anthemis 2022) 377.

¹³ Council of Europe, *Manual on Human Rights and the Environment* (Council of Europe Publishing 2006).

¹⁴ Boyle (n 8) 485.

¹⁵ Council of Europe, *Committee of Experts for the Development of Human Rights, Report Doc DH-DEV* (2005); Boyle (n 8) 485.

the ECHR possesses a degree of inherent interpretative flexibility, which allows judicial willingness to play an occasionally decisive role in the adjudication of environmental litigation.¹⁶

In particular, it identifies several key obligations arising under the ECHR in an environmental context, such as:

- (i) States must regulate and control environmental problems where these impair the exercise of Convention rights, and ensure that relevant laws are enforced effectively;
- (ii) States are also required to provide information about serious environmental risks and to ensure public access to decision-making and justice in environmental matters;
- (iii) Environmental protection is acknowledged as a legitimate public interest, which, in appropriate circumstances, can justify restrictions on certain rights, such as the right to private life (Article 8) or the right to property (Article 1 of Protocol No. 1). In this regard, the ECtHR has recognised that national authorities are best positioned to assess complex environmental issues, which often involve technical and social considerations. Accordingly, the Court affords them a wide margin of appreciation when balancing environmental concerns with individual rights.¹⁷

Nevertheless, the ECtHR has recognised that while the Convention was not specifically designed to offer general environmental protection, severe environmental degradation may nonetheless interfere with the enjoyment of fundamental rights, thereby triggering the application of various Convention provisions. In particular, the most frequently invoked articles in environmental litigation include the right to life (Article 2), the right to respect for private and family life (Article 8), the right to the peaceful enjoyment of possessions and property (Article 1 of Protocol No. 1), and the right to a fair hearing (Article 6). In addition, access to environmental information has also been linked to the freedom of expression (Article 10), particularly in cases involving public interest disclosures related to environmental risks.¹⁸ Moreover, in the

¹⁶ Kobylarz (n 4) 26.

¹⁷ *Council of Europe Report* (n 15) 10.

¹⁸ Kobylarz (n 4) 37.

growing body of climate change litigation brought before the ECtHR in recent years, allegations of additional violations often accompany these provisions. Indeed, especially in climate litigation, applicants have increasingly invoked the right to an effective remedy (Article 13), the prohibition of discrimination (Article 14), and, in more severe cases, the prohibition of torture or inhuman or degrading treatment (Article 3).¹⁹

2.1 Relevant ECHR Provisions in Environment Litigation

Before delving into the analysis of the specific Convention provisions that are relevant to environmental litigation, it is essential to clarify that, within the ECHR framework, environmental claims have increasingly raised the question of whether and to what extent existing rights may be interpreted as providing either substantive or procedural environmental protection.²⁰ Substantive environmental claims generally concern situations in which States are alleged to have failed to prevent environmental harm that adversely affects individuals' rights, either through direct acts or by omission, particularly in failing to regulate private actors. By contrast, procedural environmental claims typically involve alleged violations of rights related to access to environmental information, public participation in decision-making, and access to effective legal remedies against environmentally harmful decisions or inaction.²¹

Within this interpretative evolution, the Court has developed a body of case law recognising both negative and positive obligations for States. States are not only required to refrain from infringing upon rights through environmentally harmful acts but must also actively ensure that those rights are effectively safeguarded against environmental threats, including those stemming from private actors.²² In climate change litigation, applicants often argue that States have failed to fulfil their positive

¹⁹ Antonio Mariconda, 'Victim Status of Individuals in Climate Change Litigation before the ECtHR: Between Old Certainties and New Challenges' (2023) 3 *IRICL* 260, 266; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, opened for signature 4 November 1950, entered into force 3 September 1953) ETS No 5, arts 2, 3, 6(1), 8, 10, 13, 14 and Protocol 1 art 1.

²⁰ DeMerieux (n 1) 526.

²¹ DeMerieux (n 1) 527.

²² DeMerieux (n 1) 527.

obligations to adopt mitigation and adaptation measures, leading to violations of rights protected under multiple provisions.²³

2.2 Article 6: Right to a Fair Trial

Article 6(1) has emerged as a central provision in environmental litigation concerning violations of procedural rights.²⁴ The Court has repeatedly held that individuals must have access to an independent and impartial tribunal when administrative or environmental decisions have a direct and decisive impact on their civil rights.²⁵ This has made Article 6 a crucial legal avenue for environmental applicants and civil society actors seeking judicial review of environmentally harmful actions or omissions.

For instance, in the case of *Balmer-Schafroth v. Switzerland*, the Court considered whether a serious and imminent environmental risk could affect a civil right under domestic law, potentially triggering the procedural guarantees of Article 6(1) ECHR. However, it found that the applicants had not demonstrated a sufficiently direct and specific link to a civil right recognised in domestic law.²⁶ Similarly, in *McGinley and Egan v. the United Kingdom*, the Court recognised that health-related information may fall within the procedural guarantees of Article 6, thus underlining the applicability of this provision in environmental contexts.²⁷

The procedural guarantees embedded in the civil component of Article 6(1) ECHR include several key protections: the right to bring a case before a court, the enforcement of binding judicial decisions, the right to a hearing within a reasonable time, parity between the parties (equality of arms), as well as judicial independence and expert impartiality.²⁸ These protections are particularly relevant in environmental litigation,

²³ See also case-law reported in Corina Heri, 'Climate Change before the European Court of Human Rights: Capturing Risk, Ill-Treatment and Vulnerability' (2022) *EJIL* 1, 9; Mariconda (n 19) 268.

²⁴ DeMerieux (n 1) 527.

²⁵ DeMerieux (n 1) 545; see case law reported in DeMerieux (n 1) 485 ff.

²⁶ *Balmer-Schafroth v Switzerland* App no 22110/93 (ECHR, 26 August 1997); DeMerieux (n 1) 542.

²⁷ *McGinley and Egan v United Kingdom* App nos 21825/93 and 23414/94 (ECHR, 28 September 2000).

²⁸ European Court of Human Rights, *Guide on Article 6 of the Convention – Right to a Fair Trial (civil limb)*; *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* (n 5) para 629; *Association Burestop 55 and Others v France* App no 56176/18 (ECHR, 1 July 2021) para 65; *Kyrtatos v Greece* App no 41666/98 (ECHR, 22 May 2003), para 30; *Taşkın and Others v Turkey* App no 46117/99 (ECHR, 10 November 2004) paras 135–38; *Çöçelli and Others v Türkiye* App no 81415/12 (ECHR, 11 October

especially for those suffering harm and for environmental advocates seeking redress through national legal systems.²⁹ That said, the Court has clarified that Article 6(1) does not provide for *actio popularis* nor does it grant individuals the power to compel legislative bodies to adopt or revise legislation. Rather, the Court has affirmed that such restrictions may pursue a legitimate aim, notably the preservation of the institutional balance between the judiciary and the legislature, and are thus compatible with the Convention, provided that they do not impair the very essence of the right of access to a court. Nonetheless, where national legal frameworks make provision for constitutional or judicial review of legislation, whether direct or incidental, the procedural safeguards of Article 6(1) may be triggered, provided that the dispute concerns the determination of civil rights and obligations in the Convention sense.³⁰

In determining the applicability of Article 6(1), two cumulative criteria must be met: the dispute must involve a ‘civil right or obligation’, and the judicial decision must have a ‘directly decisive’ effect on that right.³¹ In the field of environmental law, applicants typically need to prove that they are personally and directly affected by a grave, specific, and immediate environmental threat. In climate-related disputes, however, the Court has shown a more flexible stance regarding the requirement of immediacy, acknowledging the irreversible and scientifically established nature of climate risks when no adequate mitigation or adaptation measures are taken by the State.³²

Given the criteria established by the Court, Article 6 has been deemed applicable in four primary types of environmental cases.³³ These include: (i) individual applicants residing in areas affected by current or foreseeable environmental harm who bring claims to protect their substantive rights under the Convention; (ii) individuals invoking the right to a healthy environment, where such a right is recognised within their national legal system; (iii) NGOs acting on behalf of members who live in zones

2022) paras 54–64; *Cangı and Others v Türkiye* App no 48173/18 (ECHR, 14 November 2023) paras 43–56.

²⁹ Kobylarz (n 4) 34.

³⁰ Kobylarz (n 4) 34; *KlimaSeniorinnen v Switzerland* (n 5) paras 594, 615–16, 627–31; *Posti and Rahko v Finland* App no 27824/95 (ECHR, 24 September 2002) para 52.

³¹ Kobylarz (n 4) 34.

³² Kobylarz (n 4) 34.

³³ Kobylarz (n 4) 34.

subject to environmental threats, and (iv) NGOs asserting their own rights to participate in environmental decision-making processes.³⁴

2.2.1 Article 10: Freedom of Expression

Article 10, traditionally associated with freedom of expression, has also been interpreted, under certain conditions, to encompass a passive right of access to environmental information held by public authorities.³⁵ This interpretation reflects, to a limited extent, the logic of Article 4 of the Aarhus Convention, which grants the public access to environmental information without requiring a specific legal interest or personal impact.³⁶ Under the Aarhus framework, this right applies broadly, including both objective and subjective aspects of the right to a healthy environment.³⁷ By contrast, the ECtHR has adopted a more restrictive stance. Indeed, looking at the case law, the right to receive and impart information under Article 10 may arise only when such information is instrumental to the exercise of the freedom of expression. In practice, the Court has found Article 10 applicable in cases where individual environmental defenders or NGOs were obstructed from obtaining and sharing reliable, accessible, and accurate information on environmental matters intended for public dissemination.³⁸ In this way, Article 10 has served as a valuable tool for civil society actors engaged in environmental monitoring or advocacy.³⁹ However, this provision does not impose a positive obligation on States to actively collect or disseminate information concerning environmental threats (*proprio motu*).⁴⁰ That responsibility may instead stem from other provisions (such as Articles 2, 8, or Article 1 of Protocol No. 1) where the lack of information may interfere with the enjoyment of protected rights like life, private life, or property. Moreover, as for the participatory

³⁴ Kobylarz (n 4) 34.

³⁵ *Association Burestop* (n 28) paras 78-79.

³⁶ Kobylarz (n 4) 37.

³⁷ Kobylarz (n 4) 37; see also Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447.

³⁸ *Magyar Helsinki Bizottság v Hungary* (n 9) paras 149–80; *Cangı v Turkey* (n 28) para 31; *Ecological and Humanitarian Association Zelenyy Svit v Ukraine* App no 37316/16 (ECHR, 2 November 2023) paras 15-19; Kobylarz (n 4) 37.

³⁹ See n 37; Kobylarz (n 4) 37-38.

⁴⁰ European Court of Human Rights, *Guide on the Case-Law of the European Court of Human Rights – Environment*; *Guerra* (n 3) paras 53-60; *Magyar Helsinki Bizottság v Hungary* (n 9) para 156; Kobylarz (n 4) 38.

rights in environmental decision-making, compared to the Aarhus Convention, the ECHR system confines such rights to individuals whose Convention rights are directly affected, thereby excluding broader public interest participation. It follows that the right to environmental information in ECHR cases is more restricted than the broader requirements of the Aarhus Convention. Access to information in the latter case is not dependent on being personally affected or having some right or interest in the matter, still less does it apply only to those who are ‘victims of a violation’ of convention rights.⁴¹

2.2.2 Article 1 of Protocol No. 1: Right to Peaceful Enjoyment of Possessions

Article 1 of Protocol No. 1 to the ECHR, which guarantees the right to the peaceful enjoyment of possessions, has been frequently invoked in environmental litigation where State actions or regulations impact property rights. The ECtHR interprets this provision as requiring a fair balance between the interests of individual property holders and the broader public interest, which includes environmental protection.⁴² Over time, the Court has consistently reaffirmed that safeguarding the environment constitutes a legitimate and increasingly important objective of public policy.⁴³

The Court’s environmental jurisprudence is fundamentally shaped by the need to balance competing interests. This often includes weighing environmental concerns against other rights protected under the Convention or against States’ economic and development priorities. Rather than giving absolute primacy to either human rights or environmental objectives, the Court has opted for a nuanced case-by-case approach grounded in proportionality, necessity, and the extent of interference.⁴⁴ Importantly, the Court has recognised that States enjoy a wide margin of appreciation when pursuing environmental policies, provided they ensure that individual rights are not

⁴¹ Boyle (n 8) 491; See also *Aarhus Convention* (n 37) and *European Convention on Human Rights* (n 19).

⁴² *Färröng and Lonroth v Sweden* App no 7151/75 (ECHR, 23 September 1982); See also case law in *DeMerieux* (n 1) 540 ff.

⁴³ Boyle (n 8) 493.

⁴⁴ Boyle (n 8) 493.

disproportionately affected.⁴⁵ This approach has enabled the Court to uphold restrictions on property development and similar activities, so long as such measures are lawful, serve a legitimate aim, and strike a fair balance between the general interest and individual rights.⁴⁶

2.2.3 Article 2: Right to Life

Article 2 of the ECHR, which enshrines the right to life, has been invoked in an increasing number of environmental cases, particularly in cases involving exposure to hazardous State activities or natural disasters. However, the ECtHR has maintained a high threshold for its application, requiring a concrete, personal, and imminent risk to life in order to trigger State responsibility.⁴⁷

This strict evidentiary requirement is well illustrated in cases such as *LCB v. the United Kingdom* and *Balmer-Schafroth v. Switzerland*, where the Court dismissed the applicants' claims due to insufficient evidence of a direct and immediate threat. The Court clarified that States are not under an obligation to act in the absence of conclusive knowledge of such a risk, underscoring the principle that mere potential or speculative harm is not enough to engage Article 2.⁴⁸

Nevertheless, where the requisite conditions are fulfilled, Article 2 of the Convention entails a range of positive obligations on the part of the State. Chief among these is the due diligence obligation to enact and implement a comprehensive legislative and administrative framework designed to effectively deter threats to life, including those emanating from hazardous activities or private actors.⁴⁹ These obligations are predominantly preventive in nature, aiming to secure the substantive guarantee of the

⁴⁵ *Fredin v Sweden* App no 12033/86 (ECHR, 18 February 1991) para 792-795; Boyle (n 8) 494.

⁴⁶ *Pine Valley Developments Ltd and Others v Ireland* App no 12742/87 (ECHR, 29 November 1991); *Kapsalis and Nima-Kapsali v Greece* App no 66742/01 (ECHR, 8 July 2004).

⁴⁷ See case law in Kobylarz (n 4) 39 ff.

⁴⁸ DeMerieux (n 1) 543; see also *LCB v United Kingdom* App no 23413/94 (ECHR, 9 June 1998); *Balmer-Schafroth v Switzerland* (n 26).

⁴⁹ *Osman v United Kingdom* App no 23452/94 (ECHR, 28 October 1998) para 116; *Budayeva and Others v Russia* App no 15339/02 (ECHR, 20 March 2008), para 175; *E and Others v United Kingdom* App no 33218/96 (ECHR, 26 November 2002) para 99.

right to life under the Convention.⁵⁰ More specifically, looking at the relevant jurisprudence of the ECtHR, States are required to: (i) establish a normative and institutional framework capable of ensuring the effective protection of individuals from life-threatening risks, including those originating from private entities (e.g., *Budayeva v. Russia*, *Öneryıldız v. Turkey*); (ii) guarantee the proper implementation and enforcement of the applicable legal standards by competent public authorities (e.g. *López Ostra v. Spain*, *Moreno Gómez v. Spain*, *Fadeyeva v. Russia*); (iii) adopt preventive measures to mitigate foreseeable risks, whether specific or general, with a view to averting potential harm (e.g., *Osman v. the United Kingdom*, *Mastromatteo v. Italy*); (iv) prevent emergencies or mitigate their effects (e.g., the case of *Budayeva v. Russia*).⁵¹

Importantly, Article 2 also entails a procedural dimension. States have a duty to inform individuals of known or foreseeable life-threatening risks, allowing them to take steps to protect themselves. This obligation to provide essential information has been recognised in situations involving pollution, industrial accidents, hazardous working conditions, and, increasingly, climate-related threats. For Article 2 to be engaged, the applicant must show the occurrence of death or a life-threatening situation (such as a lethal illness), alongside evidence that the State either knew or ought to have known of the danger and failed to act.⁵²

The Court assesses such claims under the substantive limb of Article 2, applying a due diligence standard that overlaps significantly with the provisions such as under Article 1 of Protocol No. 1, when it risks harming the peaceful enjoyment of possessions and, most importantly, with the positive obligations arising under Article 8, where environmental degradation has a direct harmful effect on or seriously risks the enjoyment of private and family life.⁵³ Indeed, Article 8, addressing the right to respect for private and family life, has become the most prominent provision in

⁵⁰ Przemyslaw Siwior, 'The Potential of Application of the ECHR in Climate Change Related Cases' (2021) 23 *Int'l Comm L Rev* 197, 203.

⁵¹ Siwior (n 50) 203; *Budayeva and Others v Russia* (n 49), *Öneryıldız v Turkey* App no 48939/99 (ECHR, 30 November 2004), *López Ostra v Spain* (n 2), *Moreno Gómez v Spain* App no 4143/02 (ECtHR, 16 November 2004), *Fadeyeva v Russia* App no 55723/00 (ECtHR, 9 June 2005), *Osman v United Kingdom* (n 49), *Mastromatteo v Italy* App no 37703/97 (ECHR, 24 October 2002).

⁵² See case law in *Kobylarz* (n 4) 39 ff.

⁵³ *Moreno Gómez v. Spain* (n) para. 61; *Budayeva and Others v. Russia* (n 49) para. 172.

environmental jurisprudence, especially in relation to substantive environmental claims.⁵⁴ It is precisely the interpretation and application of Article 8 in environmental contexts that will be explored in detail in the next section.

2.3 Article 8 ECHR in Environmental Litigation

In its evolving case law, the ECtHR has progressively interpreted Article 8, which guarantees the right to respect for private and family life, as encompassing protection against serious environmental harm. This marks a significant expansion beyond the traditional scope of ‘privacy’ under the Convention.⁵⁵ Although Article 8 does not explicitly refer to environmental concerns (nor does environmental protection appear among the legitimate aims justifying State interference with the right), the Court has developed a jurisprudential approach that indirectly safeguards environmental interests through the lens of individual rights.⁵⁶ The Court has consistently held that severe environmental pollution may adversely affect an individual’s well-being and interfere with the enjoyment of their home and family life, even in the absence of demonstrable health damage.⁵⁷ This interpretation began to emerge in early cases such as *López Ostra v. Spain* and *Guerra and Others v. Italy*. In the former case, the applicant lived next to a waste-treatment plant that emitted harmful fumes and odours, causing her family serious health and nuisance problems.⁵⁸ The Court’s primary concern was to assess whether the Spanish authorities had fulfilled their positive obligations to protect the applicant’s rights under Article 8 ECHR.⁵⁹ Here, the Court recognised for the first time that severe environmental pollution, although not directly caused by the State, had occurred with its tolerance, hence constituted an interference with the applicant’s enjoyment of her home and private life. In other words, the Court found a substantive violation of Article 8.⁶⁰

⁵⁴ DeMerieux (n 1) 527.

⁵⁵ Siwior (n 50) 198; Elizabeth Wicks, *Human Rights and Healthcare* (Hart Publishing 2007) 12.

⁵⁶ Ivana Krstić and Bojana Čučković, ‘Procedural Aspects of Article 8 of the ECHR in Environmental Cases – The Greening of Human Rights Law’ (2015) 63 *Annals FLB – Belgrade Law Review* 170, 172.

⁵⁷ *López Ostra v Spain* (n 2) para 51; See also *Guerra v Italy* (n 3).

⁵⁸ *López Ostra v Spain* (n 2) para 30.

⁵⁹ Judith Hippler Bello and Richard Desgagné, ‘López Ostra v Spain’ (1995) 89 *AJIL* 788, 788-789.

⁶⁰ DeMerieux (n 1) 539-544; *López Ostra v Spain* (n 2) paras 44-58.

Subsequently, the ECtHR typically found State responsibility under Article 8 in two main scenarios: (i) when the environmental harm is directly attributable to public authorities, as in cases involving, for instance, excessive noise from public infrastructure such as airports;⁶¹ (ii) when the State fails to regulate, monitor or prevent harmful activities carried out by private actors, particularly in cases of industrial pollution and defective urban planning.⁶² In line with this, positive obligations under Article 8 are considered binding not only on public authorities but also extend, indirectly, to private entities whose activities affect individuals' rights.

Importantly, failures by the State to implement or enforce existing domestic environmental legislation fall within the first scenario, as such omissions amount to a direct breach of the State's positive obligations. While States enjoy a wide margin of appreciation in designing environmental policies, their inaction or ineffective enforcement of national laws is subject to stricter scrutiny. In this regard, the Court has found violations of Article 8 in several cases, including *López Ostra*, *Moreno Gómez v. Spain*, and *Fadeyeva v. Russia*.⁶³ By contrast, where there is no evident failure in domestic regulatory or enforcement mechanisms (i.e., where the 'element of domestic irregularity is wholly absent'), the Court has shown greater restraint. In *Hatton v. the United Kingdom*, for example, the ECtHR examined whether the UK's 1993 night-flight policy at Heathrow Airport, which permitted limited flights during night hours, infringed Article 8 due to noise disturbance. The Court acknowledged that aircraft noise could interfere with private life, especially during sleep, and thus fall within the scope of Article 8. Nonetheless, it found no violation, considering that the UK had acted within its margin of appreciation: it had conducted scientific research (such as the 1992 sleep study), introduced a quota count system to encourage the use of quieter aircraft, and carried out public consultations. Moreover, the Court noted the lawful and transparent nature of the regulatory process and the economic importance of maintaining early morning flight connections. These elements led the Court to

⁶¹ *Powell and Rayner v United Kingdom* App no 9310/81 (ECHR, 21 February 1990); *Hatton and Others v United Kingdom* [GC] App no 36022/97 (ECHR, 8 July 2003).

⁶² *Siwior* (n 50) 198; *López Ostra v Spain* (n 2); *Guerra v Italy* (n 3); *Kyrtatos v Greece* (n 28); *Hatton and Others v. United Kingdom* (n 61) para 98.

⁶³ *López Ostra v Spain* (n 2); *Moreno Gómez v Spain* (n 51); *Fadeyeva v Russia* (n 51); *Siwior* (n 50) 202.

conclude that a fair balance had been struck between the applicants' rights and the broader interests of the community.⁶⁴

Drawing from this consistent line of case law, the Court has established that a violation of Article 8 in environmental matters requires the fulfilment of two cumulative conditions: first, the environmental disturbance must have a direct and substantial impact on the applicant's enjoyment of private or family life; second, the degree of interference must reach a threshold of seriousness, since minor inconveniences or nuisances typical of urban life are not, by themselves, sufficient.⁶⁵ For example, in *Powell and Rayner v. the United Kingdom*, the aircraft noise from Heathrow Airport was held to fall within the scope of Article 8 because it adversely affected the applicants' enjoyment of their home.⁶⁶ By contrast, in *Fadeyeva v. Russia*, the Court found a violation because the applicant lived near a steel plant that exposed her to proven, dangerous levels of pollution in breach of national standards, which exceeded the seriousness threshold. The Court emphasised the direct effect on her daily life and health, reinforcing that mere environmental degradation or general inconvenience is not sufficient.⁶⁷ Thus, general environmental degradation without an individual and personal impact is likewise insufficient to bring a claim within the scope of Article 8.⁶⁸ These *ratione personae* limitations reflect the Court's individualistic approach in protecting human rights, distinguishing it from broader public interest or environmental frameworks such as the Aarhus Convention.⁶⁹

On the other hand, as regards the *ratione materiae* aspect, the Court has significantly expanded the scope of Article 8 by taking into account relevant international standards. It continues to widen their scope, sometimes even exceeding relevant universal international law.⁷⁰

⁶⁴ *Hatton and Others v United Kingdom* (n 61) paras 96–129.

⁶⁵ *Siwior* (n 50) 202; *Powell and Rayner v United Kingdom* (n 61).

⁶⁶ *Powell and Rayner v United Kingdom* (n 61), para. 40.

⁶⁷ *Fadeyeva v Russia* (n 51) paras 68–70.

⁶⁸ *Taşkin and Others v Turkey* (n 28) para 113; *Siwior* (n 50) 202; *Krstić and Čučković* (n 56) 172.

⁶⁹ *Supra* n 41.

⁷⁰ *Krstić and Čučković* (n 56) 181.

2.4 The Procedural Dimension of Article 8: An Assessment Looking at the Relevant Case-Law

As highlighted before, the ECtHR has recognised that Article 8 of the Convention imposes positive obligations on States, and by extension, private entities. This has laid the legal foundation for the development of a procedural dimension within the right to private and family life.⁷¹ Initially interpreted conservatively, this dimension expanded significantly after *Guerra and Others v. Italy* (1998), which is widely acknowledged as the first case where procedural duties, specifically the obligation to provide information, were derived from Article 8.⁷² Nonetheless, the judgement marked a shift: the Court moved from focusing solely on substantive interferences to imposing proactive duties on States to inform individuals of environmental risks, even when the State was not directly responsible for the harm.⁷³ Thus, the procedural component of Article 8 has grown into one of the most prominent features of the ECtHR's environmental case law.⁷⁴ Indeed, while earlier landmark judgements, like *López Ostra v. Spain* (1994), raised important issues of State responsibility, they did not yet establish clear procedural obligations. Over time, however, the Court clarified that these obligations may arise in three key areas: (i) access to environmental information; (ii) participation in environmental decision-making, and (iii) access to justice.⁷⁵

Among the core procedural obligations derived from Article 8 is the State's duty to provide access to environmental information. This duty arises whenever an individual's health, well-being, or enjoyment of their home is potentially at risk.

⁷¹ Krstić and Čučković (n 56) 173; J-F Akandji-Kombe, *Positive Obligations under the European Convention on Human Rights* (Council of Europe 2007); Helen Cullen, 'Siliadin v France: Positive Obligations under Article 4 of the European Convention on Human Rights' (2006) 6 *Human Rights Law Review* 585; Ursula Kilkelly, 'Protecting Children's Rights under the ECHR: the Role of Positive Obligations' (2010) 61(3) *Northern Ireland Legal Quarterly* 245; Dimitrios Xenos, *The Positive Obligations of the State under the European Convention on Human Rights* (Routledge 2012). See also *X and Y v The Netherlands* App no 8978/80 (ECHR, 26 March 1985) para 23; *Marckx v Belgium* App no 6833/74 (ECHR, 13 June 1979); *Airey v Ireland* App no 6289/73 (ECHR, 9 October 1979) para 32.

⁷² Krstić and Čučković (n 56) 173.

⁷³ *Guerra v Italy* (n 3) para 58.

⁷⁴ DeMerieux (n 1) 544-545; Krstić and Čučković (n 56) 174; Chris Hilson, 'Risk and the European Convention on Human Rights: Towards a New Approach' (2009) 11 *Cambridge Yearbook of European Legal Studies* 356; Krstić and Čučković (n 56) 175.

⁷⁵ Krstić and Čučković (n 56) 178 ff; Magdalena Forowicz, *The Reception of International Law in the European Court of Human Rights* (OUP 2010).

Moreover, these positive obligations entail that, under Article 13,⁷⁶ the State must provide a domestic remedy for cases of non-compliance with these obligations, and under certain conditions, grant access to a Court under Article 6.⁷⁷

According to the Court, this obligation may arise within the context of decision-making procedures, especially those involving potentially harmful activities. In such cases, States are required to: (i) conduct appropriate studies and risk assessments, and (ii) ensure public access to their findings so that affected individuals can assess the risks and take appropriate preventive action, thus enhancing States' transparency.⁷⁸ The ECHR jurisprudence on environmental information is in one important sense potentially more extensive than under more general access to information laws: in appropriate cases, it can include a duty to inform, not simply a right of access.⁷⁹ The Court first articulated this preventive function in *Guerra and Others v. Italy* (1998), where it found a violation of Article 8 due to the State's failure to provide essential information about the risks stemming from a nearby chemical plant.⁸⁰ The judgement notes that the applicants were 'particularly exposed to danger' in the event of an accident at the factory, and there had also been a violation of Italian legislation requiring that information concerning hazardous activities be made public.⁸¹ Importantly, the judgement affirmed that States are not only required to establish mechanisms for accessing information but must also proactively disseminate such data to those potentially affected. In doing so, the Court identified key elements that define the effectiveness of the right to information, specifically, its temporal and spatial dimensions, and the essential character of the information involved. Such reasoning,

⁷⁶ Article 13 states that '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'; *European Convention on Human Rights* (n 19).

⁷⁷ Council of Europe, *Manual on Human Rights and the Environment* (3rd edn, Council of Europe 2022) 83 ff.

⁷⁸ Guide (n 40) paras 137–42; *Guerra v Italy* (n 3) para 59; *Tătar v Romania* App no 67021/01 (ECHR, 27 January 2009) paras 88, 113; *Brândușe v Romania* App no. 6586/03 (ECHR, 7 April 2009) paras 63, 74; *Hardy and Maile v United Kingdom* no. 31965/07 (ECHR, 14 February 2012) paras 245, 247, 249; *Grimkovskaya v Ukraine* App no 38182/03 (ECHR, 21 July 2011) para 69; *Taşkın and Others v Turkey* (n 68) para 119; *Öçkan and Others v Turkey* App no 46771/99 (ECHR, 28 March 2006) para 43; *Giacomelli v Italy* (n 119) para 83; *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* (n 3) para 554.

⁷⁹ Boyle (n 85) 491.

⁸⁰ Boyle (n 85) 491; *Guerra v Italy* (n 3).

⁸¹ Boyle (n 85) 491- 492.

qualified as an ‘expansionist reading of Article 8’,⁸² implied that substantive rights contained in Article 8 included an implicit procedural right to environmental information.⁸³

However, the Court’s language in *Guerra* was criticised for implying that individuals themselves must be able to assess complex environmental risks,⁸⁴ an issue addressed in subsequent jurisprudence through an increased emphasis on States’ duty to interpret and communicate technical data in an accessible manner.

Building on this approach, the Grand Chamber in *Hatton v. the United Kingdom* (2003) introduced important clarifications and developments. While ultimately finding no violation of Article 8, the Court made an explicit distinction between substantive and procedural obligations, holding that the legitimacy of environmental decisions depends not only on their outcome, but also on the fairness and transparency of the decision-making process.⁸⁵ In other words, procedural legitimacy appears sufficient to preclude a violation of Article 8. Most notably, the Court recognised for the first time that States must apply the precautionary principle, and that regulatory frameworks must be in place to govern hazardous activities, including licensing, supervision, and public consultation. This marked a significant step forward compared to *Guerra*, particularly by stressing that the absence of complete scientific certainty does not relieve States of their duty to inform and protect.⁸⁶ In this context, it is important to draw a clear conceptual distinction between the principles of prevention and precaution. Although closely related, these principles adopt different approaches to environmental risk. The prevention principle is triggered in situations where there is conclusive scientific evidence establishing a causal link between an activity and environmental harm, thus enabling targeted action against identifiable threats. By contrast, the precautionary principle applies in cases of scientific uncertainty, allowing regulatory measures to be adopted even in the absence of definitive proof. In essence,

⁸² Krstić and Čučković (n 56) 174; see case law there cited.

⁸³ Krstić and Čučković (n 56) 174.

⁸⁴ Krstić and Čučković (n 56) 175.

⁸⁵ *Hatton and Others v United Kingdom* (n 61) para 99.

⁸⁶ Krstić and Čučković (n 56) 175-176.

while prevention is grounded in certainty, precaution is designed to address potential risks under conditions of uncertainty.⁸⁷

This procedural understanding of Article 8 was further expanded in *Taşkin v. Turkey* (2004) and *Tătar v. Romania* (2009), where the Court held that planned activities posing environmental or health risks require comprehensive Environmental Impact Assessments (EIA) and public access to the findings, in order to enable individuals to understand the potential dangers and to take appropriate preventive measures. In *Tătar*,⁸⁸ the Court also acknowledged the procedural rights embedded in the Aarhus Convention, including access to information, participation in decision-making, and access to justice.⁸⁹ Notably, in *Taşkin and Others v. Turkey*, the Court referred to the Aarhus Convention, despite the fact that Turkey had neither signed nor ratified it, in order to illustrate broader international standards on access to information, public participation, and access to justice in environmental matters. While the Convention was not applied as a binding legal source, its principles, alongside those of the Rio Declaration (Principle 10), were acknowledged by the Court to reinforce the procedural obligations under Articles 6 and 8 of the Convention.⁹⁰ In *Grimkovskaya v. Ukraine* (2011), the Court explicitly invoked Aarhus to assess whether the applicant had access to a meaningful complaints mechanism. Likewise, in *Di Sarno v. Italy* (2011), the Court extended the duty to inform beyond man-made dangers to natural causes as well.⁹¹

In *Ledyayeva and Others v. Russia* (2006),⁹² the Court took a further step by indicating that environmental reports must contain not only data on risks but also specific

⁸⁷ Nicolas de Sadeleer, 'The principles of prevention and precaution in international law: two heads of the same coin?' in Elisa Morgera (ed), *Research Handbook on International Environmental Law* (2nd edn, Edward Elgar 2021) 152.

⁸⁸ The Court also introduced the precautionary principle into its reasoning in *Tătar*, stating that scientific uncertainty should not serve as a justification for inaction by public authorities. This principle was applied again in *Taşkin*, allowing applicants to claim procedural violations even in the absence of fully established environmental damage. However, in *Balmer-Schafroth v. Switzerland*, the Court declined to extend this principle, maintaining a stricter threshold of imminent and serious risk.

⁸⁹ Krstić and Čučković (n 56) 178.

⁹⁰ *Taşkin and Others v Turkey* (n 28) para 98-100.

⁹¹ Krstić and Čučković (n 56) 179; see also *Taşkin and Others v Turkey* (n 28) para 99, *Tătar v Romania* (n 78) para 114-118, *Grimkovskaya v Ukraine* (n 78) paras 39, 69 and 72, *Di Sarno and Others v Italy* App no 30765/08 (ECHR, 10 January 2012) para 107.

⁹² *Ledyayeva and Others v Russia* App nos 53157/99, 53247/99, 53695/00 and 56850/00 (ECHR, 26 October 2006) para 90.

practical measures to be taken by authorities. This decision strengthened the obligation of States to provide not only access to information but also transparency regarding the policy response to environmental risks.

In *Vilnes and Others v. Norway* (2013), the Court further consolidated the State's positive obligations under Article 8 by affirming that individuals must be informed not only of confirmed dangers, but also of uncertain or latent risks associated with hazardous activities.⁹³ Here, the Court not only found a violation of Article 8 but introduced an important refinement: the duty to inform extends to enabling prior informed consent, thereby requiring that individuals be adequately equipped to assess personal exposure before any risk materialises. In doing so, the Court reinforced the anticipatory dimension of the right to private life in contexts involving potential harm to physical integrity.⁹⁴

Following this, the ECtHR has also recognised that Article 8 includes the right to both participate meaningfully in the decision-making process and access to environmental justice. For instance, in *Grimkovskaya v. Ukraine*,⁹⁵ the Court held that the absence of both an environmental feasibility study and a mechanism for affected individuals to express their views violated Article 8. In its ruling, the Court set important standards in relation to the content of the procedural rights to participate in environmental decision-making and to access justice in environmental matters, thus reinforcing the idea that individuals must have the opportunity to express their concerns during planning procedures that may affect their living environment. This reasoning aligns with the Court's earlier findings in *Taşkin v. Turkey*, where it stressed the importance of a properly informed decision-making process in cases involving complex environmental and economic considerations.⁹⁶ Notably, the Court held that national authorities must undertake 'adequate investigations and studies to assess in advance the likely environmental consequences of proposed activities, thereby allowing them to strike a fair balance between conflicting interests',⁹⁷ including those of the wider

⁹³ *Vilnes and Others v Norway* App nos 52806/09 and 22703/10 (ECHR, 5 December 2013), para 220-236.

⁹⁴ *Kobylarz* (n 4) 177.

⁹⁵ *Grimkovskaya v Ukraine* (n 78).

⁹⁶ *Boyle* (n 8) 496.

⁹⁷ *Taşkin v Turkey* (n 28) paras 119 ff.

community and of the individuals potentially affected. While the judgement did not explicitly use the term ‘environmental impact assessment’, the language employed clearly suggests that such evaluations are necessary to meet the procedural requirements under Article 8.⁹⁸

Crucially, this fair balance of interests is not limited to the substantive evaluation of competing priorities; it also encompasses procedural dimensions. Indeed, in this case, the Court stated that ‘whilst Article 8 contains no explicit procedural requirements, the decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests of the individual as safeguarded by Article 8’.⁹⁹ This passage reinforces the idea that effective public participation is not a mere formality but a procedural safeguard essential to achieving that balance.¹⁰⁰

As regards the access to environmental justice, in *Dubetska and Others v. Ukraine* (2011), the Court further stressed the importance of timely and enforceable judicial outcomes: where environmental decisions remain unimplemented for a prolonged period, the procedural guarantees of Article 8 may be rendered ineffective. Similarly, in *Flamenbaum and Others v. France* (2012), the Court found that a fragmented procedure did not violate Article 8, as long as applicants had access to each phase and the opportunity to participate meaningfully, even if the outcome was not in their favour.¹⁰¹ Moreover, it set a higher bar for evaluating access to justice by criticising overly brief or insufficiently reasoned domestic decisions that ignored applicants’ core arguments.

The procedural dimension of Article 8 is closely intertwined with other Convention rights, particularly Articles 2, 6, and 10.¹⁰² Although access to environmental information is often discussed in the context of Article 8, the ECtHR has made clear that this is not a stand-alone entitlement within the procedural frameworks of either

⁹⁸ Boyle (n 8) 497.

⁹⁹ Boyle (n 85) 487.

¹⁰⁰ As such, in environmentally sensitive cases, genuine involvement of the affected public is indispensable, not only for compliance with Article 8 of the ECHR, but also to meet the obligations under Article 6 of the Aarhus Convention; on that regard see also Boyle (n 8) 497.

¹⁰¹ *Dubetska and Others v Ukraine* App no 30499/03 (ECHR, 10 February 2011), *Flamenbaum and Others v France* App no 3675/04 (ECHR, 13 December 2012).

¹⁰² Kobylarz (n 4) 40.

Article 2 or Article 8. Rather, the right becomes actionable only where there is a demonstrable or credible threat to health, life, or personal well-being, or when individuals suffer mental distress due to the absence of clear information about potentially harmful activities in which they are directly involved.¹⁰³ For instance, in *Öneryıldız v. Turkey* (2004), the Court placed ‘particular emphasis’ on the public’s right to information about dangerous activities which posed a threat to life.¹⁰⁴ More precisely, it emphasised that ‘[t]he positive obligation to take all appropriate steps to safeguard life for the purposes of Article 2 entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life’.¹⁰⁵

Moreover, as regards Article 6 of the Convention, restrictive conditions for applying it have, in environmentally sensitive cases, been overcome by the introduction of adequate procedural elements under Article 8. This compensatory function has been especially evident in environmental cases such as *Taşkin v. Turkey* and *Tătar v. Romania*, where the Court relied on Article 8 to reinforce procedural guarantees, including access to justice, without requiring a direct infringement of civil rights as mandated under Article 6.

Similarly, even though Article 10 nominally protects the right to receive environmental information, the Court has regularly preferred to ground such claims in Article 8. By switching to Article 8 i.e., linking the right to receive environmental information with the potential negative effects on the applicants’ quality of life, the Court managed to ‘reach a result it otherwise could not’.

Altogether, Article 8 now comprises a coherent body of procedural rights, including: (i) access to environmental information; (ii) participation in environmental decision-making; and (iii) access to justice. These rights align with the broader principles of international environmental law, particularly those enshrined in the Aarhus Convention. However, as Boyle correctly observes, the ECtHR’s interpretation

¹⁰³ *McGinley and Egan v United Kingdom* (n 27) paras 97-99; see also case law in *Kobylarz* (n 4) 40.

¹⁰⁴ Boyle (n 85) 487.

¹⁰⁵ *Öneryıldız v Turkey* (n 51) para 89 ff.

remains more narrowly tailored.¹⁰⁶ It is not concerned with environmental governance or general transparency but rather with the direct impact of environmental harm on the enjoyment of private and family life. As a result, only those personally affected may invoke these procedural guarantees.¹⁰⁷ This interpretative approach has enabled a more expansive use of Article 8, although its application remains confined to individuals who can demonstrate personal exposure to risk, thereby excluding legal entities or associations unless they too are directly affected. Following this, unlike the Aarhus Convention, the ECHR does not confer these rights on environmental organisations or the public at large.¹⁰⁸

This observation leads directly to a crucial issue: the definition of victim under Article 34 of the Convention, which constitutes a foundational requirement for the admissibility of any application before the Court. In environmental matters, this notion assumes particular importance, as it determines who is entitled to bring a claim that can be admitted by the Court in the face of complex and diffuse environmental harms.

3. The Admissibility Requirements for Individual Litigation in the Strasbourg System

In order to assess the admissibility of individual applications before the ECtHR, particular attention must be paid to Articles 34 and 35 of the ECHR. Article 35 outlines the formal admissibility criteria, including the exhaustion of domestic remedies, compliance with the six-month (now four-month) time limit, and the requirement that the applicant has not already submitted a substantially similar case.¹⁰⁹ These conditions function as procedural filters to ensure that only serious and well-founded cases reach the merits stage. Article 34, on the other hand, defines who may bring a case before the Court,¹¹⁰ introducing the fundamental notion of the victim. This concept will be analysed in greater depth in the next section, given its increasing relevance in recent ECtHR case law, particularly in the context of environmental and climate litigation.

¹⁰⁶ Boyle (n 8) 497.

¹⁰⁷ Kobylarz (n 4) 17-19.

¹⁰⁸ Krstić and Čučković (n 56) 177.

¹⁰⁹ *European Convention on Human Rights* (n 19) art 35.

¹¹⁰ *European Convention on Human Rights* (n 19) art 34.

3.1 Art 34 ECHR: The Notion of Victim

According to scholars, when applicants allege rights violations stemming from regulatory inaction, it is unrealistic to expect the Court to clearly distinguish between questions of admissibility and the merits of the case.¹¹¹ Article 34 of the ECHR governs individual applications and provides that:

‘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.’

In line with this provision, the Convention requires that applicants demonstrate victim status, that is, they must be directly or personally affected by an alleged violation. This requirement must persist throughout the proceedings and may be assessed by the Court at any stage on its own initiative. If this status is absent or lost, the application becomes inadmissible, and the Convention’s protective framework is not triggered.¹¹²

Consequently, in individual applications, the ECtHR is not empowered to engage in abstract reviews of national legislation or practices. Instead, it must assess whether the manner in which such laws or practices were applied to a particular individual has resulted in a breach of their rights under the Convention. This reflects the Convention’s rejection of any form of *actio popularis*.¹¹³

The ECtHR, as is the case with all standards of the ECHR, has shaped and clarified the meaning of Article 34, developing a doctrine detached from the domestic rules on *locus standi*.¹¹⁴ In this regard, the Court has consistently emphasised the need for a flexible and purposive approach.¹¹⁵ A rigid interpretation of the victim requirement

¹¹¹ Başak Çalı and Edouard Dubout, ‘Victim Status before the ECtHR in Cases of Alleged Omissions: The Swiss Climate Case’ (*EJIL:Talk!*, 9 April 2024).

¹¹² *Hristozov and Others v Bulgaria* Apps nos 47039/11 and 358/12 (ECHR, 13 November 2012) para 73.

¹¹³ *Roman Zakharov v Russia* [GC] App no 47143/06 (ECHR, 4 December 2015) para 164.

¹¹⁴ *Gorraiz Lizarraga and Others v Spain*, App No. 62543/00 (ECHR, 27 April 2004), para. 35.

¹¹⁵ *Stukus and Others v Poland*, App No. 12534/03 (ECHR, 1 April 2008) para. 35.

would, in its view, undermine the effectiveness of the human rights protection system established by the Convention.¹¹⁶

Based on this jurisprudence, the ECtHR has identified three types of victims: direct, indirect, and potential. A direct victim is someone whose rights have been directly impacted by a State measure or omission, and who can demonstrate a clear and causal link to the alleged violation.¹¹⁷ An indirect victim is someone who, although not directly harmed, has a personal interest in the outcome, such as family members of a deceased person whose rights were allegedly violated.¹¹⁸ In exceptional cases, the Court has also acknowledged potential victims, namely individuals who are able to present credible and substantiated evidence that a violation affecting them personally is likely to occur. However, general concerns or speculative risks are insufficient to establish such a status.¹¹⁹

This tripartite classification, though well-established in the Court's case law, faces significant stress when applied to the complex and multi-layered nature of climate change harm. The following section explores how the victim status requirement has been interpreted in ongoing climate litigation and the legal challenges that arise from it.

3.2 The Victim *Status* Requirement in Climate Change Litigation: Legal Challenges

In ongoing climate litigation before the ECtHR, applicants typically assert either direct or potential victim status in relation to the negative consequences of climate change. For instance, in *Duarte Agostinho v. Portugal* (2020), six young individuals claimed that their right to private and family life under Article 8 ECHR had been compromised due to their inability to spend time outdoors, allegedly caused by climate-induced wildfires in the vicinity of their homes, and the emotional distress resulting from such conditions. Their argument regarding potential victimhood relies on the progressive

¹¹⁶ *Karner v Austria* App no 40016/98 (ECHR, 24 July 2003) para 37.

¹¹⁷ *Tănase v Moldova* App no 7/08 (ECHR, 27 April 2010) para 104.

¹¹⁸ *Vallianatos and Others v Greece* Apps nos 29381/09 and 32684/09 (ECHR, 7 November 2013) para 47.

¹¹⁹ *Senator Lines GmbH v Austria and Others* App no 56672/00 (ECHR, 10 March 2004).

deterioration of the climate, which, if left unaddressed, is likely to pose a serious threat to their rights in the future.¹²⁰

Yet, the task of qualifying as a victim becomes significantly more complex when the Court applies a rigid interpretation of admissibility criteria. In climate cases, applicants must demonstrate not only that human-induced climate disruption triggered a specific environmental phenomenon (e.g., the heat waves in *KlimaSeniorinnen* or the wildfires in *Duarte Agostinho*), but also that the phenomenon led to an actual infringement of one or more Convention rights.¹²¹ The notion of potential victimhood adds another layer of complexity, as it concerns anticipated harm that has not yet materialised and may never occur in the exact way projected.¹²² Compounding the difficulty, applicants often pursue climate litigation with a view to influencing State policy on adaptation and mitigation, objectives that align with broader public interest, raising concerns about the use of the Court as a forum for *actio popularis*, which the ECtHR generally does not allow.¹²³

This intersection between admissibility and merits indicates that victim status cannot be assessed independently from the substance of the complaint.¹²⁴ It would be logically inconsistent to determine whether an applicant is a victim without first clarifying the content and scope of the obligations that the State is accused of having breached. A rigid separation between admissibility and the definition of substantive obligations could result in the premature rejection of applications, particularly in situations where the existence or extent of climate-related duties under the Convention is still open to interpretation.¹²⁵ Consequently, to assess whether an applicant qualifies as a victim, the Court must first verify whether the ECHR framework can be understood as

¹²⁰ *Duarte Agostinho and Others v Portugal and 32 other States* App No. 39371/20 (ECHR, 30 November 2020) para 8.

¹²¹ Pierre-Marie Dupuy and Jorge E Viñuales, *International Environmental Law* (2nd edn, Cambridge University Press 2018) 395.

¹²² *Vallianatos and Others v Greece* (n 118) para 49; Helen Keller and Corina Heri, 'The Future is Now: Climate Change Cases Before the ECtHR' (2022) 40(1) *Nordic J Hum Rights* 1, 4.

¹²³ Françoise Hampson, Fiona Martin and Frans Viljoen, 'Inaccessible Apexes: Comparing Access to Regional Human Rights Courts and Commissions in Europe, the Americas, and Africa' (2018) *Int J Const Law* 161, 180.

¹²⁴ Daniel Schmid, 'Victim Status before the ECtHR in Cases of Alleged Omissions: The Swiss Climate Case' (*EJIL: Talk!*, 30 April 2022).

¹²⁵ Schmid (n 124).

encompassing obligations concerning climate mitigation and adaptation i.e., whether the application falls within its *ratione materiae* jurisdiction.¹²⁶

Having acknowledged the potential for deriving State obligations on climate mitigation and adaptation from the Convention, the next crucial step is to identify who is entitled to invoke such obligations before the Court. In practice, the ECtHR has already dismissed two of the twelve climate-related applications on the grounds that the applicants failed to meet the victim status requirement under Article 34.¹²⁷ However, other climate cases have been declared admissible at a preliminary stage and accorded procedural priority, an indication that the Court may be inclined to adopt a more flexible, context-sensitive interpretation of victim status in this emerging area of litigation.¹²⁸ Despite this, several respondent governments have objected, contending that the applications constitute *actio popularis*, aimed at advancing general policy goals rather than redressing individual harm. This procedural posture has stimulated significant academic debate regarding the extent to which the Court's individual-centric model of standing can accommodate claims arising from a global phenomenon like climate change, where collective interests and individual rights are often inseparably intertwined.¹²⁹

From a comparative perspective, international jurisprudence on victim status in climate litigation remains fragmented. Notably, the CJEU, in *Carvalho and Others v. Parliament and Council*, dismissed an appeal in which the applicants had alleged that EU climate policy failed to afford them adequate protection.¹³⁰ The Court found the claim inadmissible, emphasising that the applicants had not demonstrated any individualised harm capable of distinguishing them from the general public. This reflects the stringent standing requirements under EU procedural law and limits the

¹²⁶ Mariconda (n 19) 268.

¹²⁷ Eva Hartmann and Sarah Willers, 'Protecting Rights through Climate Change Litigation before European Courts' (2022) *J Hum Rights Environ* 12.

¹²⁸ Hartmann and Willers (n 127) 12.

¹²⁹ Helen Keller and Julia Pershing, 'Climate Change in Court: Overcoming Procedural Hurdles in Transboundary Environmental Cases' (2022) *Eur. Hum. Rights Law Rev.* 23–46; Sarah Willers, 'Climate Change Litigation in European Regional Courts: Jumping Procedural Hurdles to Hold States to Account?' in Ivano Alogna, Christine Bakker and Jean-Pierre Gauci (eds), *Climate Change Litigation: Global Perspectives* (Brill 2021) 294.

¹³⁰ Case T-330/18 *Armando Ferrão Carvalho and Others v European Parliament and Council of the European Union* [2019] EU:T:2019:324, para 49.

instructiveness of such precedent for the ECtHR context, where the admissibility framework differs substantially.

Despite these divergences, certain parallels can be drawn. In the context of the ECtHR, the concept of ‘direct victim’ in climate litigation bears a strong resemblance to that developed in environmental or industrial pollution cases. As previously examined, applicants in such cases have been recognised as victims even when the harm in question was not directly attributable to State action.¹³¹ The determining factor was the State’s failure to fulfil its positive obligations of due diligence, an approach that can plausibly be extended to climate claims. Where applicants allege insufficient climate mitigation or adaptation efforts by the State, their victim status may be accepted on the same grounds.¹³²

That said, climate applicants face two additional burdens. First, they must demonstrate a scientifically credible link between anthropogenic climate change and a specific harmful event, whether acute (such as wildfires or floods) or gradual (like sea level rise). Second, they must show that the event in question resulted in a concrete and rights-relevant injury. Here, the role of robust scientific evidence, particularly the assessments of the Intergovernmental Panel on Climate Change (IPCC), and the input of *amici curiae*, such as specialised NGOs, becomes indispensable in substantiating causation and foreseeability.¹³³

Past environmental jurisprudence of the Court can serve as a valuable point of reference. In *Cordella and Others v. Italy*, the Court recognised the victim status of residents living in an area exposed to harmful emissions from a steel plant, relying on technical documentation that established a connection between the pollution and the deterioration of public health. Victim status was extended beyond the named applicants to include the wider community in the affected area.¹³⁴ This approach suggests that, similarly, climate applicants might base their arguments on credible scientific findings to demonstrate that the risks they face are specific and foreseeable.

¹³¹ Corina Heri, ‘Climate Change before the European Court of Human Rights: Capturing Risk, Ill-Treatment and Vulnerability’ (2022) *Eur. J. Int. Law* 1, 9-10.

¹³² Mariconda (n 19) 274.

¹³³ Mariconda (n 19) 274.

¹³⁴ *Cordella and Others v Italy* App nos 54414/13 and 54264/15 (ECHR, 24 January 2019) para. 100.

Climate litigation also brings into focus broader questions about individual standing. Although applicants often advocate for interests shared with the wider public, this alone does not invalidate their claims. In *Di Sarno v. Italy*, for instance, the Court considered admissible a complaint related to a waste emergency that affected the entire Campania region. The Court held that the widespread nature of the problem did not preclude the applicants from claiming that they themselves had suffered a personal infringement of their rights.¹³⁵

In sum, where individuals can show that they have already suffered harm linked to the consequences of climate change, and that such harm results from a failure of the State to fulfil its due diligence duties, their status as direct victims may be acknowledged under the Convention. Nonetheless, climate change differs from past environmental cases in both its scale and the number of people it potentially affects.¹³⁶ To address the risk of overwhelming caseloads, the ECtHR applies further admissibility filters, such as the ‘significant disadvantage’ test under Article 35(3)(b) ECHR. Even once this threshold is passed, applicants must still demonstrate that the harm suffered meets the required seriousness under Articles 2, 3, or 8.¹³⁷

As for potential victims, recognition is possible but more difficult. Climate litigants argue that continued greenhouse gas emissions present a predictable and serious risk to their rights, and that this justifies anticipatory protection under the Convention.¹³⁸ As highlighted previously in this paragraph, States often counter this argument by claiming that such applications are abstract or speculative. The Court’s own jurisprudence under Article 3 ECHR (prohibiting torture and inhuman and degrading treatment), particularly in *non-refoulement* cases, shows that potential victim status has been granted where applicants faced a credible risk of future inhuman or degrading treatment.¹³⁹ A similar approach could be extended to climate applicants, especially

¹³⁵ *Di Sarno and Others v. Italy* (n 91) paras. 82–110.

¹³⁶ *Mariconda* (n 19) 275-276.

¹³⁷ *Budayeva and Others v Russia* (n 49) para 137, 142; *Fadeyeva v Russia* (n 51) paras 68–69; *Savran v Denmark*, App No 57467/15 (ECHR, 7 December 2021), para 122.

¹³⁸ *Mariconda* (n 19) 276.

¹³⁹ Natasa Mavronicola, ‘The Future is a Foreign Country: Understanding State (In)Action on Climate Change as Ill-Treatment’ (*Strasbourg Observers Blog*, 19 October 2021); Tina Heri, ‘The ECtHR’s Pending Climate Change Case: What’s Ill-Treatment Got to Do with It?’ (*EJIL: Talk!*, 22 December 2020)

where applicants belong to vulnerable groups, such as minors, older persons or individuals with pre-existing health conditions.¹⁴⁰ Yet the universal nature of climate change presents a dilemma: the potential for a large volume of similar cases.¹⁴¹ A possible solution lies in the use of Article 46 ECHR, which allows the Court to order general measures to ensure compliance with the Convention. Through such a mechanism, the ECtHR could encourage systemic climate action without having to adjudicate each individual claim, thereby preserving both the effectiveness of human rights protection and the manageability of its docket.¹⁴²

4. The European Court of Human Rights and its Evolving Environmental Jurisprudence

Building upon the ‘greened’ jurisprudence of the Court, it is possible to draw several important conclusions about States’ obligations in environmental matters. First, States have a positive duty to prevent industrial pollution or other forms of environmental nuisance from seriously interfering with health, private life, or the enjoyment of property.¹⁴³ This responsibility is not one that can be delegated to private industry alone. The extent of the obligation depends on the harmfulness of the activity and the foreseeability of the risk involved.¹⁴⁴ This foreseeability is particularly relevant in the context of EIA or other sources such as official reports. If a risk is foreseeable, the State must act in advance; it cannot wait for actual harm to occur. In situations where the environmental impact could be serious or irreversible, the precautionary principle may apply, although this point has not yet been definitively established by the Court.¹⁴⁵

Secondly, while the Court often refers to the need to balance individual rights with the public interest, in the relevant case law, the States’ failure to enforce their own environmental laws left no room for such a balancing exercise. A breach of domestic

¹⁴⁰ Luigi Acconciamezza, ‘L’ammissibilità ratione personae dei ricorsi alla Corte europea di individui estremamente vulnerabili: uguaglianza sostanziale e tutela del diritto di accesso alla giustizia internazionale’ (2021) *Diritti umani e diritto internazionale* 317.

¹⁴¹ Mariconda (n 19) 279.

¹⁴² *Cordella v. Italy* (n 134) para. 182.

¹⁴³ *López Ostra v Spain* (n 2); *Guerra and Others v Italy* (n 3); *Fadeyeva v Russia* (n 51); *Öneryıldız v Turkey* (n 51); *Taşkın and Others v Turkey* (n 28).

¹⁴⁴ See n 143.

¹⁴⁵ See n 143.

law in these cases amounts to a breach of the Convention. States cannot claim that public interest justifies ignoring legal obligations or failing to enforce environmental protections. Moreover, when national courts have already assessed a harmful activity and annulled permits on public interest grounds, the Strasbourg Court is unlikely to side with governments trying to override those judgements. This reinforces the importance of respecting domestic judicial decisions in environmental matters.¹⁴⁶

Thirdly, and crucially, the duty to act does not exist to protect the environment *per se* or the public in general, but to protect individuals whose rights may be seriously affected by environmental harm. The focus of the ECtHR's jurisprudence remains on human rights protection, not environmental protection in the abstract.¹⁴⁷

Building on these general principles, the evolving approach of the ECtHR can be further understood through an analysis of recent cases, in particular *Verein KlimaSeniorinnen Schweiz v. Switzerland* and *Cannavacciuolo and Others v. Italy*, which offer valuable insights into the Court's current approach to environmental matters.

4.1 Recent Landmark Cases:

4.1.1 *Verein KlimaSeniorinnen Schweiz v. Switzerland* (2024)

The case *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* represents a landmark in human rights-based climate litigation, being the first international ruling to hold a State accountable for failing to implement adequate measures to mitigate the negative impacts of climate change on human rights.¹⁴⁸ In its judgement on 9 April 2024, the ECtHR Grand Chamber found violations of Articles 8 and 6(1) of the ECHR (the right to respect for private and family life and the right of access to justice, respectively), attributing to the Swiss government a failure to adopt and implement

¹⁴⁶ *Fadeyeva v Russia* (n 51); *Boyle* (n 85) 489.

¹⁴⁷ *Kyrtatos v Greece* (n 28).

¹⁴⁸ Annalisa Savaresi, 'Verein KlimaSeniorinnen Schweiz and Others v Switzerland: Making climate change litigation history' (2025) *RECIEL* 279.

adequate climate mitigation measures.¹⁴⁹ The ruling, comprising approximately 260 pages, clearly underscores the current and future gravity of climate change threats to the enjoyment of human rights and emphasises States' responsibility to progressively reduce greenhouse gas emissions.¹⁵⁰

A central and controversial aspect of the case concerns the issue of admissibility based on the applicants' standing. The Court adopted a notably restrictive approach with respect to the four individual applicants, all elderly women who argued that their health was negatively impacted by increasingly frequent and intense heatwaves.¹⁵¹ Despite the applicants' vulnerable condition, the Court held that they failed to meet the threshold required to qualify as victims pursuant to Article 34 ECHR.¹⁵² More specifically, the Court articulated two cumulative criteria for establishing individual victim status in climate-related cases:

- (a) the applicant must be subject to a high intensity of exposure to the adverse effects of climate change, that is, the level and severity of (the risk of) adverse consequences of governmental action or inaction affecting the applicant must be significant; and
- (b) there must be a pressing need to ensure the applicant's individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm.¹⁵³

As highlighted by Peters, this interpretative framework effectively excludes most potential individual claimants, particularly those belonging to generically vulnerable groups (such as the elderly, children, or persons with disabilities), unless they can demonstrate a uniquely heightened risk that cannot be mitigated by policy or technological means. As a result, the judgement has been criticised for creating an almost insurmountable barrier to access for individual applicants in climate litigation,

¹⁴⁹ Violetta Sefkow-Werner, 'Consistent Inconsistencies in the ECtHR's Approach to Victim Status and Locus Standi' (2025) *Eur. J. Risk Regul* 1, 1.

¹⁵⁰ Savaresi (n 148).

¹⁵¹ Sefkow-Werner (n 149) 3.

¹⁵² Sefkow-Werner (n 149) 3.

¹⁵³ *Klimaseniorinnen v. Switzerland* (n 3) para 487.

especially when viewed against the scientifically established realities of collective and cumulative climate harm.¹⁵⁴

On the other hand, in this judgement, the Court adopted an innovative approach regarding *locus standi* for the applicant association. The KlimaSeniorinnen association, established to effectively advocate for climate protection on behalf of its members, satisfied the Court's criteria for association standing.¹⁵⁵ In particular, the Court elaborated the following criteria:

'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.'¹⁵⁶

Significantly, the Court acknowledged that for certain groups, particularly those structurally underrepresented in political and judicial processes, collective action may be 'the only means through which [their] voice can be heard' and their rights defended.¹⁵⁷ This broader interpretation of *locus standi* significantly diverged from the Court's established jurisprudence, allowing associations to bring a claim to the ECtHR under new *sui generis* circumstances and,¹⁵⁸ as a consequence, prompting an extensive academic debate.¹⁵⁹ In this context, scholars such as Peters and Dzehtsiarou have argued that the Court deliberately adopted a dual strategy: on the one hand, it imposed

¹⁵⁴ Birgit Peters, 'Asymmetries in the Admissibility Criteria of the KlimaSeniorinnen Case and the Prospects of Further Climate Litigation before the ECtHR' (*Human Rights in Context Blog*, 15 April 2024).

¹⁵⁵ Sefkow-Werner (n 149) 3.

¹⁵⁶ *Klimaseniöinnen v Switzerland* (n 3) para 502.

¹⁵⁷ *Klimaseniöinnen v Switzerland* (n 3) para 489.

¹⁵⁸ Kanstantsin Dzehtsiarou, "'KlimaSeniorinnen Revolution': The New Approach to Standing' (2024) 5 *Eur. Hum. Rights Law Rev.* 423, 426.

¹⁵⁹ Savaresi (n 148).

strict admissibility requirements on individual applicants to prevent an unmanageable influx of climate-related claims; on the other, it embraced a more flexible approach towards associations, recognising collective representation as an essential mechanism to give voice to structurally underrepresented and vulnerable groups.¹⁶⁰ In doing so, the Court sought to strike a balance between judicial economy and the effective protection of rights in the context of climate change.

On the merits, the Court precisely defined the nature and scope of State obligations, stating that national authorities must adopt general measures with clear objectives and timelines to achieve carbon neutrality, set intermediate emission reduction targets, and provide evidence demonstrating the effective implementation of climate policies.¹⁶¹ Specifically, Switzerland was criticised for substantial shortcomings in its regulatory framework, including failing to quantify national emission limits and not acting promptly and consistently in implementing climate measures as mandated by national legislation.¹⁶²

The Court also recognised a violation of Article 6(1), highlighting that Swiss courts had denied the applicants effective access to justice by refusing to address their claims substantively, thus leaving the association without further legal recourse.¹⁶³ This aspect of the decision emphasises the essential role of national courts in enforcing States' obligations related to climate change.¹⁶⁴

Reactions to the ruling have been mixed. While Swiss authorities criticised the Court's broad interpretation, suggesting it unduly expanded the scope of the Convention, they nonetheless took concrete steps to comply with the judgement, such as revising national CO₂ legislation.¹⁶⁵ However, civil society organisations expressed scepticism regarding the adequacy of these measures, criticising the lack of clarity and precision

¹⁶⁰ Peters (n 154); Dzehtsiarou (n 158) 426.

¹⁶¹ Savaresi (n 148).

¹⁶² Savaresi (n 148).

¹⁶³ Sefkow-Werner (n 149) 4.

¹⁶⁴ Savaresi (n 148).

¹⁶⁵ Savaresi (n 148).

in quantifying national emission limits and in setting targets consistent with limiting global warming to 1.5°C.¹⁶⁶

In conclusion, the *KlimaSeniorinnen* ruling has implications extending far beyond Switzerland and the CoE. It is poised to significantly influence legal reasoning in national and international courts handling similar human rights-based climate litigation, setting an important precedent for future climate disputes, including ongoing advisory proceedings at the ICJ and the IACtHR.¹⁶⁷

4.1.2 *Cannavacciuolo and Others v. Italy (2025)*

The ECtHR's ruling in *Cannavacciuolo and Others v. Italy*, handed down on 30 January 2025, represents a pivotal development in the Court's environmental jurisprudence, both consolidating earlier trends and charting new territory. The case concerns the *Terra dei Fuochi* ('Land of Fires') region in Campania, southern Italy, where decades of toxic waste dumping and burning, often involving organised crime, have resulted in severe and long-standing environmental degradation.¹⁶⁸ With nearly 2.9 million people affected,¹⁶⁹ the severity of the pollution had already prompted legal action at both domestic and EU levels, including the infringement proceedings in *Commission v. Italy* (C-297/08; C-653/13) for failing to comply with waste management obligations under EU waste management law.¹⁷⁰

Unlike earlier ECtHR cases such as *Di Sarno* and *Locascia*, which focused on operational failures in waste collection, *Cannavacciuolo* addressed the authorities' lack of response to a long-standing pollution emergency of criminal and structural dimensions.¹⁷¹

¹⁶⁶ Savaresi (n 148).

¹⁶⁷ Savaresi (n 148).

¹⁶⁸ Jasmine Sommardal, 'A Landmark Judgment: Three Crucial Aspects of *Cannavacciuolo and Others v Italy*' (*ECHR Blog*, 4 February 2025).

¹⁶⁹ Sommardal (n 168).

¹⁷⁰ Katia Hamann, '*Cannavacciuolo and Others v. Italy: Towards Applying a Precautionary Approach to the Right to Life*' (*EJIL:Talk!*, 9 February 2025).

¹⁷¹ Sommardal (n 168).

On admissibility, however, the Court maintained a strict approach to standing (*locus standi*), accepting only seven individual applicants residing within officially polluted municipalities. NGOs and applicants filing late or living outside designated zones were excluded.¹⁷²

This aspect of the judgement has raised considerable controversy. In *KlimaSeniorinnen*, the Court adopted a greater openness toward the standing for associations in climate change litigation, explicitly acknowledging the ‘specific features’ of climate change, such as its global scale, intergenerational impact, and procedural complexity, and thus allowing NGOs to act on behalf of affected individuals under specific conditions (see paragraph 3.1.1).¹⁷³ Yet in *Cannavacciuolo*, the Court sharply limited this innovation, explicitly confining the *KlimaSeniorinnen* precedent to climate change cases only. It held that the *Terra dei Fuochi* case lacked the ‘specific considerations’ (e.g., intergenerational equity, global scope) that justified NGO standing in *KlimaSeniorinnen*.¹⁷⁴

This restrictive turn provoked critical reactions. In their separate opinions, Judges Krenc and Serghides argued that the environmental harm in *Cannavacciuolo*, although not climate-related, was equally diffuse, long-term, and multigenerational. Scientific evidence submitted in the case showed how pollutants had entered the food chain and breast milk, potentially affecting generations to come.¹⁷⁵ Moreover, illegal waste incineration released both chemicals and emissions contributing to climate change, further blurring the artificial line between climate and non-climate environmental degradation.¹⁷⁶

This jurisprudential shift thus invites deeper scrutiny. Why did the Court embrace a new doctrine of NGO standing in *KlimaSeniorinnen*, only to immediately narrow its scope? One possible explanation lies in the perceived exceptionalism of climate change and the Court’s concern about opening the floodgates to *actio popularis*, as

¹⁷² Hamman (n 170).

¹⁷³ Sommardal (n 168).

¹⁷⁴ *Cannavacciuolo and Others v Italy* (n 6) para 220.

¹⁷⁵ *Cannavacciuolo and Others v Italy* (n 6) concurring opinion of Judge Krenc, para 6; *Cannavacciuolo and Others v Italy* (n 6) partly concurring and partly dissenting opinion of Judge Serghides, para 2.

¹⁷⁶ Sommardal (n 168).

highlighted in the previous section. Yet this justification appears fragile. Indeed, even if the right to a healthy environment is not yet formally enshrined in the Convention, it is implicated in both *KlimaSeniorinnen* and *Cannavacciuolo*. Following that, procedural avenues for its protection should remain consistent across different environmental contexts.¹⁷⁷

By endorsing a permissive standing regime in climate litigation, while simultaneously reaffirming a restrictive approach in cases of widespread pollution, the Court risks entrenching a two-tiered model of environmental access to justice: one for climate change, and another for other equally serious environmental harms, and marked by narrower admissibility.¹⁷⁸

Moreover, by declining to assess Article 8 after finding a violation of Article 2, the Court missed an opportunity to further clarify the evolving *sub-right* to a healthy environment under the Convention, as articulated by Judge Serghides in earlier concurring opinions.¹⁷⁹

Some scholars argued that NGO standing in *KlimaSeniorinnen* was justified as a counterbalance to the Court's strict criteria for individual victim status in climate cases, as highlighted in the previous section. However, this logic should not exclude cases like *Cannavacciuolo*, where affected individuals are not only identifiable but often lack the means or capacity to assert their claims. In such scenarios, associations are uniquely placed to act on their behalf, especially where harm is structural and systemic.¹⁸⁰

Ultimately, the divergence in the Court's reasoning between the two cases raises deeper concerns about consistency and procedural justice in environmental litigation. Several of the arguments deployed in *KlimaSeniorinnen* to justify relaxed standing (such as reliance on the Aarhus Convention, comparative practices across CoE

¹⁷⁷ Irene Domenici, 'The European Court of Human Right's landmark judgment in the case of *Cannavacciuolo and Others v Italy*' (2025) 34 *RECIEL* 582, 587.

¹⁷⁸ Hamman (n 170).

¹⁷⁹ Hamman (n 170); *Cannavacciuolo and Others v Italy* App no 48116/19 (ECHR, 30 January 2025) para 260; *Cannavacciuolo and Others v Italy* App no 48116/19 (ECHR, 30 January 2025) partly concurring and partly dissenting opinion of Judge Serghides, para 2.

¹⁸⁰ Domenici (n 177) 587.

Member States, and the difficulties of proving individual harm apply equally to cases involving large-scale pollution, biodiversity loss, or toxic waste.¹⁸¹ The Court's failure to draw a convincing line between climate change and other forms of environmental degradation weakens its claim to coherence and risks undermining its legitimacy in this domain. This concern is both reflected in the concurring opinions of Judges Krenc and Serghides, who underscored the arbitrariness of this judicial stance adopted by the Court, pointing to the interconnectedness of the triple planetary crisis: climate change, pollution, and biodiversity loss.¹⁸²

On the merits, the judgement marked a groundbreaking shift by applying Article 2 (right to life) to environmental harm for the first time. The Court found that hazardous waste disposal constituted a dangerous activity creating an 'imminent' risk to life, even in the absence of proven individual illness or direct exposure by the applicants.¹⁸³ This departure from the Court's prior restrictive stance on causal links signals a welcome evolution towards a more victim-sensitive and pragmatic standard in environmental contexts.¹⁸⁴ The Court rejected the need for scientific certainty or proof of health deterioration for each applicant, acknowledging that the long-standing and omnipresent pollution itself created a sufficiently serious and foreseeable threat to human life.¹⁸⁵

This more flexible interpretation reflects a deeper understanding of the structural nature of environmental harm and aligns with emerging international jurisprudence, including the UN Human Rights Committee's position in *Portillo Cáceres v. Paraguay* and the IACtHR's advisory opinions on environmental rights.¹⁸⁶ The Court further held that the Italian authorities had failed to conduct adequate assessments, mitigate risks, or provide public information, thus breaching their positive obligations

¹⁸¹ Hamman (n 170).

¹⁸² *Cannavacciuolo*, concurring opinion of Judge Krenc, para 6; *Cannavacciuolo*, partly concurring and partly dissenting opinion of Judge Serghides, para 2.

¹⁸³ Sommardal (n 168).

¹⁸⁴ Sommardal (n 168).

¹⁸⁵ Sommardal (n 168); Hamman (n 170).

¹⁸⁶ *Portillo Cáceres and Others v Paraguay* (IACtHR, 7 September 2021) Series C No 435; Hamman (n 170).

under Article 2.¹⁸⁷ Thus, this decision elevates the protection of life in environmental matters to a central principle in the Convention system.

Equally unprecedented was the Court's application of the pilot judgement procedure in an environmental case, an instrument traditionally reserved for systemic issues like detention conditions, judicial delays, or property restitution.¹⁸⁸ In *Cannavacciuolo*, the pilot procedure was used to direct the Italian government to adopt a coordinated decontamination strategy, establish monitoring mechanisms, and create a public information platform, all within a two-year timeframe.¹⁸⁹ The use of Article 46 in this context signals a strategic shift in the Court's approach to remedies in environmental cases, moving beyond declaratory judgements toward concrete, systemic responses.¹⁹⁰ This shift may serve as a form of 'remedial compensation' for the restricted individual access to the Court by ensuring broader structural accountability at the national level.¹⁹¹

In light of the above, it could be concluded that the *Cannavacciuolo* judgement represents a milestone in the development of the ECtHR's environmental jurisprudence, primarily for finding the violation of the right to life and applying the pilot judgement procedure, both for the first time. However, it may also spark further debates when contrasted with the Court's approach to other planetary crises, such as climate change.¹⁹²

5. An Alternative Instrument for Environmental Protection: The European Social Charter

The ESC, signed in Turin on 18 October 1961 by thirteen founding Member States of the CoE, was conceived as the social counterpart to the 1950 ECHR. While the ECHR guarantees civil and political rights, the ESC is aimed at securing economic and social rights, thereby jointly covering the full spectrum of human rights as defined in the

¹⁸⁷ Sommardal (n 168)

¹⁸⁸ Sommardal (n 168).

¹⁸⁹ Hamman (n 170).

¹⁹⁰ Sommardal (n 168).

¹⁹¹ Hamman (n 170).

¹⁹² Hamman (n 170).

UDHR (1948).¹⁹³ The original Charter enshrines nineteen substantive rights, spanning areas such as employment, fair working conditions, health and social security, and protection for families, children, women, persons with disabilities, and migrant workers. These include, among others, the right to work, to fair remuneration, to safe and healthy working conditions, and to health protection and social assistance.¹⁹⁴

Over time, the ESC has undergone significant institutional evolution, especially through the reforms introduced between the late 1980s and the mid-1990s. Three key protocols, respectively adopted in 1988, 1991, and 1995, progressively expanded and strengthened the Charter's substantive and procedural framework. Notably, the 1988 Additional Protocol introduced new social rights; the 1991 Amending Protocol enhanced the supervisory mechanism, and the 1995 Additional Protocol established the collective complaints procedure within the ECSR, marking a significant innovation in the protection of participatory rights.¹⁹⁵ This reform trajectory culminated in the adoption of the Revised European Social Charter in 1996, which consolidated the existing provisions of the 1961 Charter and its protocols while introducing new rights that reflect evolving socio-economic challenges. As of today, 43 out of 47 CoE Member States have ratified either the original or the revised version of the Charter.¹⁹⁶

Notably, the ESC appears institutionally better suited than the ECHR to host a right to a healthy environment.¹⁹⁷ Indeed, its twofold enforcement mechanism, comprising the reporting system and the collective complaints procedure, is structurally tailored to monitor State compliance in areas involving diffuse interests and shared risks, such as social and environmental rights.¹⁹⁸ The collective complaints mechanism, in particular, stands out as an innovative supranational instrument for addressing

¹⁹³ AB Kasunmu, 'The European Social Charter' (1964) 13 *ICLQ* 1076, 1076.

¹⁹⁴ Kasunumu (n 193) 1077.

¹⁹⁵ Giuseppe Palmisano, 'The Right to a Healthy or Decent Environment as a Social Right: Acquis and Future Prospects of the European Social Charter System' (2020) 2 *RTDLF*, 9.

¹⁹⁶ Palmisano (n 195) 9.

¹⁹⁷ Palmisano (n 195) 9; on the ESC see also Jean-François Akandji-Kombé and Stéphane Leclerc (eds), *La Charte Sociale Européenne* (Bruylant 2001); David John Harris and John Darcy, *The European Social Charter* (2nd edn, Hotei Publishing 2001); Andrzej Marian Świątkowski, *The Charter of Social Rights of the Council of Europe* (Kluwer Law International 2007); Olivier De Schutter (ed), *The European Social Charter: A Social Constitution for Europe* (Bruylant 2010); Oliver Dörr, 'European Social Charter' in Stefanie Schmahl and Marten Breuer (eds), *The Council of Europe: Its Laws and Policies* (OUP 2017) 507.

¹⁹⁸ Council of Europe, 'Collective complaints procedure' – European Social Charter.

systemic violations of a collective nature. Introduced by the 1995 Additional Protocol, this procedure allows specific entities, including international NGOs with participatory status at the CoE, as well as European-level trade unions and employers' organisations, to lodge complaints directly before the ECSR, without needing to prove victim status or to exhaust domestic remedies.¹⁹⁹

This procedural model diverges substantially from the individual-centric approach of the ECHR and proves especially effective in addressing complex phenomena such as environmental degradation, where harms tend to affect large populations rather than discrete individuals. The ECSR examines the admissibility and merits of the complaint, and issues a legal assessment of whether the domestic legal framework or practice complies with the Charter.²⁰⁰ Although its decisions are not binding as ECtHR judgements, they constitute authoritative interpretations of a binding treaty and carry significant legal and political weight, particularly as they are transmitted to the Committee of Ministers, which may adopt recommendations to ensure compliance.²⁰¹

Although, like the ECHR, the ESC does not contain explicit provisions on environmental protection or to a right to a healthy environment, the ECSR has progressively developed an interpretative approach that recognises the interdependence between social rights and environmental well-being. Through its mandate, the Committee has clarified how environmental degradation may adversely affect the enjoyment of core Charter rights, particularly in relation to the right to health under Article 11.²⁰²

5.1 Environmental Protection under Article 11: Right to Health

Article 11 of the ESC obliges States to take appropriate measures to eliminate, as far as reasonably possible, the causes of ill health and to prevent the spread of epidemic,

¹⁹⁹ Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (opened for signature 9 November 1995, entered into force 1 July 1998) ETS No 158, arts 1, 4.

²⁰⁰ Council of Europe, Collective Complaints Procedure – European Social Charter (n 198).

²⁰¹ Council of Europe, Collective Complaints Procedure – European Social Charter (n 198); Andrea Spagnolo, 'They Are not Enforceable, but States Must Respect Them: An Attempt to Explain the Legal Value of Decisions of the European Committee of Social Rights' (2022) 7 *European Papers* 1495, 1508-1509.

²⁰² *Marangopoulos Foundation for Human Rights (MFHR) v Greece* Complaint No 30/2005 (ECSR, 6 December 2006), paras 194–196; Palmisano (n 195) 10.

endemic, and other diseases. This provision has been interpreted by the ECSR to require that States proactively address health risks that are avoidable through human intervention, including those stemming from environmental degradation.²⁰³

Since the early 2000s, the ECSR has developed a consistent interpretative approach that integrates environmental concerns into the scope of the right to health. It has been affirmed that exposure to pollution and other environmental hazards constitutes an ‘avoidable risk’ and therefore falls within the ambit of Article 11. In doing so, the Committee has grounded a rights-based approach to environmental protection within the Charter, recognising that environmental harm can significantly impair the effective enjoyment of social rights.²⁰⁴

This interpretative trajectory has led the ECSR to identify violations of Article 11 in several significant cases, especially where States failed to reconcile industrial activities with the health and dignity of affected populations. It found breaches, for instance, where national authorities did not adequately balance the interests of communities living in lignite-mining regions with economic development objectives, or where no meaningful action was taken to counteract the health impacts of industrial waste pollution in local rivers. Similar conclusions were reached in cases involving Roma communities exposed to inadequate housing, contaminated water sources, and broader environmental neglect.²⁰⁵

Beyond industrial pollution, the Committee has clarified that States bear positive obligations to shield their populations from other serious environmental risks, such as the consequences of nuclear accidents and exposure to asbestos. Moreover, systemic issues like the lack of access to safe drinking water for significant portions of the population have been held to violate Article 11.²⁰⁶

²⁰³ *Marangopoulos Foundation for Human Rights (MFHR) v Greece* (n 202) para 221; Palmisano (n 195) 10.

²⁰⁴ *ATTAC ry, Globaali sosiaalityö ry and Maan Ystävät ry v Finland* Complaint No 163/2018 (ECSR, 22 January 2019) para 12.; Palmisano (n 195) 13.

²⁰⁵ *European Roma and Travellers Forum (ERTF) v Czech Republic* Complaint No 104/2014 (ECSR, 7 May 2016, paras 124, 127.

²⁰⁶ Conclusions XV-2 (2001), France; Conclusions XVII-2 (2005), Portugal; Conclusions XVII (2005), Latvia; Conclusions 2017, Georgia, art 11(3): “The Committee concludes that the situation in Georgia

While the obligations under Article 11 are of a progressive nature, the ECSR has made clear that this does not exempt States from responsibility. Rather, States are expected to act within a reasonable timeframe, demonstrate measurable progress, and make effective use of available resources. This includes adopting and regularly updating environmental legislation, taking targeted action at the local level to mitigate pollution, ensuring the proper enforcement of environmental standards, and raising public awareness, particularly among young people, of both general and local environmental challenges.²⁰⁷

In recent years, the ECSR's reporting procedure has evolved from a formalistic review of individual provisions to a more strategic, issue-driven model. This shift has opened the door to integrating environmental considerations more systematically into the Charter's implementation. Under this model, the Committee has requested that States provide detailed information about how they prevent population exposure to pollution and contamination, including from improperly decommissioned industrial or nuclear sites, and what efforts they undertake to educate the public about environmental risks.²⁰⁸

This interpretative momentum suggests that environmental protection could also become increasingly relevant to other Charter rights, such as the right to safe and healthy working conditions (Article 3), the protection of children and young persons (Articles 7 and 17), the right to housing (Article 31), and the right to protection against poverty and social exclusion (Article 30). A potential step forward would be for the ECSR to adopt new Statements of Interpretation addressing the environmental dimensions of these rights, similar to the one it issued in April 2020 on the right to health during the COVID-19 pandemic.²⁰⁹

is not in conformity with art 11(3) of the Charter on the ground that the measures taken to ensure access to safe drinking water in rural areas have been insufficient”.

²⁰⁷ Conclusions XV-2 (2001), Addendum, Slovak Republic; Conclusions 2005, Republic of Moldova, art 11(3); Conclusions XV-2 (2001), Italy, art 11(3).

²⁰⁸ ‘Targeted questions on Article 11 (the right to protection of health) transmitted to the States Parties to the Charter in view of Conclusions 2021’ (Council of Europe, 2021) 4–8; Palmisano (n 195) 14.

²⁰⁹ ECSR, *Statement of interpretation on the right to protection of health in times of pandemic* (ECSR, 21 April 2020); Palmisano (n 195) 14-15.

Importantly, the Committee has also incorporated into its reasoning the precautionary principle, long recognised in international environmental law. Where preliminary scientific evidence indicates a credible risk to human health, States are required to act preventively in line with the high level of health protection guaranteed by the Charter.²¹⁰

This further confirms the ECSR's evolving commitment to integrating environmental risk into the broader framework of social rights protection under the ESC.

5.2 The Protection of the Environment in the ESC System: Possible Outcomes

To date, only two collective complaints have directly addressed environmental health issues under Article 11, both against Greece: in *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, Complaint No. 30/2005, the Committee found a violation where the State failed to protect workers and residents from pollution caused by lignite mining; In *International Federation for Human Rights (FIDH) v. Greece*, Complaint No. 72/2011, the complaint centred on the health risks stemming from water contamination in the Asopos River.²¹¹

Should the ECSR further develop its jurisprudence through both the reporting system and the collective complaints mechanism, this could lead to a substantial expansion of case law on the intersection between environmental degradation and the erosion of social rights. In turn, this would contribute to clarifying the practical scope and mutual reinforcement of environmental and social protection under the Charter.²¹²

Nevertheless, the current limited acceptance of the collective complaints procedure, adopted through the 1995 Additional Protocol, remains a major constraint. As of now, only 15 Council of Europe Member States have ratified this mechanism. Expanding participation would not only enhance the overall effectiveness of the Charter system but would also reinforce environmental protection through social rights enforcement.

²¹⁰ *International Federation of Human Rights Leagues (FIDH) v Greece* Complaint No 72/2011 (ECSR, 23 January 2013) paras 150–152; Palmisano (n 195) 12.

²¹¹ *Marangopoulos Foundation for Human Rights (MFHR) v Greece* (n 202); *International Federation of Human Rights Leagues (FIDH) v Greece* (n 210); Palmisano (n 195) 15–16.

²¹² Palmisano (n 195) 16.

Notably, recent political declarations by the States already party to the procedure have encouraged others to follow suit, highlighting a growing consensus on the importance of broader engagement.²¹³

6. Justice in the Liminal: Recent Developments in the Recognition of a Substantive Right to a Healthy Environment in the Framework of the Council of Europe

Although the ECtHR's 'greened jurisprudence' has contributed to effective protection of environmental rights within the Council of Europe framework, recent developments suggest a growing shift toward recognising a substantive right to a healthy environment, in line with evolving international standards. Indeed, the Parliamentary Assembly of the Council of Europe (PACE) has, on four separate occasions (1999, 2003, 2009, 2021), called for the adoption of an additional protocol to the ECHR enshrining a freestanding right to a healthy environment.²¹⁴ The 2021 initiative was particularly ambitious, attaching to Recommendation 2211 a draft protocol text that not only proposed a substantive right to 'a safe, clean, healthy, and sustainable environment' but also codified procedural guarantees such as access to information, public participation in decision-making, and access to effective remedies.²¹⁵ More specifically, the proposed legal instrument aimed to (i) affirm the responsibility of States to preserve an environment conducive to human dignity, health, and the full enjoyment of other fundamental rights; and (ii) enable more effective national-level protection of a safe, clean, healthy, and sustainable environment.²¹⁶ It further incorporated progressive interpretative principles, such as intergenerational equity, the precautionary principle, and the principle of *in dubio pro natura*, distinguishing it from previous ECHR protocols.²¹⁷

²¹³ Palmisano (n 195) 16.

²¹⁴ Corina Heri, 'Justice in the Liminal: The Council of Europe and the Right to a Healthy Environment' (2024) 73 *JCLQ* 319, 325; Parliamentary Assembly of the Council of Europe (PACE), 'Anchoring the Right to a Healthy Environment: Need for Enhanced Action by the Council of Europe' Recommendation 2211 (29 September 2021).

²¹⁵ T Eicke, 'Climate Change and the Convention: Beyond Admissibility' (2022) 3(1) *Eur Conv Hum Rts L Rev* 8, 11; Heri (n 214) 327–328.

²¹⁶ Recommendation 2211 (n 214) para 1; Council of Europe, *Reykjavik Declaration: 'United around our values'* (16–17 May 2023) paras 20–21; Recommendation 2211 (n 214) para 3.1.

²¹⁷ Heri (n 214) 327.

The proposed protocol adopted a ‘rights-expansion’ model, under which its obligations would bind only those States that chose to ratify it, thereby avoiding the unanimity requirement typical of structural reforms to the Convention.²¹⁸ Nevertheless, despite its flexible architecture, the draft has not moved forward institutionally.²¹⁹ Resistance from the Committee of Ministers (CM),²²⁰ reflecting executive-level apprehension over legal uncertainty, judicial activism, and overlap with existing rights, has blocked its progression.²²¹ This reveals an institutional tension within the CoE: while the PACE, representing national legislatures, has consistently advocated for recognition, executive branches have remained wary of embedding new obligations within the Convention’s binding legal framework.²²²

Since 2022, the CoE has shifted toward a strategy of political endorsement rather than legal codification.²²³ Documents such as Recommendation CM/Rec(2022)20 and the 2023 Reykjavík Declaration acknowledge the indivisibility of human rights and environmental protection but stop short of establishing judicially enforceable rights.²²⁴ Even States that have supported the right to a healthy environment in other international fora have shown reticence within the ECHR context, arguably due to the Convention’s powerful enforcement mechanisms.²²⁵ Consequently, Member States appear to favour non-binding affirmations over legally entrenched commitments.²²⁶

This reluctance unfolds in what some scholars describe as a ‘liminal’ phase in Strasbourg jurisprudence, characterised by institutional flux, the emergence of climate

²¹⁸ Heri (n 214) 327–328.

²¹⁹ Heri (n 214) 328.

²²⁰ It is composed of the foreign affairs ministers of the member states. See also: Council of Europe, ‘About the Committee of Ministers’ (Council of Europe, 2024).

²²¹ Parliamentary Assembly of the Council of Europe (PACE), ‘Future Action to be Taken by the Council of Europe in the Field of Environmental Protection’ Recommendation 1431 (4 November 1999); PACE, ‘Environment and Human Rights’ Recommendation 1614 (27 June 2003); PACE, ‘Drafting an Additional Protocol to the European Convention on Human Rights Concerning the Right to a Healthy Environment’ Recommendation 1885 (30 September 2009); see also Harry Balfour-Lynn and Sue Willman, ‘The Right to a Healthy Environment in the United Kingdom: Supporting the Proposal for a New Protocol to the European Convention on Human Rights’ (*Environmental Rights Recognition Project*, May 2022) 16–18; Heri (n 214) 325–326.

²²² Heri (n 214) 325.

²²³ Heri (n 214) 330.

²²⁴ Committee of Ministers, ‘Recommendation CM/Rec(2022)20 to Member States on Human Rights and the Protection of the Environment’ (27 September 2022).

²²⁵ Heri (n 214) 331.

²²⁶ Heri (n 214) 331–332.

litigation, and increasing societal and normative demands for environmental protection.²²⁷ The debate over the recognition of environmental rights within the CoE is thus closely intertwined with these unfolding developments.²²⁸ The work of the Drafting Group on Human Rights and the Environment (CDDH-ENV), while primarily technical in nature, also mirrors this transitional moment.²²⁹ Its recognition of the potential value of a right to a healthy environment, particularly in filling normative gaps, clarifying responsibilities of non-State actors, and harmonising domestic environmental standards, is tempered by its characterisation of the right as still developing, leaving its legal content deliberately undefined.²³⁰ Thus, the CoE stands at a crossroads: it can either seize the opportunity to codify environmental rights in response to mounting ecological crises, or it may choose to remain within the sphere of symbolic commitments through soft-law instruments.²³¹ The outcome of this liminal moment will significantly shape the future contours of environmental human rights protection in Europe.²³²

Crucially, the recognition of an autonomous right to a healthy environment would represent a significant innovation in this legal context, as it would allow environmental degradation to be treated as an independent violation, enabling claims based solely on objective harm to nature, even in the absence of a subjective direct impact on humans.²³³

In this context, the right to a healthy environment would typically be invoked in cases involving serious harm to ecosystems or biodiversity, without the need to demonstrate a direct, individual impact. Nonetheless, it is evident that such objective environmental damage will, sooner or later, result in consequences for human well-being, whether these effects are widespread or localised, immediate or gradual. In this sense, personal

²²⁷ Heri (n 214) 322–323.

²²⁸ Heri (n 214) 321.

²²⁹ Heri (n 214) 328–329; Council of Europe, ‘Terms of reference for the CDDH and the DH-SYSC (2022–2025)’.

²³⁰ PACE Recommendation 1431 (1999) (n 221) para 8; PACE Recommendation 1614 (2003) (n 221) paras 9, 10.2; PACE Recommendation 1885 (2009) (n 221) para 10.1; PACE Recommendation 2211 (2021) (n 221); Heri (n 214) 329.

²³¹ Heri (n 214) 335.

²³² Heri (n 214) 322.

²³³ See Recommendation 2211 (n 214) art 7; Kobylarz (n 4) 29.

harm is inherently embedded within ecological harm. Thus, this deep interconnection between human well-being and the integrity of natural systems supports the recognition of the right to a healthy environment as a fundamental human right.²³⁴ In cases of serious environmental degradation that have not yet affected individuals directly, courts would no longer need to stretch the interpretation of civil and political rights to accommodate environmental concerns. Where both human and ecological harm are present, the Court could choose to apply both the right to a healthy environment and relevant Convention rights or, alternatively, decide that the new right sufficiently covers the issue.

To function within Strasbourg's legal order, this new right would likely require a threshold of environmental harm, potentially based on technical assessments of scale, severity, or long-term ecological effects. Nonetheless, such a standard would differ from the current necessity to demonstrate imminent or personal harm, thus broadening both standing and admissibility. In short, the recognition of a freestanding right to a healthy environment would allow the ECtHR to strengthen its capacity to safeguard environmental rights by establishing an autonomous normative framework, one capable of addressing the complex, cumulative, and transboundary nature of environmental challenges.²³⁵

According to the former President of the Committee Giuseppe Palmisano, rather than amending the Convention, it would be more appropriate and effective to incorporate provisions on the right to a healthy (or decent) environment into the framework of the ESC.²³⁶ Indeed, introducing a dedicated article within it would not only update and enrich the catalogue of protected social rights but would also strengthen the legal status of environmental protection by explicitly anchoring it to a system already geared toward collective and societal interests.²³⁷ Such an amendment would align the ESC more closely with other regional human rights instruments that recognise collective

²³⁴ Kobylarz (n 4) 29-30.

²³⁵ Kobylarz (n 4) 30.

²³⁶ Palmisano (n 195) 17.

²³⁷ Palmisano (n 195) 17.

rights and environmental interests, thus enhancing the system's responsiveness to present-day ecological challenges.

Moreover, it would constitute a logical and organic development of the ESC's existing framework, essentially codifying an interpretative evolution already evident over the past two decades, particularly in relation to Article 11, which the ECSR has repeatedly interpreted as encompassing aspects of environmental health.²³⁸

In sum, introducing a new protocol to the ESC that explicitly recognises the right to a healthy or decent environment would not only reflect the system's jurisprudential evolution, but also offer a more appropriate institutional setting for addressing the collective and transboundary nature of environmental harm. It would mark a principled and practical advancement in the CoE's efforts to integrate environmental protection into its human rights architecture.²³⁹

7. Concluding remarks

The ECtHR has progressively incorporated environmental protection into its jurisprudence through dynamic interpretation of existing rights, particularly Articles 2 and 8 ECHR. This 'greening' process has enabled claims concerning environmental degradation and climate risks to be framed within the civil and political rights framework of the Convention. However, the Court's anthropocentric and individual-focused mandate imposes structural limitations: it excludes *actio popularis* and requires claimants to demonstrate personal harm, leaving general environmental harms largely unaddressed.

The recent *Klimaseniorinnen v. Switzerland* and *Cannavacciuolo and Others v. Italy* rulings further illustrate both the potential and the constraints of the current system. In *Klimaseniorinnen*, the Court acknowledged the real and foreseeable risks climate change poses to vulnerable populations, especially elderly women, and ruled for the first time on States' positive obligations in the field of climate change mitigation. Moreover, it also marked an important step forward in recognising the standing of

²³⁸ Palmisano (n 195) 18.

²³⁹ Palmisano (n 195) 24.

associations acting on behalf of affected groups, thus opening the door to collective environmental claims. However, in *Cannavacciuolo*, the claim was deemed inadmissible for lack of victim status, reaffirming the enduring procedural hurdles. Together, these decisions reflect the ECtHR's cautious yet incremental approach, balancing judicial innovation with procedural conservatism. In this regard, adopting a protocol explicitly recognising the right to a healthy environment would be a significant advancement. It would enhance legal clarity, facilitate direct adjudication of environmental claims, and align the ECHR system with global human rights trends. Complementing this, the ESC, particularly through Article 11 and the work of the ECSR, offers a valuable social rights dimension, capable of addressing collective and structural environmental harms. Strengthening coordination between these instruments would bolster the CoE's overall capacity to protect environmental human rights in a coherent and effective manner.

In conclusion, while the ECHR's interpretative evolution marks a crucial step toward integrating environmental protection within European human rights law, its indirect model remains limited in scope and accessibility. To meet the demands of the ecological crisis, the CoE must move beyond incrementalism. Codifying a substantive right to a healthy environment would ensure that environmental harm is recognised not only as a threat to individual rights, but also as a violation of a fundamental, autonomous human right in its own terms. This, in turn, would allow the European human rights regime to better fulfil its role in safeguarding both people and planet.

CHAPTER 3

ENVIRONMENTAL PROTECTION IN EU LAW

1. Introduction

Environmental protection has, over the years, developed from a marginal policy concern into one of the foundational pillars of the EU's institutional and legal order. Over the decades, the EU has developed a complex and dynamic environmental legal framework that now permeates virtually every dimension of its governance, reflecting a broad vision of sustainable development, intergenerational justice, and environmental justice. What initially began as fragmented, market-based justifications for the EU's interest in environmental matters has evolved into an overarching system of law that integrates environmental protection within internal market regulation, human rights protection, and international cooperation.

This chapter analyses the legal architecture governing environmental protection in the EU. The first section offers a historical overview of the emergence and entrenchment of environmental competence in EU law, from the absence of explicit provisions in the founding treaties to the transformative legal milestones represented by the Single European Act (SEA) and the Lisbon Treaty. It demonstrates how the environment has been constitutionally embedded within EU primary law, particularly through Articles 191–193 of the Treaty on the Functioning of the European Union (TFEU), the principle of environmental integration under Article 11 TFEU, and the broader recognition of sustainable development in Article 3 of the Treaty on the European Union (TEU). It also explores the symbolic and interpretative relevance of Article 37 of the CFR, which, although formulated as a principle, reinforces the Union's environmental commitments.

The second section turns to the procedural dimension of environmental protection within the EU judiciary, focusing on the systemic obstacles that hinder effective access to justice for individuals and civil society actors. It critically assesses the restrictive standing requirements under Article 263 TFEU, especially the interpretation of 'individual concern' under the *Plaumann* doctrine and considers the extent to which these constraints undermine the right to an effective remedy. It also evaluates the role

of Article 267 TFEU and the preliminary ruling mechanism as an alternative, although often insufficient, avenue for judicial review.

Given the EU's active role in global environmental governance, the third section examines the Union's implementation of international obligations, with a focus on the Aarhus Convention. This section discusses the Convention's three procedural pillars, namely access to information, public participation, and access to justice, and analyses how these rights have been operationalised within the EU legal order. Special attention is paid to the role of the Aarhus Convention Compliance Committee (ACCC) in monitoring the implementation, and to the legal and institutional challenges faced by the EU in ensuring compliance, particularly in the aftermath of the Committee's 2017 findings.

Finally, the chapter concludes by reviewing key developments in the case law of the CJEU, with particular reference to recent landmark judgements such as *Carvalho and Others v. Parliament and Council* (C-565/19 P) and *C.Z. and Others v. ILVA SpA* (C-626/22). These cases elucidate on the evolving jurisprudential approach to climate litigation, procedural environmental rights, and the balance between economic freedoms and environmental protection. Together, they illustrate both the potential and the enduring limitations of EU law in delivering effective and participatory environmental governance.

2. The Legal Framework for Environmental Protection in the EU

This section offers a structured analysis of the emergence and entrenchment of environmental protection within the EU's legal order. It begins by tracing the historical development of EU environmental policy, from its initial marginalisation in the founding treaties to the formal recognition of an autonomous legal competence under the SEA (Section 1.1). It then examines the transformative impact of the Treaty of Lisbon, focusing in particular on the introduction of a shared competence framework and the constitutional entrenchment of the principles of subsidiarity and proportionality (Section 1.2). The analysis then turns to the framework of EU environmental law, as codified in Articles 191-193 TFEU, whilst also addressing the broader integration of environmental objectives across EU primary law, including key

provisions of the TEU such as Article 3(3), Article 11 TFEU on environmental integration, and Article 114(3) TFEU on internal market harmonisation (Section 1.3). Finally, it assesses the normative significance of Article 37 of the CFR, which embeds a constitutional commitment to environmental protection within the Union's fundamental rights framework (Section 1.4).

2.1 The Early Evolution of Environmental Protection in EU Law (from the 1950s to 2007)

In the formative decades of European integration, environmental protection was absent from the 'constitutional' architecture of the Communities. The founding treaties, the 1951 Treaty of the European Coal and Steel Community (ECSC) and the 1957 Treaty of Rome (1957), did not contain express provisions on environmental matters.¹ The closest approximation to environmental concerns appeared in the Preamble to the EEC Treaty, which pledged to enhance the 'living and working conditions' of European citizens, a formulation largely oriented towards public health and social welfare, rather than ecological stewardship. Thus, the foundational logic of integration was manifestly anthropocentric and economic in orientation.²

Environmental concerns gained prominence in the 1970s, driven by ecological crises and growing public awareness. This led the Commission to propose a coordinated environmental strategy, resulting in the First Environmental Action Programme (EAP) in 1973.³ Although non-binding, it marked a significant shift by introducing environmental priorities into Community planning. In the same year, the institutional framework was reinforced by the establishment of a dedicated Directorate-General for

¹ Treaty establishing the European Coal and Steel Community (adopted 18 April 1951, entered into force 23 July 1952, expired 23 July 2002); Treaty establishing the European Economic Community (Treaty of Rome, adopted 25 March 1957, entered into force 1 January 1958); Geert Van Calster and Leonie Reins, 'Setting the context' in Geert Van Calster and Leonie Reins (eds), *EU Environmental Law* (Edward Elgar 2017), 1.

² European Commission, 'First communication of the Commission about the Community's policy on the environment' SEC (71) 2616, 22 July 1971; Van Calster and Reins (n 1) 2.

³ Declaration of 22 November 1973 on the Programme of Action of the European Communities on the Environment [1973] OJ C 112/1; Van Calster and Reins (n 1) 2.

the Environment (then DG XI), reflecting the nascent yet growing recognition of environmental governance within the Commission.⁴

However, the Community at that time was still lacking a dedicated treaty base for environmental action. Indeed, legislative measures were adopted under ‘ancillary provisions’, primarily Article 100 EEC, governing internal market harmonisation, and Article 235 EEC (now Article 352 TFEU), a residual clause enabling the Council to adopt measures necessary to attain the objectives of the Treaties in case of absence of a specific legal basis. This pragmatic reliance on market-related bases allowed for the initial development of environmental legislation, despite normative underdevelopment.⁵ This judicial pragmatism of the CJEU anticipated the normative and institutional developments in this realm, through its judgements like the one issued for the *Toepfer* case. Indeed, though not strictly an environmental case, the Court approved reliance on the provisions of the internal market (in that case Article 43 EEC) to ground environmental objectives even where there was no express legal source. This early case law was thus a sign of a readiness to integrate environmental protection in existing competences and prepared the ground for later developments.⁶

A decisive turning point came with the adoption of the SEA (1986), which introduced Articles 130r–130t EEC (now Articles 191–193 TFEU), providing the first explicit legal basis for Community action on the environment. These provisions recognised environmental protection as an independent policy objective of the European Community and conferred upon it a distinct legal competence. The aims articulated therein (e.g., environmental quality, human health, rational resource use) have remained substantively intact, forming the backbone of the EU’s contemporary environmental mandate.⁷ Even before the Act entered into force, the CJEU had already anticipated this shift.⁸ In *ADBHU* (Case 240/83), the Court was asked to rule on a challenge concerning a Council regulation on waste oils. It held that economic

⁴ Josephine van Zeben, ‘Environmental Law’ in *The Oxford Encyclopedia of EU Law* (Oxford Public International Law, March 2022).

⁵ Calster and Reins (n 1) 2.

⁶ Case 106 and 107/63 *Toepfer v Commission* [1965] EU:C:1964:50.

⁷ Van Zeben (n 4).

⁸ Francis Jacobs, ‘The Role of the European Court of Justice in the Protection of the Environment’ (2006) 18(2) *JEL* 185, 187.

freedoms such as free trade and competition are not absolute and may be limited by general interest objectives like environmental protection. Thus, the Court described environmental protection as an essential objective of the Community, provided that related measures are non-discriminatory and proportionate.⁹

The Court's interpretative stance was also instrumental in reinforcing the effectiveness of environmental obligations in the post-Single European Act period.¹⁰ Following the SEA, the Court further reinforced the legitimacy of environmental protection in the *Danish Bottles* case (Case 302/86),¹¹ which concerned the compatibility of Denmark's legislation on reusable beverage containers with internal market rules. Foreign importers, particularly German beverage producers exporting to Denmark, claimed that the system restricted the free movement of goods, under Article 30 EEC (now Article 34 TFEU). In doing so, it drew upon the doctrine of 'mandatory requirements' first articulated in *Cassis de Dijon* (Case 120/78), which permits Member States to justify national measures that restrict the free movement of goods, provided that such measures (i) apply equally to domestic and imported products, (ii) pursue a legitimate objective recognised by EU law, and (iii) are proportionate to that objective.¹² While *Cassis* originally identified objectives such as consumer protection and public health, *Danish Bottles* marked the first time the Court recognised environmental protection as an autonomous and legitimate public interest within this framework. The judgement confirmed that environmental protection could serve as a justification for indistinctly applicable national measures.¹³

Yet, some asymmetries remained. While internal market measures could be adopted via qualified majority voting (QMV), environmental legislation under Article 130 still required unanimity in the Council. This led to continued reliance on internal market provisions (Article 100a) for environmental measures, creating interpretive challenges

⁹ Case 240/83 *Association de défense des brûleurs d'huiles usages* (ADBHU) [1985] EU:C:1985:59, para. 13.

¹⁰ Francis Jacobs, 'The Role of the European Court of Justice in the Protection of the Environment' (2006) 18(2) *JEL* 185, 188.

¹¹ Case 302/86 *Commission v Denmark* (*Danish Bottles*) [1988] EU:C:1988:421, paras. 9, 11–12, 18–22.

¹² Case 120/78 *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein* [1979] EU:C:1979:42, paras. 8, 14.

¹³ Jacobs (n 10) 188.

concerning the boundaries of competences and the application of subsidiarity and proportionality.¹⁴

The Treaty of Maastricht (1992) represented a constitutional consolidation. It renamed the founding treaty as the Treaty establishing the European Community (TEC), extended QMV to most environmental matters, codified the precautionary principle, and made environmental protection an explicit Union objective. The co-decision procedure enhanced democratic legitimacy by strengthening the European Parliament's role.¹⁵

This trajectory was reinforced by the Treaty of Amsterdam (1997), which enshrined sustainable development and a high level of environmental protection as overarching aims of the Union.¹⁶ It also embedded general principles, particularly subsidiarity and proportionality, more deeply into the environmental decision-making framework. The relevant provisions were renumbered as Articles 174–176 TEC but still fell short of recognising an individual right to environmental protection under Union law.¹⁷

The Treaty of Nice (2001) introduced only marginal adjustments to environmental governance. However, the Treaty of Lisbon (2007) represented a historical moment in the constitutional development of EU environmental law. It established the current dual-treaty structure, rooted in the TFEU and in the TEU, and codified key reforms, most notably, the formalisation of the shared competence regime under Article 4(2)(e) TFEU, thus defining the constitutional and institutional backbone of contemporary EU environmental policy.¹⁸

In sum, the development of environmental protection within EU law reflects a remarkable evolution: from complete omission in the early treaties, to a foundational policy objective deeply embedded in the Union's legal and institutional order. This transformation, both incremental and deliberate, culminated in the Lisbon Treaty's

¹⁴ Van Calster and Reins (n 1) 2.

¹⁵ Van Calster and Reins (n 1) 2-3.

¹⁶ See also Geert Van Calster and Kurt Deketelaere, 'Amsterdam, the IGC and Greening the EU Treaty' (1998) 7 *Eur Envtl L Rev* 1, 12–25.

¹⁷ Van Calster Reins (n 1) 3.

¹⁸ Van Calster Reins (n 1) 3.

comprehensive legal framework, consolidating the environment as a core constitutional concern of the European project.

2.2 The EU Legal Framework after Lisbon: Sharing Environmental Competences

A key innovation of the Lisbon Treaty was the formal categorisation of EU competences into exclusive, shared, and supporting competences.¹⁹ Environmental protection falls within the domain of shared competence under Article 4(2)(e) TFEU, meaning both the Union and the Member States may legislate and adopt legally binding acts in this area.²⁰ This shared competence is subject to the principle of subsidiarity, enshrined in Article 5(3) TEU, which provides that, outside the scope of exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can be better achieved at the Union level.²¹ This condition is particularly well-suited to

¹⁹ Van Zeben (n 4).

²⁰ Article 4

1. *The Union shall share competence with the Member States where the Treaties confer on it a competence which does not relate to the areas referred to in Articles 3 and 6.*

2. *Shared competence between the Union and the Member States applies in the following principal areas:*

(a) *internal market;*

(b) *social policy, for the aspects defined in this Treaty;*

(c) *economic, social and territorial cohesion;*

(d) *agriculture and fisheries, excluding the conservation of marine biological resources;*

(e) *environment;*

(f) *consumer protection;*

(g) *transport;*

(h) *trans-European networks;*

(i) *energy;*

(j) *area of freedom, security and justice;*

(k) *common safety concerns in public health matters, for the aspects defined in this Treaty.*

3. *In the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.*

4. *In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.*

²¹ Article 5 (ex Article 5 TEC)

1. *The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.*

2. *Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.*

3. *Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently*

environmental policy, given the transboundary nature of many environmental problems. Environmental issues such as air pollution, water contamination, or climate change, which cross national borders, justify regulatory intervention at the EU level for reasons of effectiveness and to avoid negative externalities.²²

In parallel, Article 5(4) TEU codifies the principle of proportionality, requiring that the content and form of Union action must not exceed what is necessary to achieve the objectives of the Treaties. In environmental policy-making, this often translates into selecting the most appropriate legal instrument, whether regulation or directive, depending on the issue at hand. While regulations ensure uniform and directly applicable rules across all Member States, directives allow for national discretion in implementation, enabling adaptation to varying ecological and socio-economic contexts.²³

Nonetheless, the practical application of subsidiarity and proportionality remains a legally and politically contested issue. A recurrent point of friction lies in the frequent use of Article 114 TFEU, originally designed to facilitate internal market harmonisation, as the legal basis for environmental legislation. This approach, often justified on the grounds of removing trade barriers and ensuring legal certainty, raises normative concerns about the balance between market integration and environmental ambition, as well as about the proper demarcation of competences between the Union and the Member States.²⁴

Moreover, the Lisbon Treaty also clarified the Union's external environmental competence, particularly in relation to multilateral agreements. Articles 3(2) and 21

achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

²² Van Zeben (n 4); for the text of the treaties see Consolidated Version of the Treaty on European Union [2012] OJ C 326/13; Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C 326/47.

²³ Van Zeben (n 4).

²⁴ Van Zeben (n 4).

TFEU, read in conjunction with Article 2(2) TFEU, codify earlier jurisprudence of the CJEU, confirming the Union's capacity to act on the international stage in matters of environmental protection. Article 3(2) TFEU addresses circumstances in which the EU must have exclusive external competence, while Article 21 TFEU lays out the objectives of the EU's external action, including the promotion of sustainable development and global environmental governance. Nonetheless, the division of powers between the Union and its Member States in this field remains complex, frequently requiring careful coordination and negotiated solutions.²⁵ Finally, while environmental protection remains a shared competence, the Member States retain a central role in shaping, implementing, and enforcing EU environmental law. This is especially evident in the transposition of directives, which remain the predominant legislative instrument in this domain, where national authorities exercise significant discretion in how to achieve Union objectives. This decentralised implementation model underscores the practical interdependence of EU and national governance in the environmental sphere.

Against this backdrop, the substantive and procedural provisions enshrined in Articles 191 to 193 TFEU must be understood as the next section explores.

2.3 Environmental Provisions in EU Treaties

The constitutional foundation of EU environmental policy is primarily laid out in Articles 191 to 193 TFEU, originally introduced by the SEA and later renumbered.²⁶ Article 191(1) TFEU defines the objectives of EU environmental action: the preservation, protection, and improvement of environmental quality; the protection of human health; the prudent and rational use of natural resources; and the promotion of international efforts to address regional or global environmental challenges, most notably climate change, now explicitly mentioned among the Union's environmental goals. While these objectives have retained much of their original substance since the former Article 130r EEC, their legal entrenchment has deepened over time.²⁷ These objectives reflect a fundamentally anthropocentric orientation, centred on human

²⁵ Van Zeben (n 4).

²⁶ Van Zeben (n 4).

²⁷ Van Zeben (n 4).

welfare and public health, though they remain compatible with ecological ambitions. Biodiversity and species protection, for instance, are implicitly addressed as part of broader environmental quality, yet the dominant framing continues to prioritise human interests. Despite this, the EU is widely regarded as a global leader in setting advanced environmental standards, often exceeding those of other developed economies.²⁸

The principles underpinning EU environmental policy are codified in Article 191(2) TFEU, which requires that Union action be guided by the precautionary principle, the principle of preventive action, the rectification of damage at source, and the polluter pays principle. These principles form the normative core of EU environmental law. In essence, the precautionary principle addresses uncertain risks; preventive action tackles known threats; the rectification principle focuses on eliminating harm at its source; and the polluter pays principle ensures that environmental costs are internalised by those responsible. Complementing this normative layer, Article 191(3) TFEU establishes a procedural duty for the EU to base its environmental action on sound scientific evidence, regional environmental conditions, and a balanced assessment of socio-economic impacts.²⁹ These procedural parameters guide the Commission's legislative proposals, which must be accompanied by EIAs verifying compliance with these and other general EU principles, including subsidiarity, proportionality, and non-discrimination. Although breaches of these principles may result in annulment under Article 263 TFEU, the CJEU typically grants the EU legislature broad discretion in their application and interpretation.³⁰ Once adopted, the principles enshrined in Article 191(2) TFEU have acquired substantial interpretative relevance in the case law of the CJEU. They have served not only as interpretative tools for EU environmental legislation, but also as normative benchmarks to assess the legitimacy of broader regulatory choices made by both the Union and the Member States.³¹

Article 192 TFEU provides the procedural framework for adopting environmental measures, typically via the ordinary legislative procedure, except for certain sensitive

²⁸ Van Zeben (n 4).

²⁹ Van Zeben (n 4).

³⁰ Van Zeben (n 4).

³¹ Van Zeben (n 4).

sectors, such as fiscal policy, land use, or energy supply, where unanimity in the Council is required. Notably, Article 192(3) TFEU grants formal legal status to Environmental Action Programmes (EAPs), which had previously existed as political declarations. Indeed, the Maastricht Treaty laid the groundwork by introducing a Treaty basis for such programmes, while the Lisbon Treaty institutionalised their adoption as legal acts of the Union. Since the Seventh EAP, these programmes have articulated medium- and long-term priorities, providing strategic direction without creating binding legal obligations.³²

The capacity of Member States to adopt higher environmental standards is preserved by Article 193 TFEU, which allows for more stringent national measures, provided they are compatible with the Treaties and properly notified to the Commission. This safeguard ensures a degree of regulatory autonomy within the harmonised EU framework.³³ However, the application of Article 193 has been carefully circumscribed by the CJEU. First, stricter national measures must pursue the same environmental objective as the relevant EU act; if a national provision pursues a different aim, it cannot be justified under Article 193 (e.g., *ŠKO-Energo*).³⁴ Second, Article 193 cannot be invoked to justify the failure to transpose EU law. The CJEU has clarified that Member States must first transpose the relevant EU provisions before relying on Article 193 to introduce more ambitious standards (e.g., *Commission v. Poland*).³⁵

The Court has also given a broad interpretation of what qualifies as a ‘more stringent’ measure. It includes not only lower emission limits or stricter thresholds but also faster implementation timelines, more detailed monitoring obligations, or the removal of

³² Van Calster and Reins (n 1) 6.

³³ For the sake of narrative completeness, it is worth recalling that Article 194 TFEU, introduced by the Lisbon Treaty, provides a dedicated legal basis for EU energy policy. Although its primary focus lies in ensuring energy supply and functioning of the energy market, it expressly mandates the promotion of energy efficiency, the development of renewable energy sources, and environmental protection. This provision thus reinforces the integration of environmental considerations into EU energy governance and further illustrates the transversal character of environmental objectives across EU primary law. See also Van Zeben (n 4).

³⁴ Leonie Reins, ‘Where Eagles Dare: How Much Further May EU Member States Go under Article 193 TFEU?’ in Marjan Peeters and Mariolina Eliantonio (eds), *Research Handbook on EU Environmental Law* (Edward Elgar Publishing 2020), 27; Case C-43/13 *ŠKO-Energo* [2015] EU:C:2015:120, para. 25.

³⁵ Case C-281/11 *Commission v Poland* [2013] EU:C:2013:855, para. 115; Reins (n 34) 27.

derogations provided by EU law (*Deponiezweckverband Eiterköpfe*).³⁶ Nonetheless, all such measures must comply with general principles of EU law, including the principles of proportionality, legal certainty, and respect for fundamental rights, as underlined, for instance, by Advocate General (AG) Kokott in *Tallinna Vesi*.³⁷

While Article 193 requires prior notification to the Commission, failure to notify does not automatically render the national measure invalid. Unlike the stricter notification regime under Article 114(5) TFEU, the omission of notification under Article 193 may be procedurally irregular but does not per se lead to annulment, as clarified in *Franchini and Eolica di Altamura*.³⁸ In sum, Article 193 TFEU strikes a delicate balance between harmonisation and flexibility. It allows Member States to maintain or introduce more protective environmental measures, thereby fostering upward regulatory convergence, provided that such measures remain aligned with EU objectives and legal standards.³⁹

Beyond the provisions enshrined in Chapter XX of the TFEU, environmental protection occupies a structurally transversal position within the EU legal order. At the constitutional level, Article 3(3) TEU affirms that the Union ‘shall work for the sustainable development of Europe based on a high level of protection and improvement of the quality of the environment’, thereby elevating environmental concerns to core EU objectives.⁴⁰ This foundational commitment is operationalised through the principle of environmental integration, codified in Article 11 TFEU, which mandates that environmental protection requirements be incorporated into the definition and implementation of all Union policies and activities, particularly with a view to promoting sustainable development. As a horizontal obligation, this provision binds all EU institutions to mainstream environmental considerations across sectors,

³⁶ Case C-6/03 *Deponiezweckverband Eiterköpfe* [2005] EU:C:2005:222, para. 64; Reins (n 34) 25.

³⁷ Case C-60/18 *Tallinna Vesi* [2018] EU:C:2018:969, para. 45; Reins (n 34) 30.

³⁸ Case C-2/10 *Azienda Agro-Zootecnica Franchini and Eolica di Altamura* [2011] EU:C:2011:502, para. 52; Reins (n 34) 31.

³⁹ Reins (n 34) 34-35.

⁴⁰ Van Zeben (n 4).

ranging from agriculture and energy to competition, transport, and cohesion policy, ensuring coherence between sectoral objectives and environmental imperatives.⁴¹

Democratic participation in environmental governance has also been reinforced by the Treaty of Lisbon, notably through the introduction of the European Citizens' Initiative (ECI) in Article 11(4) TEU. This mechanism allows at least one million EU citizens, drawn from a significant number of Member States, to invite the Commission to propose legislation in areas where the Union has competence, including environmental protection.⁴² The ECI thus constitutes an essential tool for enhancing the democratic legitimacy and responsiveness of EU environmental policy.⁴³ Furthermore, Article 114(3) TFEU plays a pivotal role in reconciling internal market harmonisation with environmental protection objectives. While Article 114 serves as the primary legal basis for the approximation of laws within the internal market, paragraph 3 explicitly mandates that proposals grounded in this provision must ensure 'a high level of protection', particularly in relation to the environment and human health. This clause has allowed the EU legislature to embed robust environmental safeguards even when acting outside the specific legal bases of environmental policy, as exemplified by key instruments such as the REACH Regulation (Regulation No 1907/2006) governing the registration and use of chemicals, or legislation on product and emissions standards.⁴⁴ This dense legal architecture finds further reinforcement in the CFR, whose Article 37 introduces an environmental clause with potential constitutional significance, a theme explored in the next section.

2.4 The Charter of Fundamental Rights of the EU: Article 37

The origins of the CFR trace back to its initial political proclamation by the EU institutions in Nice on 7 December 2000, although it lacked binding legal status at that time.⁴⁵ Since 1 December 2009, with the entry into force of the Treaty of Lisbon, the

⁴¹ Van Zeben (n 4).

⁴² Maria Lee, 'The Environmental Implications of the Lisbon Treaty' (2008) *10 Environ Law Rev* 131, 135.

⁴³ Van Zeben (n 4).

⁴⁴ Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) [2006] OJ L396/1.

⁴⁵ Vasileios G Tzemos and Konstantinos Margaritis, 'The Charter of Fundamental Rights of the European Union: The First Ten Years - New Challenges and Perspectives' (2021) *10 Laws* 76, 76.

Charter has been formally incorporated into the EU legal order as part of primary Union law, together with the TFEU and the TEU.⁴⁶ This development is reflected in Article 6(1) TEU, which states:

‘1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties. The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties. The rights, freedoms, and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.’

The CFR includes a dedicated provision on environmental protection.⁴⁷ In particular, Article 37 CFR provides that:

‘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’.⁴⁸

Although it appears an ambitious normative commitment, Article 37 CFR is formulated as a ‘principle’ rather than a ‘right’, and its legal implications must be understood accordingly. Indeed, pursuant to Article 52(5) CFR, principles do not confer subjective entitlements directly upon individuals. Instead, they serve as interpretative guidelines for the legislative and executive branches and may be judicially cognisable only in the context of reviewing the legality or interpretation of implementing acts.⁴⁹

Moreover, Article 37 is addressed solely to the Union institutions, and not the Member States, and mirrors the objectives enshrined in Article 191 TFEU on EU environmental policy and the horizontal integration obligation under Article 11 TFEU.⁵⁰ Then, under

⁴⁶ Tzemos and Margaritis (n 45) 76.

⁴⁷ Jasper Krommendijk, ‘The Human Right to a Healthy Environment from an EU Charter Perspective’ (*Verfassungsblog*, 8 April 2025).

⁴⁸ Krommendijk (n 47).

⁴⁹ Tobias Lock, ‘Article 37 CFR’ in Manuel Kellerbauer, Marcus Klamert and Jonathan Tomkin (eds), *The EU Treaties and the Charter of Fundamental Rights: A Commentary* (OUP 2019) 2198; Charter of Fundamental Rights of the European Union [2012] OJ C326/391, art 52(5); Krommendijk (n 47).

⁵⁰ Lock (n 49) 2198.

Article 52(2) CFR, it must be applied under the same conditions as those Treaty provisions.⁵¹ It thus lacks ‘self-executing’ character and cannot serve as an autonomous legal basis for judicial enforcement.⁵² In practical terms, the legal effect of Article 37 remains modest. Its function is primarily interpretative and justificatory. It may be invoked to support the legitimacy of environmental objectives when weighed against other Charter-protected economic freedoms, such as the right to property (Article 17 CFR) or the freedom to conduct a business (Article 16 CFR). However, it does not confer enforceable rights, nor does it add substantive content beyond that already found in primary EU law.⁵³

This sharply contrasts with international instruments that do enshrine an enforceable right to a healthy environment, such as Article 1 of the Aarhus Convention or Article 22 of the African Charter on Human and Peoples’ Rights. While Article 37 CFR expresses an institutional commitment to environmental protection, individuals cannot invoke it in isolation to compel regulatory action or judicial intervention.⁵⁴

However, it is important to note that individuals and civil society actors, including NGOs, do benefit from environmental procedural rights under EU law. These include access to environmental information, public participation in environmental decision-making, and access to justice in environmental matters. Nonetheless, such rights derive not from Article 37 CFR, but from the Union’s secondary legislation,⁵⁵ most notably Directive 2003/4/EC (on access to environmental information), Directive 2003/35/EC (on public participation and access to justice), and Regulation (EC) No 1367/2006 (the Aarhus Regulation), which operationalises the Aarhus Convention at the EU level.⁵⁶ Moreover, in 2021, the Aarhus Regulation was significantly amended by Regulation

⁵¹ Lock (n 49) 2198.

⁵² Lock (n 49) 2198.

⁵³ Krommendijk (n 47).

⁵⁴ Krommendijk (n 47).

⁵⁵ Lock (n 49) 2198.

⁵⁶ Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information [2003] OJ L41/26; Directive 2003/35/EC of the European Parliament and of the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment [2003] OJ L156/17; Regulation (EC) No 1367/2006 of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention to Community institutions and bodies [2006] OJ L264/13.

(EU) 2021/1767, which expanded the internal review mechanism for environmental NGOs.⁵⁷

The CJEU has generally adopted a cautious approach to Article 37. This is true especially in relation to the so-called substantive ‘sword rights’, such as Article 2 (right to life) and Article 7 (respect for private life and the home), that are generally used to advance environmental protection,⁵⁸ in line with the environmental jurisprudence of the ECtHR (see Chapter 2). However, by looking at the CJEU case law, it is possible to see that there are some exceptions in which Article 37 CFR has been used interpretatively. In *Ville de Lyon*, AG Bobek relied on Article 37 to reinforce the precautionary principle on the question of air quality, affirming that environmental protection constitutes a foundational value of the Union that must be balanced seriously against other interests.⁵⁹ Similarly, in *TestBioTech*, the General Court referred to Article 37 as a normative basis for endorsing the Union’s precautionary stance in regulating genetically modified organisms (GMOs), illustrating the provision’s value as a guide for regulatory discretion.⁶⁰

Paradoxically, the Charter has more frequently served as a legal basis to oppose environmental regulation rather than support it.⁶¹ In cases such as *Križan*⁶² and *Symphony Environmental Technologies*,⁶³ economic actors invoked Charter rights (particularly Articles 16, 17, 20, and 41) as ‘shield rights’ to challenge restrictive environmental measures.⁶⁴ This inverse deployment underscores the structural asymmetry in the enforceability of environmental norms under EU fundamental rights law.

⁵⁷ Regulation (EU) 2021/1767 of the European Parliament and of the Council amending Regulation (EC) No 1367/2006 [2021] OJ L356/1.

⁵⁸ Krommendijk (n 47).

⁵⁹ Case C-242/19 *Ville de Lyon* [2020] EU:C:2020:296, Opinion of AG Bobek, para 65.

⁶⁰ Case T-177/13 *TestBioTech and Others v Commission* [2016] EU:T:2016:736, para 89.

⁶¹ Krommendijk (n 47).

⁶² Case C-416/10 *Križan and Others v Slovenská inšpekcia životného prostredia* [2012] EU:C:2012:18, para 1.

⁶³ Case T-745/20 *Symphony Environmental Technologies plc and Symphony Environmental Ltd v Parliament, Council and Commission* [2024] EU:T:2024:45, paras 315–327 (referring to the invocation of Articles 16 and 17 CFR as shield rights).

⁶⁴ Krommendijk (n 47).

In Chapter 2, it has been observed how climate litigation is undergoing a progressive transformation within the CoE framework, especially in the aftermath of *VereinKlimaseniorinnen*. Following this evolution, one may wonder whether a similar evolution is taking place within the EU legal order, especially in light of the CFR and the broader environmental acquis. However, the recent jurisprudence of the CJEU suggests a more restrained approach. For instance, in *Carvalho and Others v. Parliament and Council*, the Court refused to engage substantively with environmental claims grounded in the Charter, including those relying on Article 37 CFR.⁶⁵

Against this backdrop, where Article 37 CFR offers only a non-justiciable principle with limited legal effect, it becomes essential to turn to the core procedural avenues available within the EU legal order itself. In particular, Articles 263 and 267 TFEU provide the primary mechanisms through which individuals and organisations may seek judicial review and engage with the Union’s legal system to challenge environmental and other public interest measures.

3. Access to Justice in the EU

Traditionally, the CJEU holds that the system of judicial protection, no matter the interest or party concerned, consists of a complete system of remedies.⁶⁶ This means that, according to the Court, the Treaty provides for remedies against all acts of the EU and its institutions, and there will be no possible means by which any act will be able to exist without being open to review by the Court.⁶⁷

The layered nature of the EU provides for two ways of recourse to potential applicants seeking judicial review.⁶⁸ There is a direct route, with a clear role for the Court as the direct adjudicator of conflicts arising by acts of the EU and its institutions, through the existence of Article 263 TFEU. Congruously, there is an indirect route beginning at a national level, as both the Treaty and the case law of the Court envision a role for

⁶⁵ Case C-565/19 P *Carvalho and Others v Parliament and Council* [2021] EU:C:2021:252, para 49.

⁶⁶ Matthijs van Wolferen and Mariolina Eliantonio, ‘Access to Justice in Environmental Matters in the EU: The EU’s Difficult Road towards Non-compliance with the Aarhus Convention’ in Marjan Peeters and Mariolina Eliantonio (eds), *Research Handbook on EU Environmental Law* (Edward Elgar Publishing 2020) 148, 149.

⁶⁷ Case 294/83 *Parti écologiste “Les Verts” v European Parliament* [1986] EU:C:1986:166.

⁶⁸ van Wolferen and Eliantonio (n 66) 149.

national courts acting as European courts to request the review of these same acts, should they find a problem in their legality when they are being implemented at the national level.⁶⁹ This last route is possible due to the system created by the current formulation of Article 267 TFEU, the preliminary reference procedure, which allows for national courts to request the CJEU to review EU law.⁷⁰

Access to the CJEU in environmental matters is regulated by Article 263 TFEU, which states that persons other than the addressee of an act may only bring an action when they are directly and individually concerned by the measure. The CJEU itself has given a very restrictive interpretation to this provision, with the consequence that individuals and NGOs rarely have access to the Court for environmental matters.⁷¹

3.1 Legal Standing of Individuals under Article 263 TFEU

Article 263 TFEU constitutes the most recent and advanced formulation of the annulment procedure within the EU legal order. Originally enshrined in Article 173 EEC and subsequently revised as Article 230 TEC, this provision has evolved in parallel with the Union's constitutional development. Its current formulation reflects an increasingly expansive approach to judicial review, both in terms of the types of acts subject to scrutiny and the range of applicants who may challenge them.

Article 263 TFEU states as follows:

'The Court of Justice of the European Union shall review the legality of legislative acts, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects vis-à-vis third parties. It shall also review the legality

⁶⁹ Roberto Baratta, 'National Courts as Guardians and Ordinary Courts of EU Law: Opinion 1/09 of the ECJ' (2011) 38 *LIEI* 297.

⁷⁰ There is a large body of work on this issue, yet the following contributions offer an overview Carmen Martínez Capdevila, 'The Action for Annulment, the Preliminary Reference on Validity and the Plea of Illegality: Complementary or Alternative Means?' (2006) 25 *YEL* 451; Gareth Davies, 'The Division of Powers Between the European Court of Justice and National Courts: A Critical Look at Interpretation and Application in the Preliminary Reference Procedure' in Niamh Nic Shuibhne (ed), *Regulating the Internal Market* (Edward Elgar 2006); The standard work remains Morten Broberg and Nils Fenger, *Preliminary References to the European Court of Justice* (OUP 2010).

⁷¹ The Court has not accepted that the defense of the general interest 'environment' might need some specific considerations and has argued that any change in its jurisprudence would require a prior amendment of the EU Treaties. This element is of a particular relevance especially in relation to the membership on the EU to the Aarhus Convention. Indeed, the ACCC has found that the CJEU's interpretation of Article 263 TFEU is in breach of the EU's obligations under the Aarhus Convention. For the relevant case law, see the following paragraphs.

of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties.

It shall for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers.

The Court shall have jurisdiction under the same conditions in actions brought by the Court of Auditors, by the European Central Bank and by the Committee of the Regions for the purpose of protecting their prerogatives.

Any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

Acts setting up bodies, offices and agencies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies, offices or agencies intended to produce legal effects in relation to them.

The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.⁷²

An action for annulment is available in the case of any measures adopted by the institutions, irrespective of their nature or form, which are intended to have legal effects on third parties.⁷³

For an act to be challenged, it must first be ascertained whether that act has become part of the legal order.⁷⁴

That is not the case for a non-existent act i.e., an act tainted by an irregularity of such gravity that it cannot be tolerated by the Union legal order and must be treated as having no legal effect, even provisionally.⁷⁵ A finding of non-existence, which the Union courts can make *ex officio*, must be reserved for exceptional circumstances.⁷⁶ The silence of an institution may, in certain cases, result in the implicit adoption of an act;⁷⁷ however, silence alone is not equivalent to an act that may be challenged.⁷⁸

⁷² Consolidated Version of the Treaty on the Functioning of the European Union (n 22) art 263.

⁷³ E.g. Case C-366/88 *France v Commission* [1990] EU:C:1990:348, paras 8–10.

⁷⁴ Andrea Bernhard, ‘Article 263 TFEU’ in Manuel Kellerbauer, Marcus Klamert and Jonathan Tomkin (eds), *The EU Treaties and the Charter of Fundamental Rights: A Commentary* (OUP 2019) 1800.

⁷⁵ Case C-137/92 P *BASF and Others v Commission* [1994] EU:C:1994:247, para 49.

⁷⁶ *BASF* (n 75) para 50.

⁷⁷ Bernhard (n 74) 1800.

⁷⁸ Case C-123/03 P *Greencore Group plc v Commission* [2004] EU:C:2004:783, para 50.

Instead, where an institution unlawfully fails to adopt an act, such inaction may be subject to challenge by an action for failure to act under Article 265 TFEU.⁷⁹

The form of the act is generally irrelevant.⁸⁰ Even atypical acts (those that do not correspond to any of the categories of legal acts referred to in Article 288 TFEU) can be subject to the review, provided they produce binding legal effects.⁸¹ This includes, for example, public statements by institutional representatives.⁸² Regarding the binding nature of the act, the wording of the provision itself excludes recommendations and opinions from the category of reviewable acts.⁸³

As for the classification of applicants, Article 263(2)–(4) TFEU distinguishes between three categories: privileged applicants, semi-privileged applicants, and natural and legal persons,⁸⁴ each with different levels of standing.

The first category of privileged applicants includes Member States, the European Parliament, the Council, and the Commission, which may bring annulment actions without needing to demonstrate a legal interest.⁸⁵

The second category of semi-privileged applicants includes institutions such as the Court of Auditors, the European Central Bank, and the Committee of the Regions,

⁷⁹ Bernhard (n 74) 1800-1801.

⁸⁰ Joined Cases C-213/88 and C-39/89 *Luxembourg v European Parliament* [1991] EU:C:1991:449, para 15.

⁸¹ Bernhard (n 74) 1800-1801.

⁸² Case T-3/93 *Air France v Commission* [1994] EU:T:1994:36, paras 40–53.

⁸³ Moreover, measures that are merely preparatory, i.e. those that do not definitively determine the position of an EU institution, are not independently challengeable under Article 263 TFEU, although their legality may still be contested in proceedings against the final act. The same rule applies to confirmatory acts, which simply reiterate earlier decisions without introducing new legal or factual elements. Conversely, a measure responding to a request based on substantial new information may no longer be considered merely confirmatory and may thus be subject to annulment proceedings. Partial annulments are permitted only where the challenged provisions are severable from the remainder of the act, and do not alter its substance. Furthermore, acts adopted within the scope of the Common Foreign and Security Policy (CFSP) are in principle excluded from the Court's review, pursuant to Article 275 TFEU, except when ensuring compliance with Article 40 TEU or reviewing restrictive measures imposed on individuals or legal persons; see also Bernhard (n 74) 1801.

⁸⁴ Bernhard (n 74) 1802.

⁸⁵ E.g. Case 45/86 *Commission v Council* [1987] EU:C:1987:163, para 3; Case 131/86 *United Kingdom v Council* [1988] EU:C:1988:86 para 6; Case C-208/99 *Portugal v Commission* [2001] EU:C:2001:638, para 22; Case 166/78 *Italy v Council* [1979] EU:C:1979:195, para 6; Case C-378/00, *Commission v EP and Council* [2003] EU:C:2003:42, para 28.

which may challenge acts only to protect their prerogatives, and must demonstrate how the contested measure infringes those prerogatives.⁸⁶

Lastly, non-privileged applicants include natural and legal persons that may challenge acts only under the strict conditions laid down in paragraph 4 of Article 263.⁸⁷ The notion of natural or legal persons capable of instituting an action for annulment is to be understood broadly. Indeed, the meaning of ‘legal person’ for the purpose of Article 263(4) TFEU is not necessarily the same as in the various legal systems of the MS.⁸⁸ Under Union law, an applicant is also a legal person if it has been treated as an independent legal entity by the Union institutions.⁸⁹ For instance, the governments of regions or autonomous communities, where they enjoy legal personality, are treated as legal persons within the meaning of Article 263(4) TFEU.⁹⁰

For natural and legal persons, standing is subject to a high threshold. Indeed, they may bring an action for annulment in any of the following three situations: (a) against an act that is addressed to them; (b) against an act that is of direct and individual concern to them; and (c) against a regulatory act that is of direct concern to them and does not entail implementing measures.

As regards the first scenario, acts addressed to individuals or legal persons are typically classified as ‘decisions’ under Article 288 TFEU. These include formal measures such as Commission decisions under Articles 101 and 102 TFEU, but also informal acts like letters capable of producing legal effects. In such cases, applicants do not need to demonstrate any further concern beyond being the direct addressee. However, individuals cannot sidestep stricter admissibility criteria by requesting a general measure and then challenging its rejection.⁹¹

⁸⁶ Case C-316/91 *European Parliament v Council* [1994] EU:C:1994:76, paras 13–19; Case C-303/94 *European Parliament v Council* [1996] EU:C:1996:238, paras 17–20; Case C-189/97 *European Parliament v Council* [1999] EU:C:1999:366, para 16.; Koen Lenaerts, Ignace Maselis and Kathleen Gutman, *EU Procedural Law* (2nd edn, OUP 2021).

⁸⁷ *Bernhard* (n 74) 1802.

⁸⁸ Case 135/81 *Groupement des agences de voyages* [1982] EU:C:1982:371, para 10.

⁸⁹ Case 18/74 *Syndicat General du Personnel* [1974] EU:C:1974:96, paras 7–9; Case T-161/94 *Sinochem Heilongjiang v Council* [1996] EU:T:1996:101, para 31.

⁹⁰ Case T-214/95 *Vlaamse Gewest v Commission* [1998] EU:T:1998:77, para 28 and the case law cited.

⁹¹ *Bernhard* (n 74) 1803.

If an institution refuses to adopt a general act (like a regulation) and the refusal is addressed to a specific applicant, it is still considered an act of general application and is subject to the more demanding criteria for standing, more specifically the one embedded in the twin notions of direct and individual concern.⁹²

As will be explored in the following section, these criteria form the core of the so-called *Plaumann* doctrine, which is at the heart of individual access to the EU judicial system.

3.2 The Requirement of Individual Concern: the *Plaumann* Doctrine and Its Constraints

Under Article 263(4) TFEU, individuals may challenge EU acts only if they are both directly and individually concerned.⁹³

The second requirement of ‘individual concern’ under Article 263(4) TFEU constitutes the most significant judicially-constructed barrier to effective access to justice for private applicants within the EU legal order. The interpretation of this criterion has been developed for the first time by the CJEU in its landmark decision in *Plaumann v. Commission* (Case 25/62).⁹⁴ In this case, the applicant, a German importer of clementines, challenged a Commission decision refusing to allow Germany to suspend customs duties. Although the measure was not addressed to the applicant, he claimed it directly and individually affected his legal position.⁹⁵

The Court rejected this argument and held that, for a person to be individually concerned, they must be affected ‘by reason of certain attributes peculiar to them, or by circumstances which differentiate them from all other persons’, so that they are singled out ‘just as in the case of the person addressed’. The Court concluded that engaging in a commercial activity open to any person, such as fruit importation, was

⁹² Case C-25/92 *Miethke* [1993] EU:C:1993:32, para 10; Case T-83/92 *Zunis v Commission* [1993] EU:T:1993:93, para 30; Case T-277/94 *AITEC v Commission* [1996] EU:T:1996:66, para 50; Case 42/71 *Nordgetreide* [1972] EU:C:1972:16; Case C-87/89 *Sonito* [1990] EU:C:1990:213; Joined Cases C-15/91 and C-108/91 *Buckl v Commission* [1992] EU:C:1992:454.

⁹³ *Bernhard* (n 74) 1803.

⁹⁴ Case 25/62 *Plaumann v Commission* [1963] EU:C:1963:17.

⁹⁵ Case 25/62 *Plaumann v Commission* (n 94) paras 2–7.

not sufficient to establish individual concern. Thus, the action was dismissed as inadmissible.⁹⁶

The jurisprudence that followed reaffirmed the rigidity of this interpretation. In *Deutz and Geldermann* and later in *Buralux*, the Court dismissed arguments based on the foreseeability or precision of the group of affected persons, confirming that what matters is not whether the group can be identified, but whether the legal act differentiates its members in a legally specific and exclusive way. Thus, measures applying to objectively determined groups are, by definition, not individually concerning, regardless of the actual impact on particular applicants.⁹⁷ This so-called *Plaumann* test, while presented as compatible with a broad reading of the Treaty's wording, has in practice led to a judicial interpretation that restricts access to justice for private individuals and NGOs, particularly in cases of environmental protection.

For instance, in *Greenpeace and Others v. Commission* (Case T-583/93), the General Court faced for the first time a case involving environmental degradation.⁹⁸ The applicants were local farmers and residents together with the environmental NGO Greenpeace, which challenged the EU's financial support for the construction of two power plants in the Canary Islands, arguing that despite these infrastructure were likely to cause environmental damage, it was not carried out an EIA as required by EU law, namely by Directive 85/337 (EIA Directive).⁹⁹ However, the General Court denied the standing to Greenpeace and the group of residents as they were not individually concerned. On appeal, the Court upheld the interpretation of the General Court (Case C-321/95P), holding that the criteria set out in *Plaumann* apply 'whatever the nature, economic or otherwise, of the applicants' interests'.¹⁰⁰ This outcome is particularly problematic given that Article 6 of that Directive clearly differentiates between 'the public' and the 'public concerned', the latter being those whose rights to participation

⁹⁶ Case 25/62 *Plaumann v Commission* (n 94) 106–107.

⁹⁷ Joined Cases 106 and 107/63 *Toepfer (Deutz und Geldermann) v Commission* [1965] EU:C:1965:65; Case C-209/94 P *Buralux and Others v Council* [1996] EU:C:1996:100, para 24.

⁹⁸ Case T-583/93 *Greenpeace and others v Commission* [1995] EU:T:1995:147.

⁹⁹ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment [1985] OJ L175/40.

¹⁰⁰ Case C-321/95 *Greenpeace and others v Commission* [1998] EU:C:1998:153.

and information are most directly implicated.¹⁰¹ The Court's failure to integrate this procedural distinction into its standing analysis not only neglects a central aspect of secondary Union law but also reveals a profound judicial unwillingness to adjust the *Plaumann* criteria in light of evolving environmental norms.¹⁰²

A similar rigidity is found in *Danielsson and Others v. Commission* (Case T-219/95R),¹⁰³ where Tahitian residents challenged EU inaction concerning French nuclear testing near their homes. Despite their proximity to the test site and potential health risks, the Court declared the claim inadmissible and thus found that the applicants were not individually concerned by these activities, since they were affected 'in the same way as any other persons residing in Polynesia'. This reasoning reveals a paradox: the broader the impact of an EU measure, the less likely any individual is to obtain access to judicial protection.¹⁰⁴

This restrictive approach was revisited in the landmark cases of *Unión de Pequeños Agricultores* and *Jégo-Quéré*. In the former (Case T-173/98),¹⁰⁵ a trade association sought to annul a Council Regulation, arguing that no national legal remedy existed because the regulation was directly applicable and Member States took no implementing measures. The General Court considered these arguments insufficient to justify a departure from the interpretation of Article 173(2) EEC Treaty (now Article 263 TFEU). Indeed, it found that neither the association nor its members were individually concerned according to the *Plaumann* test and thus declared the application inadmissible. On appeal (Case C-50/00P), the case was heard in plenary, with AG Jacobs proposing a more flexible interpretation of individual concern to ensure effective judicial protection.¹⁰⁶ Despite Jacobs' argument that individuals should not be forced to breach EU law just to gain standing, the CJEU rejected this proposal, affirming that Treaty reform, not judicial innovation, was the appropriate

¹⁰¹ Council Directive 2011/92/EU of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment [2012] OJ L26/1 (replacing Directive 85/337/EEC).

¹⁰² Ludwig Krämer, 'The EU Courts and Access to Environmental Justice' in Jutta Brunnée, Ellen Hey and Daniel Bodansky (eds), *The Oxford Handbook of International Environmental Law* (Oxford University Press 2008) 112.

¹⁰³ Case T-219/95 R *Danielsson and others v Commission* [1995] EU:T:1995:219.

¹⁰⁴ *Danielsson and others v Commission* (n 103) paras 70-71.

¹⁰⁵ Case T-173/98 *Unión de Pequeños Agricultores v Council* [1999] EU:T:1999:296.

¹⁰⁶ Case C-50/00 P *Unión de Pequeños Agricultores v Council* [2002] EU:C:2002:462.

avenue for change.¹⁰⁷ In particular, as regards the individual right to access to justice, the Court stated:

‘Individuals are...entitled to effective judicial protection of the rights which they derive from the Community legal order, and the right to such protection is one of the general principles of law stemming from the constitutional traditions common to the Member States. That right has also been enshrined in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ... By Article 173 and Article 184 [now Articles 263 and 277 TFEU] on the one hand, and by Article 177, [now Article 267 TFEU] on the other, the Treaty has established a complete system of legal remedies and procedures designed to ensure judicial review to the Community Courts...[u]nder that system, where natural or legal persons cannot, by reason of the conditions for admissibility laid down in the fourth paragraph of Article 173 of the Treaty [now Article 263(4) TFEU], directly challenge Community measures of general application, they are able, depending on the case, either indirectly to plead the invalidity of such acts before the Community Courts under Article 184 of the Treaty or to do so before the national courts and ask them, since they have no jurisdiction themselves to declare those measures invalid ... to make a reference to the Court for a preliminary ruling on validity... Thus, it is for the Member States to establish a system of legal remedies and procedures, which ensure respect for the right to effective judicial protection.

While it is, admittedly, possible to envisage a system of judicial review of the legality of Community measures of general application different from that established by the founding Treaty and never amended as to its principles, it is for the Member States, if necessary, in accordance with Article 48 EU Treaty [Treaty establishing the European Community (EC Treaty), now Article 48 TEU (Consolidated Version of the Treaty on European Union and of the Treaty Establishing the European Community)] to reform the system actually in force.’¹⁰⁸

This approach of the CJEU, placing the responsibility for a change of the status quo of Article 263(4) TFEU on the Member States, eventually even by promoting an amendment of the EU Treaty, became even more visible in the *Jégo-Quéré v. Commission* (Case T-177/01). With regard to the facts of the case, *Jégo-Quéré & Cie SA*, a French fishing company operating in the southwest of Ireland, brought an action for annulment against Commission Regulation (EC) No. 1162/2001. The regulation introduced new technical measures in the fisheries sector, including a requirement to use fishing nets with a minimum mesh size of 100 mm. As a result, the company could no longer use its existing nets and would have had to invest significantly to comply. Thus, it claimed to be directly affected by the regulation, to have no access to effective remedies at the national level, and that the measure was imposing obligations on the company despite not being formally addressed to it.¹⁰⁹ In this case, the General Court endorsed the argument of the AG and proposed a broader test for individual concern. It held that an applicant should be considered individually concerned where a general

¹⁰⁷ AG Jacobs, Opinion in *Unión de Pequeños Agricultores v Council* (n 106).

¹⁰⁸ Case T-173/98 *Unión de Pequeños Agricultores v Council* (n 105) paras 40–45.

¹⁰⁹ Case T-177/01 *Jégo-Quère v Commission* [2002] EU:T:2002:112, paras 18-21.

measure affects their legal position in a definite and immediate manner, regardless of how many others are similarly affected.¹¹⁰ However, on appeal (Case C-263/02P), the Court reiterated its earlier interpretation of the provision, arguing that the Treaty has established a comprehensive and exhaustive system of remedies and procedures, which ensures respect for the right to effective judicial protection. Moreover, of particular interest is the Court's reaction to the criticism of AG Jacobs, who argued that in the case of an EU regulation which requires no implementation by national authorities, individuals are left with no other option than to violate the law in order to obtain judicial review, by defending themselves in court and contesting the regulation's validity.¹¹¹ In addressing this concern, the Court clarified that the direct applicability of an EU regulation does not imply that an individual must first infringe it to challenge its validity. Rather, national legal systems may allow individuals affected by such regulations to request a national implementing measure, which can then be challenged before domestic courts, thus providing a pathway for indirect judicial review of the EU act.¹¹² Moreover, the CJEU confirmed that the principle of effective judicial protection cannot override the explicit requirements of the Treaty, such as the condition of individual concern under Article 263 TFEU. The Court held that any relaxation of this standard would exceed the judicial powers conferred by the Treaties and could only be achieved through formal Treaty revision.¹¹³

Following the rulings in *Unión de Pequeños Agricultores* and *Jégo-Quéré*, the CJEU firmly reaffirmed the restrictive approach to individual access to EU courts, maintaining its adherence to the *Plaumann* test. It rejected arguments that the fundamental right to effective judicial protection required a broader reading of Article 263(4) TFEU, even in cases where no national remedy was available. The General Court, which had initially suggested a more flexible interpretation in *Jégo-Quéré*, subsequently aligned itself with the Court of Justice.¹¹⁴ In *EEB and Stichting Natuur*

¹¹⁰ Case T-177/01 *Jégo-Quéré v Commission* (n 109), paras 49-51.

¹¹¹ AG Jacobs, Opinion in Case C-50/00 P *Unión de Pequeños Agricultores v Council* (n 106) para. 33.

¹¹² Case C-263/02 P *Commission v Jégo-Quéré* [2004] EU:C:2004:210, para. 35.

¹¹³ Case C-263/02 P *Commission v Jégo-Quéré* (n 112) para. 36-38.

¹¹⁴ Reference to the *Plaumann*-doctrine: Case T-16/04 *Arcelor v European Parliament and Council* [2010] EU:T:2010:54, para. 99; Case T-403/07 *Union nationale de l'apiculture v Commission* [2008] EU:T:2008:469; Case T-241/07 *Buzzi v. Commission* [2008] EU:T:2008:464, para. 19; Case T-532/08 *Norilsk Nickel v. Commission* [2010] EU:T:2012:351, para. 97; Case T-291/04 *Enviro Tech v Commission* [2011] EU:T:2011:760, para. 102. Reference to the judgements in *Jégo-Quéré v*

en Milieu v. Commission,¹¹⁵ the General Court dismissed the argument that the Aarhus Convention created a new legal framework guaranteeing access to justice for individuals and NGOs, holding that international agreements could not override EU primary law. Similarly, in *WWF-UK v. Council*,¹¹⁶ the General Court reiterated that the mere statutory aim of protecting the environment was insufficient to establish individual concern, as such capacity did not distinguish the applicant from others in a comparable position.

Despite the general rigidity of the *Plaumann* doctrine, the EU Courts have exceptionally recognised individual concern in certain categories of cases. Firstly, individual concern may be found where Union legislation grants the applicant specific procedural safeguards.¹¹⁷ In such cases, standing is recognised in order to protect procedural rights, but this does not automatically entitle the applicant to challenge the substance of the measure.¹¹⁸

Secondly, standing has been acknowledged where the Commission is required, under specific provisions, to take into account the personal situation of certain individuals when adopting a measure.¹¹⁹ This duty to consider individual consequences may establish the necessary differentiation under *Plaumann*. Thirdly, individual concern may arise where the applicant is seriously affected in a specific right or their market position, to an extent that distinguishes them from all other economic operators.¹²⁰

Commission and Unión de Pequeños Agricultores v Council; Case T-16/04 *Arcelor*, para. 103; Case T-94/04 *EEB v. Commission* [2005] EU:T:2005:425, para. 48; Case T-37/04 *Azores v. Council* [2008] EU:T:2008:236, para. 92.

¹¹⁵ Joined Cases T-236/04 and T-241/04 *EEB and Stichting Natuur en Milieu* [2005] EU:T:2005:426, para. 71, referring to the decision in Case C-240/90 *Germany v. Commission* [1992] EU:C:1992:408, para. 42.

¹¹⁶ Case T-91/07 *WWF-UK v Council* [2009] EU:C:2009:286 para. 86.

¹¹⁷ Case 26/76 *Metro v Commission* [1977] EU:C:1977:167, para 13; Case C-198/91 *Cook v Commission* [1993] EU:C:1993:197, paras 24–5.

¹¹⁸ Case C-355/08 P *WWF* [2009] EU:C:2009:286, para 44 and the case law cited; Case T-381/11 *Eurofer v Commission* [2012] EU:T:2012:273, paras 34–5 and the case law cited.

¹¹⁹ Case C-152/88 *Sofrimport SARL v Commission* [1990] EU:C:1990:259, para 11; Case 11/82 *Piraiiki Patraiki v Commission* EU:C:1985:18, para 31; Joined Cases T-481/93 and T-484/93 *Vereniging van Exporteurs in Levende Varkens v Commission* [1995] EU:T:1995:163 and T-483/93 *Antillean Rice Mills NV and Others v Commission* [1995] EU:T:1995:162, para 67; Joined Cases T-481/93 and T-484/93 *Vereniging van Exporteurs in Levende Varkens v Commission*, para 61; Case T-135/96 *UEAPME v Council* [1998] EU:T:1998:128, para 90.

¹²⁰ Case C-358/89 *Extramet Industrie SA v Council* [1991] EU:C:1991:144, paras 16–17; Case C-309/89 *Codorniu SA v Council* [1994] EU:C:1994:197, paras 21–22.

However, the boundaries of these exceptions remain imprecise, and the Union Courts continue to show reluctance in accepting claims based solely on economic impact, unless the harm is particularly specific or severe. While such exceptions may, in principle, mitigate the rigidity of the *Plaumann* standard, they are narrowly construed and cautiously applied in practice. This persistent restrictiveness has, in turn, prompted broader judicial reflections on the effectiveness of judicial protection within the Union legal order, although it appears particularly problematic in the field of environmental law.¹²¹

3.3 The Requirement of ‘Direct Concern’: Doctrinal Clarifications and Post-Lisbon Evolution

As analysed in depth in the previous paragraph, the jurisprudence of Article 263(4) TFEU has traditionally focused on the requirement of individual concern, which remains the core element of the *Plaumann* doctrine. Nonetheless, the Lisbon Treaty introduced a procedural innovation by recognising ‘direct concern’ as a distinct basis for standing, aimed at partially mitigating the rigidity of *Plaumann*.

Direct concern, though less debated, plays a key role in determining admissibility. It is satisfied when the contested measure directly affects the applicant’s legal position and leaves no discretion to the implementing authorities.¹²² The measure must apply automatically, without necessitating any intermediate steps, either at the Union or national level. Importantly, purely economic effects, especially for parties indirectly impacted (such as upstream or downstream actors), are not sufficient to establish direct concern.¹²³ Where a measure substantively determines the legal position of an individual and its execution is automatic, direct concern may still arise. For instance, a Commission decision obliging a Member State to recover unlawful State aid may

¹²¹ Case T-177/01 *Jégo-Quéré v Commission* [2002] EU:T:2002:112.; Case C-50/00 P *Unión de Pequeños Agricultores v Council* [2002] EU:C:2002:462.

¹²² Case C-386/96 P, *Dreyfus* [1998] EU:C:1998:193, para 43; Joined Cases C-445/07 P and C-455/07 P, *Ente per le Ville Vesuviane* [2009] EU:C:2009:529, para 45; Case T-18/10 *Inuit Tapiriit Kanatami v European Parliament and Council* [2013] EU:T:2013:215, para 71-72; Case C-132/12 P *Stichting Woonpunt and Others v Commission* [2014] EU:C:2014:100, para 68; Case 132/77 *Société pour l’exportation de sucre* [1978] EU:C:1978:99; Case C-188/92 *TWD Textilwerke Deggendorf GmbH v Bundesrepublik Deutschland* [1994] EU:C:1994:90.

¹²³ Case T-177/01 *Jégo-Quéré* [2002] EU:T:2002:112; Case C-50/00 P *Unión de Pequeños Agricultores v Council* [2002] EU:C:2002:462.; see also Bernhard (n 74) 1806; Joined Cases C-455/13 P C-457/13 P and C-460/13 P *Anicav v Commission* [2015] EU:C:2015:616, paras 47–9.

directly concern the beneficiaries, whereas an authorisation to grant aid, which leaves discretion to national authorities, would not.¹²⁴

However, in order to rely on this ground, three cumulative conditions must be met. First, the contested measure must qualify as a *regulatory act* namely, understood as an act of general application which has not been adopted through a legislative procedure, as defined by Article 289 TFEU.¹²⁵ This category may include certain decisions, provided that they apply generally and not to a limited number of subjects.¹²⁶ Second, the applicant must be directly concerned by the act, following the interpretation established for the second alternative under Article 263(4).¹²⁷ Third, the act must not require any implementing measures, meaning that it must produce immediate legal effects for the applicant without further intervention by either Union or national authorities.¹²⁸ Whether or not implementing measures exist must be assessed from the point of view of the applicant.¹²⁹ If the act directly alters the applicant's legal position, the requirement is satisfied.¹³⁰ Conversely, where administrative steps, however minor, are necessary for enforcement, the condition is not met.

Despite this evolution, the Court has continued to apply a restrictive and formalistic interpretation of standing requirements. By systematically prioritising formal differentiation over substantive harm, the Court has entrenched an exclusionary model of standing that structurally disadvantages environmental applicants and NGOs. This effectively denies legitimacy to public interest litigation and marginalises fundamental rights, including those related to health and environmental protection. In particular,

¹²⁴ E.g. Joined Cases C-182/03 and C-217/03 *Belgium and Forum* [2006] EU:C:2006:416, para 57; Case T-335/08 *BNP Paribas v Commission* [2010] EU:T:2010:271, para 75; Case T-380/94 *AIUFASS and AKT v Commission* [1996] EU:T:1996:195.

¹²⁵ Case T-381/11 *Eurofer* [2012] EU:T:2012:273, para 44.

¹²⁶ E.g. Case T-381/11 *Eurofer v Commission* [2012] EU:T:2012:273, para 45; Case T-93/10 *Bilbaina de Alquitrane SA v Commission* [2013] EU:T:2013:106, para 55; Case T-178/13 *Jaczewski v Commission* [2014] EU:T:2014:827, para 22. In Case T-461/12 *Hansestadt Lübeck v Commission* [2014] EU:T:2014:758 para 25, the GC took the view that a decision to start the formal procedure under Article 108(2) TFEU was not a regulatory act. By contrast, a Commission decision on state aid that applies to situations that are determined objectively and entails legal effects for a class of persons envisaged in a general and abstract manner is of general application. See Case T-219/13 *Ferracci v Commission* [2016] EU:T:2016:485., para 52 and the case law cited.

¹²⁷ E.g., Case T-673/13 *European Coalition to End Animal Experiments v ECHA* [2015] EU:T:2015:167, para 67.

¹²⁸ Case C-274/12 P *Telefónica SA v Commission* [2013] EU:C:2013:852, para 27.

¹²⁹ Bernhard (n 74) 1806.

¹³⁰ Case C-274/12 P, *Telefónica* (n 128) para 30.

procedural access to justice for NGOs remains contingent on demonstrating an individualised legal impact akin to that of an addressee which, in practice, they are rarely able to meet. This approach reveals a tension between the principle of effective judicial protection, formally enshrined in EU primary law, and the Court’s continued adherence to a doctrinal framework that resists adaptation to the evolving demands of collective interest litigation.

3.4 National Courts as Gatekeepers: Article 267 and the Preliminary Ruling Procedure

The CJEU has repeatedly stated that the system of judicial protection created by the EU Treaties is a ‘complete system’ of legal remedies. This framework combines direct actions before the CJEU, particularly under Article 263 TFEU, with the role of national courts, which may submit questions on the interpretation or validity of EU law under Article 267 TFEU.¹³¹ The latter provision allows national courts to request preliminary rulings on the Treaties or on the legality of acts adopted by EU institutions, bodies, offices, or agencies.¹³²

More specifically, the preliminary ruling mechanism is, in practice, the main route through which EU law is applied consistently and uniformly across all Member States, thereby contributing to legal integration.¹³³ In this procedure, domestic courts serve as genuine ‘gatekeepers’.¹³⁴ Indeed, any court or tribunal that has doubts concerning the interpretation or validity of EU law may, if jurisdiction and admissibility requirements are met, refer the matter to the CJEU, which is obliged to address the questions it receives any court or tribunal that has doubts concerning the interpretation or validity of EU law may, if jurisdiction and admissibility requirements are met, refer the matter to the CJEU, which is obliged to address the questions it receives.¹³⁵

¹³¹ Krämer (n 102) 119.

¹³² Consolidated Version of the Treaty on the Functioning of the European Union (n 22) art 267.

¹³³ Walter Hallstein, *Die Europäische Gemeinschaft* (5th edn, Econ Verlag 1979) 53.

¹³⁴ Takis Tridimas, ‘Knocking on Heaven’s Door: Fragmentation, Efficiency and Defiance in the Preliminary Reference Procedure’ (2003) 40 *Common Market Law Review* 9, 26.

¹³⁵ See e.g. Case 19/68, *De Cicco v Commission* [1968] EU:C:1968:56, para 478; and Case C-415/93 *Union Royale Belge des Sociétés de Football Association ASBL v Bosman* [1995] EU:C:1995:463, para 59; André Donner, ‘The Constitutional Powers of the Court of Justice of the European Communities’ (1974) 11 *CML Rev* 127, 140; Nils Wahl and Luca Prete, ‘The Gatekeepers of Article 267 TFEU: On Jurisdiction and Admissibility of References for Preliminary Rulings’ (2018) 55 *CML Rev* 511, 512.

Whether the referring body qualifies as a ‘court or tribunal’ within the meaning of Article 267 TFEU is determined exclusively under EU law. The Court has developed a set of criteria for this purpose: the body must be established by law, be permanent, exercise compulsory jurisdiction, follow an *inter partes* procedure, apply rules of law, and be independent.¹³⁶ Although this case law has attracted criticism from within and outside the Court, its approach has remained relatively flexible. This flexibility reflects the substantial differences between national legal systems (including their judicial structures) and their constant evolution. Such adaptability allows the Court to accommodate institutional changes at the national level and to develop its jurisprudence in step with them, in line with the idea that legal interpretation must follow the realities of legal practice.¹³⁷ Article 19(1) TEU, which embodies the principles of subsidiarity and procedural autonomy, obliges Member States to provide remedies sufficient to ensure effective judicial protection in areas covered by Union law. Against this background, the preliminary reference procedure stands out as the mechanism most clearly designed to ensure cooperation between national courts and the CJEU as part of a single legal community.¹³⁸ As the Court observed in Opinion 1/09,¹³⁹ the tasks assigned to national courts and to the CJEU are both indispensable to preserving the very nature of the law established by the Treaties, a clear expression of a ‘judge-to-judge’ dialogue.¹⁴⁰

However, there are significant distinctions between direct access to the CJEU and the preliminary reference mechanism.¹⁴¹ One central difference lies in the object of the litigation. For instance, in the *Greenpeace* case, the national court examined the

¹³⁶ Case C-54/96 *Dorsch Consult Ingenieurgesellschaft mbH v Bundesbaugesellschaft Berlin mbH* [1997] EU:C:1997:413, para 23; Case C-53/03, *Syfait*, EU:C:2005:333, para 29.

¹³⁷ AG Wahl, Opinion in Joined Cases C-58/13 and C-59/13 *Torresi v Consiglio dell’Ordine degli Avvocati di Macerata* [2014] EU:C:2014:265, paras 27–30; Gil Carlos Rodríguez Iglesias, ‘L’*évolution de l’architecture juridictionnelle de l’Union européenne*’ in Allan Rosas and others (eds), *The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case Law* (Asser 2013) 43–44.

¹³⁸ Nils Wahl and Luca Prete (n 135) 521.

¹³⁹ Opinion 2/13 (Full Court) *Accession of the European Union to the European Convention on Human Rights* [2014] EU:C:2014:2454, para 85.

¹⁴⁰ Thomas von Danwitz, ‘Le dialogue de juge à juge – Considérations sur les devoirs réciproques des juges dans le cadre de la coopération juridictionnelle instaurée par l’article 267 du TFUE’ in Paolo Iazzano and others (eds), *La Cour de justice de l’Union européenne sous la présidence de Vassilios Skouris* (Bruylant 2015) 717–719.

¹⁴¹ Krämer (n 102) 123.

validity of a domestic permit, while the CJEU was asked to assess the lawfulness of a Commission decision authorising funding. Furthermore, procedural requirements at the national level, such as standing rules or admissibility thresholds, can hinder the effective use of Article 267.¹⁴² In Germany, for example, a claimant must demonstrate a violation of an individual right to bring a case.¹⁴³

Additional barriers stem from institutional or cultural reluctance. For instance, in Denmark, judicial referrals to the CJEU are subject to prior consultation with the government.¹⁴⁴ In several Member States (including Greece, Portugal, Spain, and Ireland), environmental cases have rarely, if ever, been referred to Luxembourg. Even when national courts acknowledge breaches of EU environmental law, they may decline to impose corrective measures or request a preliminary ruling, as seen in certain UK cases concerning air pollution.¹⁴⁵

Another structural limitation of the Article 267 procedure is that national courts lack the competence to invalidate EU acts. This raises concerns about whether individuals seeking to challenge the legality of Union measures should be required to rely on domestic proceedings, over which they have limited procedural control. The applicant cannot compel the national judge to refer the question, nor can they shape the formulation of the preliminary question.¹⁴⁶

These practical and doctrinal shortcomings have been criticised by the ACCC, which concluded that the mechanism under Article 267 TFEU cannot, in itself, justify a general exclusion of the public from access to EU courts to challenge acts or omissions of Union institutions.¹⁴⁷

¹⁴² Krämer (n 102) 124.

¹⁴³ Verwaltungsgerichtsordnung (German Code of Administrative Court Procedure) art 42(2).

¹⁴⁴ Krämer (n 102) 124.

¹⁴⁵ *R (ClientEarth) v Secretary of State for Environment, Food and Rural Affairs* [2011] All ER (D) 115 (Dec) (QB); *R (ClientEarth) v Secretary of State for Environment, Food and Rural Affairs* [2012] EWCA Civ 897 (appeal pending before the UK Supreme Court).

¹⁴⁶ Krämer (n 102) 124.

¹⁴⁷ Aarhus Convention Compliance Committee, *Findings and Recommendations with Regard to Communication ACCC/C/2008/32 (Part I) Concerning Compliance by the European Union* (14 April 2011) para 90; Peter Pagh-Rasmussen, 'Kan grønne organisationer håndhæve miljøkrav? Om Aarhus-konventionen om borgernes miljørettigheder' (2008) 10 *Tidsskrift for Miljø* 496.

The CJEU has invoked also the principle of sincere cooperation enshrined in Article 4(3) TEU to argue that responsibility lies with the Member States to enhance the effectiveness of judicial protection. The article reads as follows:

‘1. In accordance with Article 5, competences not conferred upon the Union in the Treaties remain with the Member States.

2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.

3. Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

The Member States shall facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardise the attainment of the Union’s objectives.’¹⁴⁸

This principle, however, governs mutual obligations between the EU and the Member States and does not, on its own, impose an obligation on national legislatures to amend domestic law in order to address gaps in EU-level access to justice.¹⁴⁹

Given the heterogeneity of national legal systems, reliance on domestic courts to ensure judicial protection in EU environmental matters creates inconsistencies and legal uncertainty. From the perspective of uniformity and effectiveness, it is more coherent to argue that challenges to EU institutional acts should be adjudicated within the Union’s own judicial system, rather than being deflected to national courts.¹⁵⁰

While Article 267 TFEU enables individuals to challenge national environmental measures indirectly before the CJEU via preliminary references, this mechanism operates solely within the boundaries of the EU legal order. To grasp the full scope of procedural environmental rights, particularly regarding access to justice, it is essential to consider the broader international obligations incumbent upon the Union. As a contracting party to the Aarhus Convention, the EU is required to ensure compliance

¹⁴⁸ Consolidated Version of the Treaty on European Union (n 22) art 4.

¹⁴⁹ Krämer (n 102) 124.

¹⁵⁰ Krämer (n 102) 126.

with the Convention's three pillars, including the right of the public to access judicial and administrative procedures in environmental matters, which will be examined in the following section.

4. The Aarhus Convention

As part of its broader commitment to transparent and participatory environmental governance, the EU has progressively integrated international legal instruments into its normative framework. One of the most significant developments in this regard occurred in 1998 with the adoption of the Aarhus Convention. The Convention sought to strengthen environmental governance, especially across Eastern Europe, the Caucasus, and Central Asia, regions then undergoing transitions to democracy in the wake of the Cold War.¹⁵¹ Described by the former UN Secretary-General Kofi Annan as 'the most ambitious venture in the area of environmental democracy so far undertaken under the auspices of the United Nations',¹⁵² the Convention provides binding legal recognition of environmental procedural rights. By establishing enforceable obligations on public authorities, it places transparency, accountability, and public participation at the heart of environmental governance. Its Preamble affirms the right of every individual to live in 'an environment adequate to his or her health and well-being', and the responsibility 'to protect and improve the environment for the benefit of present and future generations'. The exercise of these rights and responsibilities is contingent on three core procedural guarantees, which characterise the Convention: (i) access to environmental information, (ii) public participation in decision-making, and (iii) access to justice.¹⁵³

¹⁵¹ Lisa Vanhala, 'Shaping the Structure of Legal Opportunities: Environmental NGOs Bringing International Environmental Procedural Rights Back Home' (2017) 39(3) *Law & Policy* 111.

¹⁵² Peter Oliver, 'Access to Information and to Justice in EU Environmental Law: The Aarhus Convention' (2013) 36 *Fordham Int'l LJ* 1423, 1424; Economic Commission for Europe, *The Aarhus Convention: An Implementation Guide* (United Nations 2000) UN Doc ECE/CEP/72, UN Sales No E.00.II.E.3

¹⁵³ Oliver (n 152) 1423. The link between the first two pillars is self-evident; in order for there to be meaningful participation in decision making the public must have access to the environmental information held by public authorities, particularly those public authorities charged with environmental decision making. Susan Wolf, 'Access to EU Environmental Information: EU Compliance with Aarhus Convention' (2013) 14 *ERA Forum* 475.

Originally adopted by 46 countries, the Convention currently has 48 parties, including all EU Member States and the EU itself. The membership of the EU is possible thanks to Article 17(5) of the Convention, which extends its applicability to ‘regional economic integration organisation’. Following this, the EU is subject to this legal instrument on the same level as any other State party.¹⁵⁴ However, EU ratification does not automatically extend to its Member States, each of which must ratify the Convention individually.

What distinguishes the Aarhus Convention is the active involvement of civil society, particularly environmental NGOs, which initiated the process that led to its adoption and also participated substantively in its drafting, influencing both the content and the normative structure of its provisions.¹⁵⁵ This high level of participation in the Aarhus process reflects a broader trend in international environmental law, where NGOs have come to play increasingly substantive roles across all stages, from negotiation and ratification to implementation and enforcement, thereby acting as vital intermediaries between citizens and governments, enabling the public to engage with international legal processes.¹⁵⁶

However, despite its innovations, the Convention’s contribution to the recognition of a substantive right to a healthy environment remains limited. As noted in the Implementation Guide,¹⁵⁷ the Convention represents one of the most explicit acknowledgements of the evolving norm of a right to a healthy environment. Nevertheless, it does not establish this right as binding or justiciable under international law. It would thus appear that the Convention merely serves to further

¹⁵⁴ As such, the EU is bound by the Convention alongside its Member States, enabling it to adopt legally binding instruments at the regional level that reflect the Convention’s procedural rights. See Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447.

¹⁵⁵ Vanhala (n 151) 115.

¹⁵⁶ At major net major negotiations (such as those for the Climate Convention) NGOs routinely observe proceedings, distribute briefing materials, lobby state delegates, and in some cases, even join delegations as advisors; see also Edith Brown Weiss, ‘International Environmental Law: Contemporary Issues and the Emergence of a New World Order’ (1993) 81 *Geo LJ* 675, 693.

¹⁵⁷ This guidance document is intended as a convenient non-legally binding and user-friendly reference tool to assist policymakers, legislators and public authorities in their daily work of implementing the Convention and of realising the provisions of Principle 10 in practice. The document draws on other international law instruments in the area of the environment and human rights. See also *Implementation Guide* (n 152).

underline the interconnectedness of the two areas of human rights and environmental law.

4.1 The Three Pillars of the Aarhus Convention

As previously mentioned, the Aarhus Convention is built around three interconnected pillars: the right of access to environmental information, public participation in environmental decision-making, and access to justice. These rights are articulated respectively in Articles 4 and 5, Articles 6 to 8, and Article 9.¹⁵⁸

Access to environmental information is addressed in Articles 4 and 5. Article 4 obliges States to provide environmental information upon citizens' requests, without requiring applicants to justify their interest, an approach often referred to as 'passive release of information'.¹⁵⁹ The expression 'environmental information' is interpreted broadly and includes any written, visual, audio, or electronic material concerning the state of the environment. The duty to provide this information falls on public authorities, which, pursuant to Article 2, include national, regional, and local governments, entities exercising public administrative functions under national law, and certain private bodies under public control. Authorities must respond to information requests no later than one month after submission (with a possible extension to two months for complex or voluminous requests). Any refusal to disclose must be justified on narrowly interpreted grounds, keeping in mind the overarching public interest in transparency.¹⁶⁰ Article 5 complements this framework by requiring Parties to actively gather, maintain, and disseminate environmental information. Authorities are expected to ensure that such data is up-to-date, easily accessible, and increasingly available in digital formats.¹⁶¹

The second core component of the Convention concerns the right to public participation in environmental decision-making. This right is outlined in Articles 6, 7, and 8. Article 6 focuses on public involvement in decisions relating to specific projects. It grants the 'public concerned' (which includes individuals or groups likely

¹⁵⁸ Aarhus Convention (n 154).

¹⁵⁹ Oliver (n 152) 1425.

¹⁶⁰ Aarhus Convention (n 154) Art- 4-5; Jerzy Jendroska, 'Aarhus Convention and Community Law: The Interplay' (2005) 2 *J Eur Environ Plann L* 12, 15.

¹⁶¹ Aarhus Convention (n 154) Artt. 6-7-8.

to be affected or holding a legitimate interest, notably environmental NGOs) a set of procedural rights, including timely notification, access to relevant documents, the opportunity to submit comments, and the right to receive a reasoned decision. Authorities are also expected to take public input into account in a meaningful way. A key innovation of the Convention is recognising environmental NGOs as part of the ‘public concerned’, if compliant with national laws.¹⁶² This departs from traditional rules requiring direct harm for legal standing. Since environmental damage affects diffuse interests, identifying specific rights holders is often impossible. Following this, the Convention fills this gap by allowing NGOs to defend environmental interests even without individualised harm.¹⁶³

Article 7 extends participatory rights to the formulation of environmental plans and programmes. Although the procedural requirements are somewhat less stringent than those under Article 6, authorities must still ensure fair, transparent, and inclusive processes. Finally, Article 8, though less detailed compared to Articles 6 and 7, focuses on public participation in the drafting of executive regulations and generally applicable legal norms affecting the environment. The wording of Article 8 reflects a best endeavours obligation. Specifically, Paragraph 1 encourages Parties to promote meaningful participation in the preparation of rules with significant environmental impact, without equating them with formal legislative acts. This clarifies that executive rulemaking falls under the Convention’s scope, while excluding laws passed by parliaments. In this respect, Article 8 reinforces the Convention’s broader objective of enhancing democratic accountability in environmental governance.¹⁶⁴

The third pillar and most complex pillar of the Convention is the right of access to justice, codified in Article 9. It allows the public to challenge: (i) denials of information under Article 4, (ii) violations of participatory rights under Article 6, and (iii) broader breaches of environmental law. Article 9(1) allows individuals whose requests for environmental information are denied, to seek for a prompt and affordable review

¹⁶² Aarhus Convention (n 154) Art 2(5); NGOs are requested to possess legal personality or geographic establishment in the state concerned; see also Catherine Redgwell, ‘Access to Environmental Justice’ in Francesco Francioni (ed), *Access to Justice as a Human Right* (OUP 2007) 153.

¹⁶³ Ole W. Pedersen, ‘European Environmental Human Rights and Environmental Rights: A Long Time Coming’ (2008) 21 *Geo Int’l Env’tl L Rev* 73, 97.

¹⁶⁴ Aarhus Convention (n 154) Art. 8.

mechanism, either through a judicial procedure or an alternative process conducted by an independent and impartial body established by law. If handled by regular courts, it must also ensure the availability of an expeditious, low-cost administrative review, either by a competent public authority or by an impartial non-judicial body, as an additional remedy.¹⁶⁵

Article 9(2) focuses specifically on the ability of the ‘public concerned’ to challenge decisions that fail to comply with the participation standards set out in Article 6. Access to these procedures is contingent on national legal definitions of ‘sufficient interest’, which can limit the effectiveness of the remedy. Nevertheless, the Convention encourages Parties to interpret these criteria broadly, in line with its objective of promoting wide and effective public access to justice.¹⁶⁶

Article 9(3) extends the right of access to justice, allowing the public to challenge acts or omissions by both public authorities and private entities that contravene national environmental laws. This provision, which also applies to decisions falling under Article 7, is nonetheless subject to the procedural rules and standing thresholds established by each Party’s domestic legislation, resulting in variations in the provision’s enforceability across jurisdictions.

Article 9(4) obliges Parties to ensure that review mechanisms under paragraphs 1 to 3 offer effective and equitable remedies, including injunctive relief when appropriate, and that they are not prohibitively expensive. Article 9(5), in turn, mandates transparency regarding access to these procedures and calls on Parties to consider establishing support mechanisms to mitigate financial or procedural barriers, thereby improving access to justice, particularly for vulnerable or marginalised communities.¹⁶⁷

Importantly, Article 9 performs a dual function: on one hand, it ensures the enforcement of the procedural rights enshrined in the Convention; on the other hand, it empowers ‘external’ members of the public to hold authorities accountable for

¹⁶⁵ Aarhus Convention (n 154) Art. 9; Redgwell (n 162) 166 ff: for a very detailed analysis of Article 9 see Implementation Guide (n 157).

¹⁶⁶ Aarhus Convention (n 154) Art. 9; See n 165 Pedersen (n 163) 96.

¹⁶⁷ See n 165; Pedersen (n 163) 95-98.

failing to uphold environmental law.¹⁶⁸ However, the effectiveness of Article 9 in bridging the enforcement gap also depends on the institutions established to monitor and promote compliance. This brings us to the distinctive mechanism developed under the Aarhus Convention: the Compliance Committee.

4.2 Art. 15: The Aarhus Convention Compliance Committee (ACCC)

Article 15 introduces a compliance mechanism that sets a notable precedent within the framework of international environmental law.¹⁶⁹ Adopted at the first Meeting of the Parties (MOP) in 2002, the Compliance Committee was created as ‘a non-confrontational, non-judicial and consultative’ body tasked with reviewing Parties’ adherence to the Convention’s provisions.¹⁷⁰ This mechanism is designed to ensure the effective enjoyment of procedural environmental rights by the public, as emphasised in the text of Article 15. The Committee consists of eight independent experts, nominated by both Parties and NGOs, emphasising civil society’s role. Members serve in a personal capacity, selected for their expertise and integrity.¹⁷¹

The Compliance mechanism may be triggered through four distinct channels: (i) a Party may make a submission about compliance by another Party; (ii) a Party may make a submission concerning its own compliance; (iii) the Secretariat may make a referral to the Committee; and (iv) members of the public may make communications concerning a Party’s compliance with the Convention.¹⁷² This fourth channel represents one of the Convention’s most innovative aspects, granting direct access to the compliance process for civil society actors.¹⁷³

When deciding on a complaint, the Committee reports to the MOP and can make any number of recommendations. These may include: providing advice and assistance to support the implementation of the Convention; requesting the concerned Party to develop a compliance strategy with a clear timeline; issuing a formal declaration of

¹⁶⁸ Redgwell (n 162) 168.

¹⁶⁹ Redgwell (n 162) 172.

¹⁷⁰ Aarhus Convention (n 154) Art. 15.

¹⁷¹ UN Economic Commission for Europe, ‘Decision I/7: Review of Compliance’ UN Doc ECE/MP.PP/2/Add.8 (2 April 2004).

¹⁷² Emrah Akyüz, ‘The Development of Environmental Human Rights’ (2021) 8(2) *IGEO* 218, 222.

¹⁷³ Pedersen (n 132) 97.

non-compliance; or, as a last resort, recommending the suspension of the rights and privileges granted to the non-compliant Party under the Convention.¹⁷⁴ Upon reviewing a case, the Committee reports to the Meeting of the Parties (MOP) and may recommend various actions. These include offering advice or technical assistance, requiring the concerned Party to adopt a compliance strategy with specific deadlines, issuing a formal declaration of non-compliance, and, in serious cases, recommending the suspension of that Party's rights under the Convention. To date, the ACCC has received approximately 200 communications, 197 of which have been submitted by individuals or environmental NGOs. Only three submissions originated from Parties, two addressing another Party's conduct and one concerning its own obligations. Additionally, four separate requests for advisory opinions have been submitted independently of pending cases.¹⁷⁵

To support broader implementation, the Convention also created a Task Force on Access to Justice, which facilitates the exchange of best practices, promotes the development of specialised environmental courts, and organises training for judges and legal professionals. Despite challenges like uneven standards for standing and remedies, these initiatives underscore the Convention's commitment to enhancing procedural rights.¹⁷⁶

In sum, the Compliance Committee exemplifies the Aarhus Convention's unique approach to international legal supervision. By coupling non-confrontational review with meaningful public access, it fosters both vertical accountability (between States and individuals) and horizontal oversight (among States), providing a dynamic model for procedural enforcement that continues to shape environmental governance globally.

¹⁷⁴ *Review of Compliance* (n 171) 37; Pedersen (n 63) 98.

¹⁷⁵ Jurisprudence emerging from the Committee has contributed significantly to clarifying key provisions of the Convention. For example, in *Green Salvation v. Kazakhstan*, the Committee found a violation of Article 9(1), citing excessive delays and denial of standing to an NGO. The decision underscored the importance of timely and equitable access to justice, especially for civil society actors; see also Redgwell (n 162).

¹⁷⁶ UN Economic Commission for Europe, 'Report of the First Meeting of the Task Force on Access to Justice' UN Doc ECE/MP.PP/WG.1/2006/4 (15 March 2006), para 11; Redgwell (n 162) 172.

4.3 The Implementation of the Aarhus Convention in the EU

As previously noted, the Aarhus Convention was signed both by the EU and its Member States. More precisely, the Aarhus Convention was signed by the European Commission in 1998 and approved by the Council in 2005.¹⁷⁷ However, under EU law, international agreements such as the Aarhus Convention do not possess direct effect and must be implemented through secondary legislation.¹⁷⁸ Moreover, in accordance with the principle of primacy, EU primary law, including the Treaties, takes precedence over international agreements to which the Union is a party.¹⁷⁹

Like many international agreements concluded by the EU, the Aarhus Convention is a mixed agreement, meaning that both the Member States and the Union bear legal obligations under international and EU law respectively.¹⁸⁰

The three pillars of the Convention (see paragraph 3.2) have been implemented at both national and EU institutional levels through distinct legislative instruments.¹⁸¹

At the Member State level, Directive 2003/4/EC implements the Convention's first pillar, establishing a general obligation for public authorities to ensure timely and proactive access to environmental information. Article 2(1) of the Directive defines 'environmental information' in broad terms, expanding on Article 2(3) of the Convention. The CJEU, in *Stichting Natuur en Milieu*,¹⁸² clarified that health-related data qualify as environmental information only if linked to environmental elements or influencing factors. Article 4(2) of the Directive allows authorities to withhold information to protect, for example, personal data or intellectual property, aligning with the CFR (Articles 8 and 17(2)), provided that these rights outweigh the public interest in disclosure.¹⁸³

¹⁷⁷ Council Decision (EC) 2005/370 of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters [2005] OJ L124/1.

¹⁷⁸ Wolf (n 153) 478.

¹⁷⁹ Case T-600/15 *PAN Europe and Others v Commission* [2016] EU:T:2016:601.

¹⁸⁰ Wolf (n 153) 476.

¹⁸¹ Pedersen (n 132) 1435.

¹⁸² See *Stichting Natuur en Milieu* (n 115).

¹⁸³ Pedersen (n 132) 1435.

As regards the second and the third pillar, Directive 2003/35/EC aligns national obligations with Articles 6, 7, and 9(2)–(4) of the Convention. It mandates early and effective public participation, including by NGOs, in the development or revision of environmental plans and programmes. Public authorities must inform the public of proposed plans via notices or digital means, enable submission of comments while all options remain open, and ensure those inputs are meaningfully considered. Once a decision is made, authorities must communicate the outcome and explain how public views were taken into account. Directive 2003/35/EC also amends Directive 85/337/EEC (EIA Directive), enhancing public participation in decisions on projects likely to have significant environmental effects. Importantly, it introduces Article 10(a), which guarantees access to justice for the ‘public concerned’ to challenge the legality, both at the substantive and procedural level, of decisions, acts, or omissions related to participatory rights. These procedures must be fair, equitable, timely, and not prohibitively expensive, in accordance with Article 9(4) of the Aarhus Convention.¹⁸⁴

At the EU institutional level, the foundational instrument is Regulation 1367/2006/EC, the so-called Aarhus Regulation.¹⁸⁵ Prior to the entry into force of the Convention, EU institutions were not subject to its obligations, as confirmed by the General Court in *WWF European Policy Programme v. Council* (Case T-264/04),¹⁸⁶ where the Court ruled that neither the Convention nor the Aarhus Regulation were applicable at the time. Instead, the legal basis was Regulation (EC) No 1049/2001 on public access to documents (ATD Regulation),¹⁸⁷ which, while related, was not designed to implement Aarhus.

The Aarhus Regulation, adopted in September 2006 and applicable from June 2007, was designed to close this gap. It extends the principles of access to environmental information to all Union institutions, bodies, offices, and agencies, building upon the

¹⁸⁴ Directive 85/337/EEC (n 99), as amended by Directive 2003/35/EC (n 56), art 10a (5).

¹⁸⁵ Pedersen (n 132) 1435.

¹⁸⁶ Case T-264/04, *WWF European Policy Programme v Council of the European Union* [2007] EU:T:2007:114.

¹⁸⁷ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [2001] OJ L145/43.

ATD Regulation.¹⁸⁸ Articles 3–5 of the Regulation impose obligations concerning the availability, accuracy, and dissemination of environmental data, while Article 2(1) extends the class of beneficiaries to include any natural or legal person, without discrimination based on nationality, residence, or seat.¹⁸⁹

Although initial discussions had contemplated limiting the scope to the first pillar, the final Regulation adopted an integrated approach covering all three. This decision was aimed at ensuring coherence and administrative efficiency across EU institutions. However, while the first two pillars were effectively implemented,¹⁹⁰ the third one, entailing the issue of access to environmental justice, remained structurally deficient.¹⁹¹ Notably, the Commission’s proposal for a directive specifically on access to justice in environmental matters was withdrawn after over a decade of inaction in the Council. Consequently, the system lacked an effective mechanism for public accountability regarding the acts and omissions of EU institutions.¹⁹²

This shortcoming persisted until the *Aarhus Convention Compliance Committee* issued its 2017 findings identifying the EU’s non-compliance with Article 9(3) of the Convention. These findings, together with growing civil society pressure, eventually led to the adoption of Regulation (EU) 2021/1767.¹⁹³ The impact and content of this reform will be examined in the following section.

¹⁸⁸ 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 [2006] OJ L264/13, art 3.

¹⁸⁹ Regulation (EC) No 1367/2006 (n 188) artt. 2(1)-5.

¹⁹⁰ Commission, ‘Proposal for a Directive of the European Parliament and of the Council amending Directives 85/337/EEC and 96/61/EC concerning the assessment of the effects of certain public and private projects on the environment’ COM (2003) 624 final, 24 October 2003.

¹⁹¹ Attila Pánovics, ‘Requests for internal review and the revised Aarhus Regulation’ (2023) *Essays of Faculty of Law University of Pécs Yearbook* 143, 147.

¹⁹² Pánovics (n 191) 147.

¹⁹³ Regulation (EU) 2021/1767 of the European Parliament and of the Council amending Regulation (EC) No 1367/2006 [2021] OJ L356/1.

4.4 The Implementation of the Third Pillar: Pitfalls of the 2006 Aarhus Regulation

As previously, within the EU legal order, the main instrument for challenging acts or omissions of EU institutions is the action for annulment under Article 263 TFEU. However, for non-privileged applicants, strict admissibility requirements, interpreted restrictively by the CJEU through the *Plaumann* doctrine, significantly limit access to justice. Despite persistent academic and institutional criticism, these rules remained unaffected even after the Lisbon Treaty reforms.¹⁹⁴

As regards the issue of access to justice in relation to the Aarhus Convention, the CJEU has consistently held that Article 9(3) is not directly applicable in the EU and cannot be used to assess the legality of EU acts.¹⁹⁵ This provision grants Parties broad discretion in its implementation, as it applies only when the conditions laid down by national law, interpreted here to include EU law, are met. Therefore, individuals or NGOs do not enjoy an automatic right to access administrative or judicial proceedings under Article 9(3); this right depends on the adoption of specific legal criteria at the EU level. To fulfil this obligation, the Aarhus Regulation was adopted. It aims, among other things, to implement Article 9(3) with regard to EU institutions and bodies. It introduces a mechanism for internal administrative review by defining a new category of acts, namely ‘administrative acts’, that can be challenged by way of internal review. This procedure allows certain members of the public, especially environmental NGOs meeting the criteria of Article 11, to request the review of administrative acts or omissions adopted (or not adopted) by EU institutions under environmental law.¹⁹⁶

According to Article 10, the request for internal review must be addressed to the institution that adopted the act, or, in the case of an omission, should have adopted it.¹⁹⁷ The Regulation defines ‘environmental law’ in Article 2(2)(f) as EU legislation,

¹⁹⁴ Pánovics (n 191) 147-148.

¹⁹⁵ E.g. Joined Cases C-404/12 P and C-405/12 P, *Stichting Natuur en Milieu and Pesticides Action Network* [2015] EU:C:2015:5, paras 47, 51; Joined Cases C-401/12 P and C-403/12 P *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht v Commission* [2015] EU:C:2015:4, para 55.

¹⁹⁶ van Wolferen and Eliantonio (n 66) 158.

¹⁹⁷ The request needs to be in writing, be lodged within 6 weeks, and state the ground for review. The EU institution or body has to consider the request, unless it is clearly unsubstantiated. It is required to

regardless of its legal basis, that contributes to the objectives of EU environmental policy under Article 191 TFEU. ‘Administrative act’ is defined in Article 2(1)(g) as any individual measure taken by an EU institution under environmental law that produces legally binding and external effects. These conditions are cumulative, and the Regulation expressly excludes from this definition acts adopted in the course of competition proceedings, infringement procedures, OLAF investigations, and cases before the European Ombudsman. Furthermore, Article 2(1)(h) defines ‘administrative omission’ as the ‘failure of an EU body to adopt an administrative act’ as defined above. Recital 11 of the Regulation clarifies that ‘omissions should be covered where the institution was under a legal obligation to adopt such an act under environmental law.’¹⁹⁸

Importantly, environmental NGOs may use the Aarhus Regulation both to request internal administrative review and, where this fails, to initiate judicial review under the first limb of Article 263(4) TFEU. Alternatively, they may bring the matter before the European Ombudsman (Article 228 TFEU). However, the Regulation does not change the standing rules under EU law;¹⁹⁹ NGOs can only bring actions before the General Court ‘in accordance with the relevant provisions of the Treaty’, which means that the *Plaumann* criteria for admissibility still apply.²⁰⁰

Although the Aarhus Regulation was designed to implement the Convention, in practice it does not fully achieve this. In particular, Article 10(1) fails to properly reflect Article 9(3) of the Convention, because it limits internal review to acts of individual scope. This limitation has led to many requests being declared inadmissible.

state its reasons in a written reply within 12 weeks, in exceptional cases 18 weeks. For detailed rules governing the request for internal review see Commission Decision 2008/50/EC of 13 December 2007 [2008] OJ L 13/24. Under that decision the party requesting review must provide ‘the relevant information and documentation supporting those grounds’ (see Article 1, point 3, of that decision).

¹⁹⁸ Regulation (EC) No 1367/2006 of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention to Community institutions and bodies [2006] OJ L264/13, art 2; see also Pánovics (n 191) 150.

¹⁹⁹ The first case whereby environmental NGOs have instituted proceedings for the annulment of the reply sent to them by the Commission under Title IV of the Regulation was *Stichting Natuur en Milieu and Pesticide Action Network Europe*; Recital 21 and Article 12(1) of the Aarhus Regulation; Pánovics (n 191) 151.

²⁰⁰ Sacha Garben, “Articles 191-193,” in *Commentary on the EU Treaties and the Charter of Fundamental Rights*, eds. Manuel Kellerbauer, Marcus Klamert and Jonathan Tomkin (OUP, 2019), 1525.

So far, the review procedure has been used mainly for GMO and chemical decisions. Moreover, the narrow definition of ‘environmental law’ and the exclusion of certain types of acts further reduce the Regulation’s scope.²⁰¹

Several practical examples illustrate these limitations. In 2007, four environmental organisations, namely European Environmental Bureau (EEB), Friends of the Earth Europe (FOEE), Health & Environment Alliance (HEAL), and Women in Europe for a Common Future (WECF), submitted urgent requests to the Commission to review its decision to propose candidates to the Management Board of the European Chemicals Agency (ECHA). The Commission rejected the requests, arguing that staff-related decisions are inherently internal and lack the external legal effects required by the definition of ‘administrative act’.²⁰²

In another case, a German NGO advocating for bee protection requested an internal review of the Commission Implementing Regulation (EU) 2016/1056,²⁰³ which extended the approval period for the active substance glyphosate. The Commission again found the request inadmissible, reasoning that the Regulation was not of individual scope, it was binding in its entirety and directly applicable to all operators placing glyphosate-based products on the market.²⁰⁴

A further example involved an NGO submitting a request to the European Investment Bank (EIB) to review a financing decision for an environmental project. The EIB rejected the request, claiming that its financing activities were not subject to the Aarhus Regulation.²⁰⁵ However, in the case brought by ClientEarth, the General Court ruled otherwise. It found that the financing decision was indeed adopted under environmental law, since it concerned funding for an environmental project, and therefore fell within the Regulation’s scope.²⁰⁶ The Court also rejected the argument that the decision lacked legally binding and external effects, noting that such effects

²⁰¹ Pánovics (n 191) 151; Case T-33/16 *TestBioTech v European Commission* [2018] EU:T:2018:135, para 45.

²⁰² European Commission, *The Aarhus Convention and the EU*; Pánovics (n 191) 152.

²⁰³ Pánovics (n 191) 152.

²⁰⁴ See Article 2 of the Implementing Regulation; Pánovics (n 191) 152.

²⁰⁵ Case T-9/19 *ClientEarth v European Investment Bank* [2021] EU:T:2021:42.; Pánovics, (n 191) 152.

²⁰⁵ Pánovics (n 191) 152.

²⁰⁶ *ClientEarth v European Investment Bank* (n 205) paras 125-142.

were triggered by the Board's approval, even if specific terms were to be negotiated later.²⁰⁷

These cumulative shortcomings, consistently highlighted by civil society actors and confirmed through litigation before the EU courts, ultimately laid the groundwork for institutional and legal reform. The turning point came with the findings of the ACCC, which catalysed a renewed political and legislative effort to bring the EU legal framework into alignment with its international obligations.

4.5 From Violation to Reform: The 2021 Aarhus Regulation

In March 2017, following a detailed review of a communication submitted by ClientEarth in 2008, the ACCC found that the EU was in breach of Article 9(3)-(4) of the Convention. The Committee held that the limited opportunities available to individuals and NGOs to access justice at the EU level, especially the possibility to bring cases before the CJEU, did not meet the requirements of the Convention.²⁰⁸ It concluded that neither the Aarhus Regulation nor the case law of the CJEU ensured compliance.²⁰⁹

The ACCC identified several significant shortcomings in the EU legal framework concerning access to justice in environmental matters. First, the internal review mechanism was limited to recognised environmental NGOs, thereby excluding individual members of the public, which conflicts with the Convention's broader scope of participation. Second, the review procedure was confined to acts of individual scope, which meant that general acts, such as regulations applicable to wider groups, were excluded from challenge. Third, only acts adopted under environmental law were eligible for review, whereas the Convention requires that all acts merely 'relating to' the environment should be open to scrutiny. Lastly, the exclusion of acts that do not produce legally binding and external effects further contravened the spirit and text of

²⁰⁷ James Flynn, Sarah Abram and Hugo Leith, 'EU General Court annuls decision of the European Investment Bank and underlines importance of environmental law in EU legal order' (*Brick Court Chambers*, 28 January 2021).

²⁰⁸ UNECE, *Findings and recommendations of the Aarhus Convention Compliance Committee: Communication ACCC/C/2008/32 (Part II)* (11 March 2017).

²⁰⁹ Benedikt Pirker, 'Implementation of the Aarhus Convention by the EU – An Inconvenient Truth from the Compliance Committee' (*European Law Blog*, 24 April 2017).

the Convention, which does not impose such a restriction on the types of acts that can be challenged.²¹⁰

These findings raised fundamental concerns about the principle of judicial protection within the EU legal order. The ACCC also noted that the CJEU had not developed a new jurisprudential approach that would ensure compliance.²¹¹ As such, it recommended either a revision of the Aarhus Regulation or a change in CJEU case law.²¹²

The EU Commission initially responded by expressing concern, arguing that the ACCC's findings did not account for the EU's unique legal system, particularly the central role of national courts and the preliminary ruling procedure under Article 267 TFEU. The Commission maintained that the Aarhus Regulation, designed to govern EU institutions, was not intended to implement Article 9(3) in relation to national administrative or judicial proceedings, which fall under the competence of Member States.²¹³ Nevertheless, the ACCC's conclusions focused solely on access to justice in relation to acts and omissions of EU institutions and bodies, not Member States. In June 2018, the Council adopted Decision (EU) 2018/881 under Article 241 TFEU, requesting the Commission to assess options for addressing the ACCC's findings and, if needed, to propose legislative amendments.²¹⁴

In October 2019, the Commission published a study confirming that the best course of action was to revise the Aarhus Regulation. This intent was echoed in the European Green Deal, which committed to enhancing access to administrative and judicial review for citizens and NGOs in environmental matters. A formal legislative proposal

²¹⁰ UNECE, ACCC/C/2008/32 (Part II) (n 208) paras 85–121.

²¹¹ UNECE, ACCC/C/2008/32 (Part II) (n 208) paras 81-83, 122-123 and 81-83.

²¹² Pánovics (n 191) 153.

²¹³ Pánovics (n 191) 153.

²¹⁴ Council Decision (EU) 2018/881 of 18 June 2018 requesting the Commission to submit a study on the Union's options for addressing the findings of the Aarhus Convention Compliance Committee in case ACCC/C/2008/32 and, if appropriate in view of the outcomes of the study, a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1367/2006 [2018] OJ L 155/6.

was submitted on 14 October 2020, explicitly referencing Article 9(3) of the Convention and the ACCC's concerns.²¹⁵

Following constructive negotiations with the Parliament and Council, the amended Aarhus Regulation (EU) 2021/1767 was adopted in October 2021. In the same month, the 7th Meeting of the Parties (MoP7) endorsed the ACCC's findings in case ACCC/C/2008/32 and recognised that the revised Regulation brought the EU into compliance with the Convention.²¹⁶

The core aim of the 2021 reform²¹⁷ was to remedy long-standing deficiencies in access to environmental justice at the EU level. One of the most significant changes addressed the problematic restriction to acts of individual scope. Article 9(3) of the Convention does not impose such a limitation, yet under the previous framework, NGOs were routinely denied review of general acts, leading to widespread inadmissibility of their applications.²¹⁸

The revised Regulation accordingly broadened the scope of internal review to include non-legislative acts of general application and acts adopted under other policy areas, provided they affect the environment. Crucially, the Regulation now recognises that review must be available for any administrative act that contravenes environmental law, regardless of its formal legal basis.²¹⁹

The reform also extended standing to individual members of the public. Under the revised framework, any person who demonstrates an 'impairment' of their rights caused by a breach of environmental law, provided they are 'directly affected in comparison with the public at large', may submit a request for internal review. This

²¹⁵ Commission, 'Staff Working Document Accompanied by an External Study on the Functioning of Access to Justice in Environmental Matters' SWD (2019) 378 final, 10 October 2019; Commission, 'Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal' COM (2019) 640 final, 11 December 2019; Commission, 'Proposal for a Regulation of the European Parliament and of the Council Amending Regulation (EC) No 1367/2006 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' COM (2020) 642 final, 14 October 2020.

²¹⁶ Pánovics, (n 191) 155.

²¹⁷ Council Regulation (EU) 2021/1767 amending Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention to Community institutions and bodies [2021] OJ L 356/1.

²¹⁸ Pánovics (n 191) 155.

²¹⁹ Regulation (EU) 2021/1767 (n 217) Arts 2, 10.

formulation avoids creating an *actio popularis* while effectively overcoming the rigid admissibility standards of the *Plaumann* doctrine.²²⁰

Moreover, the 2021 reform introduced additional procedural improvements aimed at enhancing scrutiny quality: indeed, NGOs now have more time to consider whether to file a review request (two weeks more), while institutions benefit from four additional weeks to respond. Moreover, a new participatory mechanism allows groups of citizens (at least 4000 people from five Member States, with at least 250 from each) to trigger scrutiny of environmental concerns in the public interest.²²¹

The 2021 reform marks a decisive shift from the 2006 model, moving towards a more inclusive and responsive framework, better aligned with the objectives of the Aarhus Convention and the European Green Deal.²²² However, while the revision represents a step forward, it remains a partial solution. Significant structural barriers persist, particularly in relation to acts with environmental effects that are not formally classified under environmental law, and the continued application of the *Plaumann* doctrine remains a key obstacle to standing for the public and NGOs.

Despite the progress achieved, full compliance, both substantively and procedurally, with the Convention's access to justice requirements has not yet been realised. As many scholars have argued, this gap in compliance is largely attributable to constraints arising from Union primary law. Accordingly, it can be concluded that the Aarhus Regulation alone cannot ensure the EU's full alignment with Article 9(3) and (4) of the Convention. To achieve full compliance, and to honor the guarantees enshrined in Article 47 of CFR, substantive reform of the Union's rules on legal standing under primary law remains essential.²²³

²²⁰ George Dellis, 'Greening Luxembourg: Environmental Rights after the 2021 Amendments of EU Aarhus Regulation' (*Chemins Publics*, 10 December 2021).

²²¹ Regulation (EU) 2021/1767 (n 217) Arts 10(2) and 10a.

²²² Regulation (EU) 2021/1767 (n 217) Art 10.

²²³ Tessa Trapp, *The Failure of the Aarhus Regulation? The Impossible Possibility of Substantive Judicial Review Under the Internal Review Mechanism of the Aarhus Regulation* (Amsterdam Law School Research Paper No 2025-07, Amsterdam Centre for European Law and Governance Research Paper No 2025-01, 2025) 1, 24.

5. The Recent Jurisprudence of the CJEU on Environmental Matters

This last section will examine two recent and significant judgements of the CJEU in the field of environmental law, selected for their contemporary relevance and legal importance. These are Case C-565/19 P *Carvalho and Others v. Parliament and Council* and Case C-626/22 *C.Z. and Others v. ILVA SpA*.

The *Carvalho* case is the first climate litigation brought before the CJEU. In this action, 37 citizens from various EU Member States (including members of the indigenous Sámi population) challenged the adequacy of EU climate legislation, calling for more ambitious measures to limit global warming. The applicants claimed to be personally and individually affected by climate change, citing concrete harm to their livelihoods, particularly in sectors such as agriculture and tourism, due to extreme weather events. The case highlights the procedural hurdles faced by individuals and NGOs in establishing legal standing in environmental matters before EU courts.²²⁴

The *C.Z. v. ILVA* case, decided by the Grand Chamber in 2024, concerns an industrial plant in Taranto, Italy, which was the largest steel factory in Europe, known for its long-standing environmental and health impacts. Despite judicial interventions and the 2012 seizure of the site, pollution persisted for years, sparking national controversy over the trade-off between economic interests and the right to health and a clean environment. The Court reaffirmed the Member States' obligation to protect public health even in the face of industrial or economic pressures.²²⁵

These two cases were chosen because they reflect key aspects of recent CJEU jurisprudence: the challenges of enforcing environmental rights through the courts, and the effectiveness of EU law in responding to environmental threats linked to industrial operations.

²²⁴ Massimiliano Montini, 'La giustizia climatica nell'Unione europea: il caso *Carvalho* e le prospettive future' (2023) *Ordine internazionale e diritti umani* 654–662; Case C-565/19 P *Carvalho and Others v Parliament and Council* [2021] EU:C:2021:252.

²²⁵ Sarah Argentesi, 'ILVA di Taranto: il disastro ambientale e il ruolo dell'ONA' (*Osservatorio Nazionale Amianto*, 23 October 2024); Case C-626/22 *C.Z. and Others v ILVA SpA* [2024] EU:C:2024:542.

5.1 C-565/19 P *Carvalho and Others v. Parliament and Council*

This judgement, delivered at the appellate level, marked the resolution of the first climate litigation case ever brought before the CJEU. It was not, however, the only one: in 2021, the Peter Sabo case was also lodged, though it was dismissed as manifestly unfounded.²²⁶ *Carvalho* nonetheless remains the most significant, both as the first case decided by judgement and because of its wide media coverage.

The action fits within a broader trend of climate litigation, in which citizens across the world have sought judicial orders compelling governments to adopt more ambitious climate measures.²²⁷ Within this framework (of which the *Klimaseniorinnen* case, discussed earlier, is a notable example), *Carvalho* is distinctive in that it was directed not against a Member State, but against the EU itself. This feature introduced inherent limitations that ultimately influenced the outcome.

The applicants, 37 individuals from EU and non-EU countries together with a Sámi youth association, sought the annulment of three EU legislative acts: Directive (EU) 2018/410, Regulation (EU) 2018/841, and Regulation (EU) 2018/842. These measures implemented the EU's NDCs under the Paris Agreement. The applicants argued that the 40% emissions reduction target for 2030, compared to 1990 levels, was too modest and inconsistent with higher-ranking norms requiring stricter cuts. To support their case, they relied on extensive scientific evidence, including IPCC reports, showing that anthropogenic greenhouse gas emissions drive global warming and intensify extreme weather events, thereby endangering fundamental rights, particularly their own.

On these grounds, the applicants claimed that the EU was legally bound to prevent such rights violations by adopting more ambitious climate policies, citing Articles 2, 3, 15, 16, 17 and 24 CFR, as well as Article 191 TFEU. Accordingly, they asked the Court to annul the contested measures in so far as they set only a 40% reduction, and

²²⁶ Case C-297/20 P *Peter Sabo v European Parliament and Council of the European Union* (Order of 14 January 2021, appeal from Case T-141/19 *Peter Sabo v European Parliament and Council of the European Union* [2020] EU:T:2020:179; Francesco Gallarati, 'Caso Carvalho: la Corte di Giustizia rimanda l'appuntamento con la giustizia climatica' (2021) 2 *DPCE Online* 2603.

²²⁷ Massimiliano Montini, 'Verso una giustizia climatica basata sulla tutela dei diritti umani' (2020) *Ordine internazionale e diritti umani* 506; Gallarati (n 226).

to order Parliament and Council to adopt legislation imposing at least a 50–60% reduction by 2030.

From a procedural standpoint, the action was partly classified as an action for annulment under Article 263 TFEU, and partly as an action for damages based on non-contractual liability pursuant to Articles 268 and 340 TFEU.²²⁸

At first instance, the General Court dismissed the case on grounds of inadmissibility,²²⁹ and this decision was upheld on appeal by the Court of Justice. In both instances, the debate focused on the preliminary issue of whether the applicants had *locus standi*.

The applicable provision, Article 263(4) TFEU, permits individuals to bring annulment actions in three circumstances: when they are the addressee of the act; when the act, though not addressed to them, affects them directly and individually; or when the act is regulatory in nature, directly affects them, and requires no implementing measures. In *Carvalho*, the first and third conditions were excluded, since the measures were legislative, not regulatory, and not addressed to the applicants. Therefore, the case hinged on the requirement of ‘individual concern’.

In this regard, the admissibility of the action brought by the applicants had to be assessed in light of the criteria established by the *Plaumann* case law, dating back to 1963, to which the Court still refers when examining the admissibility of annulment actions. According to that case law, in particular:

‘A person other than the addressee of a decision may claim to be individually concerned only if that decision affects them by reason of certain attributes peculiar to them or by reason of circumstances that differentiate them from all other persons, and thereby distinguishes them individually just as in the case of the addressee.’²³⁰

In the present case, the applicants claimed to be individually affected by climate change, since some of them were farmers, others tourism operators, and, ultimately,

²²⁸ TFEU (n 22) Artt. 263, 268, 340.

²²⁹ Case T-330/18 *Armando Carvalho and Others v European Parliament and Council of the European Union* [2019] EU:T:2019:324; Gerd Winter, ‘*Armando Carvalho and Others v EU: Invoking Human Rights and the Paris Agreement for Better Climate Protection Legislation*’ (2020) *Transnational Environmental Law*; Morgan E Harris, ‘*Carvalho and Others v Parliament and Council: Climate Justice and “Individual Concern”*’ (2020) 1 *Diritti umani e diritto internazionale*, 175.

²³⁰ *Plaumann v Commission* (n 94).

all were individually and differently harmed in the enjoyment of their fundamental rights. However, this argument was not accepted by the General Court, for reasons that the Court did not consider necessary to reconsider on appeal. Specifically, while acknowledging that climate change may affect all individuals in one way or another, the Court held that this circumstance was not sufficient to confer standing on every individual to challenge a general measure, as this would effectively undermine the requirements laid down in Article 263 TFEU and, in particular, the criteria developed in the *Plaumann* case law.²³¹ For similar reasons, the Court also rejected the argument raised by the applicant that the requirement of individual concern should be considered satisfied whenever the challenged measure interferes with the enjoyment of a fundamental right of an individual nature. On this point, the Court noted that accepting such an interpretation would effectively deprive Article 263(4) TFEU of meaning, as any general measure is in fact always capable of interfering with a fundamental right.²³²

Secondly, the applicants asked the Court to reconsider the admissibility criteria for annulment actions under Article 263(4) TFEU, as developed by the *Plaumann* case law, in order to align them with the right to an effective remedy before an impartial tribunal in the event of a violation of their fundamental rights, as enshrined in Article 47 CFR.

The Court, drawing on *Unión de Pequeños Agricultores*, held that Article 263 TFEU must indeed be read in light of Article 47 CFR, but this cannot override the conditions expressly laid down in the Treaties. If those conditions are too restrictive, it is for the Member States, not the Court, to amend them through Treaty revision. The Court also reiterated its view from *Unión de Pequeños Agricultores* that EU law provides a complete system of remedies. Individuals who cannot bring direct actions under Article 263(4) TFEU may still challenge EU acts through Article 277 TFEU or via national courts and preliminary ruling.²³³ On this basis, the applicants' request for a broader interpretation of standing criteria was rejected in both instances.

²³¹ *Carvalho and Others v Parliament and Council* (n 227) para 37.

²³² *Carvalho and Others v Parliament and Council* (n 227) para 46-48.

²³³ See Case C-50/00 P *Unión de Pequeños Agricultores v Council of the European Union* EU:C:2002:462, para 44; and Case C-263/02 P, *Commission of the European Communities v Jégo-*

Yet, while consistent with established case law, these conclusions leave significant issues unresolved, particularly as regards the effectiveness of judicial remedies in environmental matters. The assertion that EU law already ensures a complete system of remedies is not entirely convincing. The criticisms raised by AG Jacobs in *Unión de Pequeños Agricultores* and echoed by the General Court in *Jégo-Quéré* remain pertinent. Indeed, the preliminary reference procedure under Article 267 TFEU does not always guarantee full and effective protection. Member States may lack adequate remedies to review the legality of EU acts, especially when such acts are self-executing or require no implementing measures. Moreover, even where national courts are empowered, and in some cases obliged, to refer questions of validity, there is no certainty that they will do so, since the mechanism is subject to conditions that leave judges with wide discretion.²³⁴

These issues had been explicitly raised by the appellants, but the Court chose not to address them, reiterating instead its established view that EU law already provides a complete system of remedies. As affirmed in *Unión de Pequeños Agricultores*, it is for Member States to ensure effective judicial protection through their own legal systems.²³⁵ In practice, however, this reasoning sits uneasily with Article 47 CFR, now primary EU law, which guarantees an effective remedy also against acts of Union institutions as well.

The Court further argued that Article 47 CFR cannot justify disregarding the conditions laid down in Article 263 TFEU, since doing so would exceed the competences conferred by the Treaties. While this may be true for the requirements expressly contained in Article 263, it does not necessarily apply to the additional criteria developed by the Court itself. In particular, the Treaties do not oblige the Court to interpret ‘individual concern’ as narrowly as in *Plaumann*; nothing prevents a broader approach, for instance, recognising standing for applicants who can show substantial and immediate harm directly caused by the contested act.

Quéré & Cie SA EU:C:2004:210, para 36, both cited in Case T-330/18, *Carvalho and Others v Parliament and Council* (n 227) paras 68–69.

²³⁴ Opinion of AG Jacobs in Case C-50/00 P *Unión de Pequeños Agricultores v Council of the European Union* [2002] EU:C:2002:197, paras 36–49.

²³⁵ Opinion AG Jacobs (n 234) para 41.

With particular regard to the ‘individual concern’ condition, nothing in the Treaties obliges the Court to require that the applicant’s position be equivalent to that of the act’s addressee. There is no logical or legal obstacle preventing a more expansive approach, for example, by recognising individual concern in anyone able to demonstrate substantial and immediate harm directly caused by the contested measure.²³⁶

Additional concerns arise from the compatibility of the EU system with Article 9 of the Aarhus Convention, binding on the Union since 2005. Although Regulation (EC) No 1367/2006 introduced a procedure allowing NGOs to challenge EU decisions in environmental matters, its scope remains limited. It applies only to administrative acts of individual scope, excludes legislative acts, requires prior internal review, and remains subject to Article 263(4) TFEU, thereby perpetuating the restrictive standing criteria.

The doubts voiced by many scholars, as well as by the ACCC, about the conformity of EU law with the Convention’s access to justice requirements prompted an amendment of the Regulation in 2021. Yet the reform only partly addressed the problem and, in any event, had no bearing on the case at issue, since the revised text still limits admissibility to administrative acts, excluding legislative ones. The European courts clarified their stance in *Peter Sabo*, where both the General Court and the Court of Justice dismissed as manifestly unfounded the claim that the *Plaumann* criteria were incompatible with the Aarhus Convention. The Court underlined that the Convention does not require access to justice against legislative acts, and therefore the EU is not bound to extend standing to such measures.²³⁷

What emerges is the Court’s reluctance to allow judicial review of EU legislative acts, a reluctance rooted not only in concerns over a potential overabundance of litigation but also in a broader deference to the legislator, one that inevitably curtails the effectiveness of constitutional review. This restrictive approach to *locus standi*, reaffirmed by this judgement, significantly limits the justiciability of acts adopted by

²³⁶ Opinion AG Jacobs (n 234) para 59-60.

²³⁷ Case C-297/20 P *Peter Sabo v European Parliament and Council of the European Union* (n 226) paras 35–37.

EU institutions in environmental matters. This limitation is particularly evident in the climate sector, where, more than in general environmental cases, it is extremely difficult to establish a direct causal link between the adoption of a general measure and the occurrence of an individual harm. Thus, imagining a climate action that satisfies the direct and individual concern requirement, as interpreted under *Plaumann*, appears at present to be a highly challenging task.

In conclusion, it can be observed that although the outcome of the *Carvalho* case may have dampened the enthusiasm of climate litigation proponents before the Court, it does not necessarily mark the end of climate justice within the EU legal order. On the contrary, likely, the Court of Justice has only postponed its reckoning with an issue that will demand a clear stance from the EU judges.

7.2 C-626/22 C.Z. and Others v. ILVA SpA (Grand Chamber, 2024)

If one wants to trace back the history of European integration, mention must necessarily be made of the ECSC. Inspired by the Schuman Declaration of 9 May 1950, it represented the first attempt to create a common market for strategic materials such as coal and steel. The aim was not only to support Europe's post-war reconstruction but also to prevent new rearmament policies on both sides of the Rhine in the early years of the Cold War. Today, the ECSC is part of history: while coal is (at least in principle) destined to follow the same path under environmental treaties such as the Paris Agreement, steel production remains a central issue in EU law, particularly under Directive 2010/75/EU on industrial emissions (the IED).²³⁸

This became evident in the case concerning the Italian Ilva SpA steel plant, which led to the CJEU Grand Chamber judgement of 25 June 2024 in C-626/22 *C.Z. and Others v. Ilva SpA in Amministrazione Straordinaria*. The Ilva plant, located in Taranto, is one of the largest steelworks in Europe: as AG Kokott recalled in her Opinion,²³⁹ it covers an area of 1500 hectares and employed around 11,000 workers in 2019, while

²³⁸ Jacques Bellezit, 'Good IED! The CJEU Grand Chamber "Ilva" judgment: a Kirchberg view of conciliating environmental law and human rights' (*EU Law Analysis*, 10 July 2024).

²³⁹ Opinion of AG Kokott in Case C-626/22, *C.Z. and Others v Ilva SpA in Amministrazione Straordinaria* [2023] EU:C:2023:990, para 49.

the Italian State still held almost 40% of the shares and exerted particular influence over the company.²⁴⁰

Residents of Taranto and nearby towns brought proceedings before the Milan District Court, claiming that the plant's activities violated their rights to health, to peace and tranquillity in their lives, and to a clean climate. The CJEU had never dealt with the plant before, although the ECtHR had already condemned Italy several times in connection with it, most notably in *Cordella and Others v. Italy* (2019), *Ardimento and Others v. Italy* (2022), and *Briganti and Others v. Italy* (2022).²⁴¹ In all of these cases, the Strasbourg Court found violations of Articles 8 and 13 ECHR, recognising that both residents and workers suffered from illnesses such as cancer due to prolonged exposure to pollutants like Sulphur dioxide (SO₂) and PM10 particulate matter. These emissions had been documented for decades by national and international scientific reports.²⁴²

Italian law had transposed the IED through Legislative Decree No 152 of 3 April 2006. In 2012, however, the Taranto District Court ordered the provisional seizure of Ilva's 'hot zone' equipment, effectively stopping production.²⁴³ In response, the Italian authorities adopted a tailor-made regime between 2012 and 2016 to ensure the plant's continued operation. Ilva was classified as a 'plant of strategic national importance', its facilities placed under government-appointed provisional administrators, deadlines for environmental rehabilitation were repeatedly extended, and, in 2016, as part of the transfer of shares to ArcelorMittal, the EIA regime was replaced by an *ad hoc* decree of the President of the Council of Ministers, considered equivalent to an Integrated Environmental Permit.²⁴⁴

In the current CJEU case, residents and neighbours of the ISSPP seized the Milan District Court of a class-action request for 'an injunction in respect of the operation of the installation or at least parts thereof to protect their rights to health, to peace and

²⁴⁰ Opinion of AG Kokott (n 239) para 64.

²⁴¹ *Cordella and Others v Italy* App nos 54414/13 and 54264/15 (ECHR, 24 January 2019); *Ardimento and Others v Italy* App no 17285/18 (ECHR, 24 May 2022); *Briganti and Others v Italy* App no 12030/18 (ECHR, 13 July 2022).

²⁴² *Cordella and Others v Italy* (n 241) paras 13–31.

²⁴³ Case C-626/22 *C.Z. and Others v ILVA SpA* [2024] EU:C:2024:542, para 27.

²⁴⁴ *C.Z. and Others v Ilva SpA* (n 243) paras 27–35.

tranquility in the conduct of their lives and to the climate. In their view, those rights have been very seriously affected for decades by the operation of the steelworks'.²⁴⁵

After dealing with an admissibility, following the preliminary ruling procedure, the CJEU was asked to answer the following questions:

- i. Does Directive 2010/75, read in the light of Article 191 TFEU, must be interpreted as meaning that the Member States are required to impose a prior assessment of the effects of the activity of the installation concerned on the environment and on human health as an integral part of the procedures for granting or reconsidering a permit to operate such an installation under the directive?
- ii. Must Directive 2010/75 be interpreted as meaning that, to grant or reconsider a permit to operate an installation under that directive, the competent authority must take into account, in addition to the polluting substances that are foreseeable having regard to the nature and type of industrial activity concerned, all those polluting substances which are the subject of emissions scientifically recognised as harmful which result from the activity of the installation concerned, including those generated by that activity which were not assessed during the initial authorisation procedure for that installation?²⁴⁶

The Grand Chamber held that the IED Directive, read in the light of Article 191 TFEU and Articles 35 and 37 of the CFR, requires Member States to ensure that any prior assessment of the environmental and health effects of an installation forms an integral part of the procedure for granting or reconsidering its operating permit. In this context, national authorities must not only consider the foreseeable pollutants linked to the nature and type of the industrial activity, but also all harmful substances scientifically recognised as liable to be emitted, including those not initially assessed when the authorisation was first granted. Moreover, the judgement excludes national legislation that repeatedly extends the time allowed to operators to comply with protective

²⁴⁵ *C.Z. and Others v Ilva SpA* (n 243) para 46.

²⁴⁶ *C.Z. and Others v Ilva SpA* (n 243).

measures, despite the existence of serious risks to health and the environment. In such cases, the activity of the installation should be suspended.²⁴⁷

Although the decision condemned the tailor-made regime created for Ilva, it also broadened the scope of the IED in a jurisprudential manner. The Court underlined that EIAs are not only an integral part of the permitting procedure but must also take account of pollutants recognised as harmful and potentially emitted, even when not foreseeable.²⁴⁸ This extension, grounded in the protection of health and the environment as safeguarded by Articles 35 and 37 of the Charter, risks placing a significant burden on national environmental authorities. Assessing substances that are ‘liable to be emitted’ may increase both the complexity and the weight of environmental reports, especially given the scientific and legal challenges of determining the presence and impact of such substances.

The Aarhus Convention adds another layer of complexity, requiring that environmental information be transparent and accessible to the public.²⁴⁹ Reconciling this obligation with the technical difficulties of assessing scientific data is not straightforward, since even lawyers and judges often struggle to evaluate highly complex environmental evidence.²⁵⁰

The Italian authorities, by creating an *ad hoc* regime for Ilva in an attempt to safeguard employment, contributed to this legal and political tangle, making it even harder for ordinary citizens, especially those already affected by pollution-related illnesses, to obtain information in a truly transparent and comprehensible way.

The Ilva case, described by a French ecological newspaper as an ‘ecological monster’ or ‘ecological bomb’, has already been addressed twice by the ECHR and is now under the scrutiny of the CJEU Grand Chamber. Yet, while the judgement is unlikely to eliminate pollution or compensate victims, it illustrates how the provisions of the IED must be reconciled with the CFR. This approach reflects a broader trend of aligning

²⁴⁷ Bellezit (n 238).

²⁴⁸ Bellezit (n 238).

²⁴⁹ Aarhus Convention (n 154) art 5(2).

²⁵⁰ *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgement) [2010] ICJ Rep 14, Joint Dissenting Opinion of Judges Al-Khasawneh and Simma, para 4.

human rights law and environmental law, already affirmed by the ECHR in cases such as *Klimaseniorinnen v. Switzerland*, and now acknowledged by the Luxembourg Court.

Indeed, since 1970, the Court recognised that ‘international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories, can supply guidelines’, chiefly the ECHR. If the ‘principle of equivalence’ in protection of human rights between the ECHR and EU legal systems was recognised by Strasbourg judges,²⁵¹ the CJEU was more reluctant to follow its Strasbourg counterpart, wanting to preserve its authority over EU law interpretation.²⁵²

In the *Ilva* judgement, however, the Court gave due weight to previous Strasbourg judgements on the same issue. What emerges is a cautious but significant recognition of the ECtHR’s case law within the EU legal order. However, this road is far from smooth: it is marked by the pollution of Ilva’s steelworks and the suffering of its victims.²⁵³

8. Concluding remarks

As this chapter has illustrated, the evolution of environmental protection in the EU legal order reflects a profound transformation: from its initial marginalisation in the founding treaties to its present status as a core constitutional objective, embedded in both primary and secondary law. The EU’s legal framework now integrates environmental concerns across a wide range of policies, promotes sustainable development, and formally acknowledges environmental protection in instruments such as Articles 191–193 TFEU, Article 11 TFEU, and Article 37 of CFR. However, this normative progress has not been fully mirrored in the domain of procedural rights and access to justice.

The analysis of judicial remedies reveals a persistent and significant gap between environmental protection and procedural enforceability. Access to the EU Courts under Article 263(4) TFEU remains tightly restricted. Legal standing is recognised

²⁵¹ *Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v Ireland* App no 45036/98 (ECtHR, 30 June 2005); *Avotiņš v Latvia* App no 17502/07 (ECHR, 23 May 2016).

²⁵² *Accession of the European Union to the European Convention on Human Rights* (n 139).

²⁵³ *Bellezit* (n 238).

only when the applicant is either the addressee of the measure or is directly and individually concerned by it. This interpretation, consolidated through the *Plaumann* doctrine, has been applied rigidly, preventing individuals and civil society actors, including environmental NGOs, from challenging EU acts unless they can demonstrate a personal and unique legal impact, which is rarely possible in environmental matters.

Despite the recognition of a fundamental right to effective judicial protection, the CJEU maintains that the current system of remedies, comprising direct actions and the preliminary reference mechanism under Article 267 TFEU, is complete and sufficient. It has also repeatedly affirmed that the general interest in safeguarding the environment does not qualify as an individual legal interest capable of conferring standing.

Nonetheless, the EU's international commitments, especially under the Aarhus Convention, offer an alternative normative perspective. The Convention seeks to strengthen public participation and judicial access in environmental governance. Yet, its implementation within the EU legal order remains incomplete. While the Convention has higher authority than secondary law, it cannot override Treaty provisions such as Article 263(4) TFEU, which limits the possibilities for using it as a direct basis for broadening access to justice at the EU level. The Aarhus Regulation, even after the 2021 reform, still falls short in ensuring meaningful judicial accountability for EU institutions.

Moreover, the Court has clarified that only the Member States, not the judiciary, have the power to reform the current standing regime through Treaty amendment, a position rooted in the principle of sincere cooperation under Article 4(3) TEU. This constitutional constraint underscores the limits of relying on litigation alone to advance environmental rights within the Union's institutional framework.

The recent case law of the CJEU further illustrates these tensions. In *Carvalho and Others v. Parliament and Council*, the Court reaffirmed its restrictive interpretation of *locus standi*, excluding individuals and NGOs from directly contesting EU climate measures despite the serious risks posed by global warming. At the same time, in *C.Z. and Others v. ILVA SpA*, the Grand Chamber strengthened substantive protection by requiring Member States to ensure that environmental and health risks are fully

assessed before authorising industrial activities, even if this entails suspending operations. Taken together, the two rulings reveal a paradox: while the CJEU shows a willingness to expand substantive environmental rights, it remains reluctant to relax procedural barriers to judicial access.

In conclusion, while the EU has made considerable strides in substantive environmental law, its procedural architecture remains ill-suited to address the challenges of environmental litigation in an era of ecological urgency. The asymmetry between high-level policy commitments and limited legal standing undermines the effectiveness of environmental governance and restricts democratic participation. Unless a structural reform of judicial access is undertaken, either through Treaty change or through more ambitious secondary legislation, environmental justice in the EU will remain more a principle than a practice.

CONCLUSION

The research conducted in this thesis has examined the emergence and development of environmental rights, specifically the right to a healthy environment, within international, regional, and supranational legal frameworks, with a particular focus on the role of individual litigation. While significant progress has been made in integrating environmental concerns into both international human rights law and the EU legal order, the current system remains fragmented, uneven, and constrained by political as well as procedural limitations.

Recent developments occurred at the international level suggest that the right to a healthy environment may evolve into a fully autonomous right within the near future. The 2022 UNGA's Resolution, which recognised the human right to a clean, healthy, and sustainable environment, represented a historic acknowledgment of the intrinsic link between environmental protection and the enjoyment of fundamental rights. More importantly, the ICJ's Advisory Opinion delivered on 23 July 2025 clarified that States bear positive obligations under international law to combat climate change and mitigate its consequences. This pronouncement demonstrates that tackling the climate crisis is a legal imperative that States must fulfil as part of their international commitments. Still, the very necessity of resorting to an advisory opinion demonstrates the reluctance of States to accept binding treaty obligations in this domain. Indeed, proposals for additional protocols or conventions explicitly codifying the right to a healthy environment are still being blocked by political obstacles, revealing a profound gap between international aspirations and concrete commitments.

In the European context, the coexistence of the ECtHR and the CJEU adds another layer of complexity. Despite the constraints of their respective mandates, both have contributed significantly to the development of environmental rights. Through the 'living instrument' doctrine, the ECtHR has progressively 'greened' the Convention, interpreting rights such as the rights to life, property, and, most importantly, the right to private and family life in light of environmental concerns. In doing so, it has not only addressed concrete harms but also signalled a readiness to engage with systemic challenges such as climate change, as demonstrated in recent cases of climate litigation.

By contrast, the CJEU, originally conceived as ‘the guardian of the Treaties’, has taken a more cautious and indirect approach. Nevertheless, human rights considerations have progressively informed its jurisprudence, and most notably, it often refers to the ECtHR’s case law as a model when it comes to the protection of fundamental rights. This imbalance demonstrates how the two courts serve different purposes, but also the potential complementarity of their roles. Through the interpretation of the CFR and its case law on access to justice, the CJEU has contributed to the enforcement of environmental norms within the EU. However, restrictive doctrines on individual standing, exemplified by the *Plaumann* test, continue to hinder direct access for individuals and NGOs to EU remedies, and even reforms linked to the Aarhus Convention have only partially alleviated these obstacles.

The comparison between the ECtHR and the CJEU shows a picture of complementarity rather than redundancy. On the one hand, the ECtHR has demonstrated greater flexibility and willingness to integrate environmental protection into its human rights jurisprudence, even if often through indirect reasoning. On the other hand, the CJEU, while more constrained procedurally and institutionally, remains crucial for ensuring the effective implementation of EU environmental law and for linking environmental protection to broader questions of legality, governance, and compliance. In other words, both courts play indispensable but distinct roles, and their coexistence contributes to the richness and resilience of the European legal space.

Yet, a persistent difficulty is the absence of genuine judicial dialogue between the two courts in the field of environmental rights. Whereas in other domains, such as non-discrimination, there has been a fruitful cross-fertilisation of jurisprudence, in environmental matters, the ECtHR and the CJEU continue largely to operate in parallel. This silence is not without repercussions: it perpetuates inconsistencies, prevents the emergence of a coherent body of case law, and ultimately weakens the enforceability of environmental rights.

A structural explanation for this disparity can be traced in the EU’s persistent reluctance to accede to the ECHR. This institutional impasse has particularly acute implications in the field of environmental rights. Nonetheless, especially given the

inherently cross-border nature of environmental harm, individuals could significantly benefit from a genuine dialogue between the Courts.

Ultimately, it is possible to say that individual litigation has been central in addressing environmental concerns through the human rights law framework, offering concrete remedies and gradually contributing to the articulation of standards and obligations. Yet, its effectiveness is often undermined by procedural hurdles, restrictive standing rules, and the absence of an explicit substantive right to a healthy environment. As proof of that, the jurisprudence of the ECtHR demonstrates how dynamic interpretation can partially compensate for these gaps, whereas the practice of the CJEU underscores the limits imposed by institutional design and doctrinal rigidity.

In conclusion, the trajectory traced in this contribution reveals a legal field in transition. Individual litigation remains the most significant and accessible tool for individuals and communities to seek environmental justice, even though it is far from flawless. The recognition of a substantive right to a healthy environment (whether through its explicit codification in a binding treaty or through the gradual crystallisation of customary international law), combined with greater institutional coherence and judicial dialogue, would reinforce the effectiveness of this legal avenue. The urgency of the climate crisis leaves little room for complacency: law must adapt to societal transformations and contemporary challenges, and courts, at international, European, and domestic levels, should play their part in ensuring that environmental protection is not merely aspirational, but firmly anchored within the framework of fundamental rights and the rule of law.

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