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## Ensuring the human rights to a healthy environment: normative regulation and practice of the ECtHR

At the present stage of humankind, the question of understanding a person as part of an ecosystem is increasingly being raised. Modern challenges and processes of globalization require the creation of a new social consciousness and significant changes to the politics and economy of the world community. However, the realization of such aspirations is impossible without respect for environmental human rights. As of today, environmental rights remain a focus of attention in the developed countries of the world. This area of human rights protection is enshrined in national constitutions, but the right to a safe environment is not specified at all in any international act. The real observance of environmental human rights and the existence of effective mechanisms for their protection are indicators of how the development of the state meets the modern needs of society.

**I. Normative regulation.** It should be emphasized that the scientific recognition and normative consolidation of environmental rights in international law are important for the development of international ideological concepts of environmental protection, based on the ideas of solving environmental problems in the interests of the individual and all humankind. This is also salient for the formation of a system of international environmental law.

A striking example of an international treaty that secures environmental human rights is the Convention of the United Nations Economic Commission for Europe on Access to Information, Public Participation in Decision-Making and Access to Justice on Environmental Issues, adopted on 25 June

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1998, in Aarhus, Denmark (the Aarhus Convention). This identified three main types of environmental rights considered as important factors in the development of democracy:

- 1) Public access to environmental information.
- 2) Public participation in the decision-making process on environmental issues.
- 3) Public access to justice on environmental issues.<sup>2</sup>

These rights are implemented primarily through the formation of international environmental policy and international environmental legislation, especially the EU's strategic position on the environment. This was legally enshrined in the Treaty on the European Community, which declared the EU's aspirations for a high degree of protection, improving the quality of the environment and people's standard of living. Over time, it became a starting point for the environmental policy and law of the EU, and then a duty for the implementation of national environmental legislation.

The scope of the UNECE Convention is regional, and any European country can join it. It is based on the provisions of the first principle of the Declaration of the United Nations Conference on the Human Environment<sup>3</sup> and the tenth principle of the Rio Declaration on the Environment and Development.<sup>4</sup> The main idea of the Convention is to recognize the obligations of present society to future generations. This follows from the very purpose of the Convention, enshrined in Article 1 – to ensure that every citizen lives in an environment conducive to their health and well-being. In addition, the subject of the Convention directly concerns the relationship between society and governing bodies. The Aarhus Convention goes further than any other Convention on Environmental Protection, in the sense that it imposes on the authorities of member states clear obligations to society to ensure access to information, public participation in decision-making, and access to justice.

At present, the national environmental legislation of developed countries establishes a number of conditions and guarantees for the implementation of the environmental rights specified in the Aarhus Convention. These include, in particular, measures of an administrative and judicial nature: citizens have the right to appeal to authorities, other bodies, and organizations on issues relating to the negative impact on the environment, and to file lawsuits if their environmental rights are violated.

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2 UNECE Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters [Internet]. [cited 2023 February 4]. Available from: <http://www.unece.org/env/pp/welcome.html>

3 Declaration of the United Nations Conference on the Human Environment [Internet]. [cited 2023 February 4]. Available from: [https://www.un.org/ru/documents/decl\\_conv/declarations/declarathenv.shtml](https://www.un.org/ru/documents/decl_conv/declarations/declarathenv.shtml)

4 The Rio Declaration on Environment and Development [Internet]. [cited 2023 February 4]. Available from: <https://www.preventionweb.net/files/resolutions/N9283657.pdf>

When applying the claim method of protecting rights in court, citizens may, however, face problems proving the facts of violation of their environmental rights, or rather difficulties associated with the need to independently prove the facts of violation of environmental rights and the causal relationship between the action committed and the ensuing consequences. However, a positive point in the assessment of evidence in disputes over environmental rights is the effect of the principle of proof beyond a reasonable doubt, the use of which is practised by the European Court of Human Rights. The specified principle is that evidence must be sufficiently powerful, understandable, and supported by one of the conclusions or similar irrefutable presumptions of fact. The application of this principle reflects the maximum standard when establishing the fact of violation of a particular environmental law.

A further issue over judicial protection of environmental rights is the lack, in some countries, of legislation enshrining certain such rights. This is important for determining the boundaries of the environmental rights of citizens as such, as well as separating them from other rights. In turn, this leads citizens to become unable or unwilling to make decisions on ensuring the protection of their environmental rights.

The recognition and consolidation of the right to a healthy environment developed gradually; it was first defined in 1972 in the Declaration on the Environment at the UN Conference in Stockholm (the so-called Stockholm Declaration).<sup>5</sup> The first Principle of this Declaration stipulates that a person has a fundamental right to freedom, equality, and proper living conditions, in an environment of a quality that allows for a dignified life and well-being. In accordance with these provisions, a mutually determining link was established between the state's obligation to ensure a favourable environment and the unconditional characteristic of achieving a prosperous "high-quality" standard of human life. Thus, the Stockholm Declaration became a catalyst for the recognition of the right to a healthy environment at the international and national levels. As UN Special Rapporteur David Boyd rightly points out, today, the right to a healthy environment "is included in regional human rights treaties and environmental treaties binding more than 120 states. It enjoys constitutional protection in more than 100 states and is incorporated into the environmental legislation of more than 100 states. In total, 155 states have already established legal recognition of the right to a healthy and sustainable environment."<sup>6</sup>

Another international legal act that allowed for rethinking of the global mechanisms for ensuring the realization and protection of the right

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5 Declaration of the United Nations Conference on the Human Environment [Internet]. [cited 2023 February 4]. Available from: [https://www.un.org/ru/documents/decl\\_conv/declarations/declarathenv.shtml](https://www.un.org/ru/documents/decl_conv/declarations/declarathenv.shtml)

6 Boyd, D., Chapter 2: The Right to a Healthy and Sustainable Environment, in Aguila, Y. and Viñuales, J.E., 2019. A Global Pact for the Environment-Legal Foundations. University of Cambridge.

to a healthy environment was the Declaration on the Environment and Development, adopted in 1992 at the UN Conference in Rio de Janeiro. This identified the need to create certain mechanisms for access to environmental information, public administration in the field of environmental protection, justice, and so on.<sup>7</sup> The Declaration defines the fundamental principles of the implementation of world and domestic policy in the field of environmental protection. In particular, the fundamental principle of the system of subjective public environmental rights is the recognition of the priority of “caring for people” to ensure a decent and fruitful standard of living (Principle 1). Principles 2–4 determine the need to use natural resources and natural objects with a focus on meeting both the needs of the current generation and future generations, which is the basis of the generally recognized world concept of sustainable development. According to Principle 7, international cooperation is necessary for the tasks of preserving, protecting, and restoring the healthy state and integrity of the Earth’s ecosystem. Principle 9 declares the need to intensify the processes of “greening.”<sup>8</sup> Finally, Principle 10 gives every person the right to participate in the adoption and development of management decisions in the field of environmental protection; to have access to environmental information available to public authorities, including information about hazardous materials and activities in their communities; and to participate in decision-making processes.<sup>9</sup>

The system of guarantees for the implementation of subjective public environmental rights contained in the Declaration, in accordance with the provisions of international legal acts, includes the following:

- 1) National bodies of the judiciary as a component of the system of public administration.
- 2) Administrative bodies, the activities and functioning of which should be properly regulated in accordance with the requirements of national administrative and procedural legislation.
- 3) Criteria for the effectiveness of legislative acts in the fields of environmental protection and the anthropogenic environment. These criteria, in accordance with international standards, include the expediency of considering the environmental conditions for the development of society and the relevant region. National environmental programmes should take into account the social and economic needs of the state, society, and its individual components.
- 4) Establishment of mechanisms for compensation for losses caused by pollution of the natural and anthropogenic environment.<sup>10</sup>

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7 The Rio Declaration on Environment and Development [Internet]. [cited 2023 February 4]. Available from: <https://www.preventionweb.net/files/resolutions/N9283657.pdf>

8 Ibid.

9 Ibid.

10 Ibid.

Only if a complex set of such factors of influence is implemented does it become reasonable to conclude that the state has adopted effective means of exercising and protecting subjective public environmental rights.

Principle 14 of the Declaration indicates the priority of establishing the inexpediency of transferring environmentally hazardous industries from the territory of one (socio-economically developed) country to another, less developed country.<sup>11</sup> Meanwhile, Principle 20 pays special attention to the issue of women's participation in the adoption and development of management decisions.<sup>12</sup>

As already noted, the fundamental principles of the implementation and protection of subjective public environmental rights were reflected in the next international legal act, the UN Aarhus Convention (the UN Convention on Access to Information, Public Participation in Decision-Making and Access to Justice on Environmental Issues) of 1998. The adoption of the Aarhus Convention was a decisive stage in ensuring the right of the individual to a safe natural and anthropogenic environment.<sup>13</sup>

Given the importance of proper information support for courts on the environmental rights of citizens, in August 2002, 120 judges from about 60 countries, at the invitation of the United Nations Environment Programme (UNEP), gathered at the Global Symposium of Judges in Johannesburg, South Africa. The judges subsequently adopted the so-called Johannesburg Principles on the role of law in sustainable development. This document emphasizes that independent judicial bodies and proceedings are vital for the implementation, development, and enforcement of environmental law.

The Symposium noted that judges at all levels (both national and international), as decision-makers, are in a unique position to put environmental principles into practice. In particular, when executive authorities make decisions, especially in the field of industrial development, administrative power is, in a way, dependent on business circles, because industrialists are major taxpayers and funders of budgets. In this context, concerns were expressed about possible pressure on judges from executive authorities and business circles, to persuade judges to side with commercial benefits when deciding cases. Realizing this, at the initiative of the United Nations in November 2002, the Bangalore Principles of Judicial Conduct were adopted; these were approved at the 59th session of the UN Commission on Human Rights in Geneva in April 2003. Briefly, these can be presented in the form of eight indicators of judicial behaviour: independence, objectivity, honesty, incorruptibility, adherence to ethical standards, equality, competence, and diligence.

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11 Ibid.

12 Ibid.

13 UNECE Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters [Internet]. [cited 2023 February 4]. Available from: <http://www.unece.org/env/pp/welcome.html>

With the above in mind, the UN Economic and Social Council has developed programmes to implement the provisions of the Aarhus Convention into national legislation, to strengthen public participation in these processes, and to inform society and representatives of the judiciary about the norms of the Convention.

The system of international legal acts in the field of environmental protection also includes a few agreements and conventions, which detail the mechanisms for implementing the above concepts. In particular, it is worth highlighting the Convention on Transboundary Air Pollution over Long Distances of 1979, the World Charter of Nature of 1982, the UN Convention on the Law of the Sea of 1982, the UN Framework Convention on Climate Change of 1992, the Convention for the Protection of Biological Diversity of 1992, the Additional Protocol I of 1977 to the Geneva Conventions for the Protection of Victims of War of 1949, and agreements of the World Trade Organization on ensuring the safety of consumer products.

International acts include environmental and environmental conventions and their protocols, such as the UN Convention against Drought, the Convention on Biodiversity, the Framework Convention for the Protection and Balanced Development of the Carpathians, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention), the Convention on the Protection of the Black Sea from Pollution, the European Landscape Convention, and the Convention on the Protection of Wild Flora and Fauna, as well as the Natural Environment in Europe (Berne Convention).

UN General Assembly Resolution No. 70/1 of 25 September 2015, “Transforming our world. Agenda for Sustainable Development until 2030,” established that the idea of “sustainable development” involves the goal of “protecting the planet from degradation, including through rational consumption and production, rational use of its natural resources and taking urgent measures to change the climate so that the planet can meet the needs of current and future generations.” This should be combined with the task of ensuring a “wealthy,” decent standard of living for individuals and society as a whole.<sup>14</sup>

However, it is obvious that there is currently a significant need to continue the development of this direction. Therefore, on 29 September 2021, the Parliamentary Assembly of the Council of Europe (PACE) recommended the adoption of an additional protocol to the European Convention on Human Rights that would enshrine, among other things, the right to a healthy environment.<sup>15</sup> PACE called for an ambitious new legal framework, both at na-

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14 UN General Assembly Resolution No. 70/1 of 25 September 2015, Transforming our world. 2030 Agenda for Sustainable Development. [Internet]. [cited 2023 February 4]. Available from: <http://sdg.org.ua/ua/resources-2/344-2030-2015>

15 PACE, Anchoring the Right to a Healthy Environment: Need for Enhanced Action by the Council of Europe, Resolution 2396 (2021), [Internet]. [cited 2023 February 4].

tional and European levels, to anchor “the right to a safe, clean, healthy and sustainable environment”; it presented a draft of an additional protocol to the European Convention on Human Rights which would make such a right enforceable in law in all countries which ratified it.

In a resolution and recommendations based on a report by Simon Mutkin, “Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe,” PACE declared that “The Convention does not make any specific reference to the protection of the environment, and the European Court of Human Rights can thus not deal effectively enough with this new-generation human right.”<sup>16</sup> In addition, the PACE indicated that about half of the world’s countries recognized such a “right to a healthy natural environment” in their constitutions, including 32 member states of the Council of Europe.<sup>17</sup>

Therefore, in a second resolution based on a report by George Papandreou, “More participatory democracy to tackle climate change,”<sup>18</sup> PACE declared that “the Assembly, therefore, urges governments to combine clear political engagement and top-down leadership with bottom-up, participatory governance, to tackle the urgency of the climate crisis and ensure meaningful contributions from citizens. Deliberative democracy can also provide an antidote to the resurgent threat of authoritarian regimes and reinvigorate democratic practices.”<sup>19</sup> The accepted text emphasizes that “In this respect, stressing the

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Available from: <https://pace.coe.int/en/files/29499>; PACE, Anchoring the Right to a Healthy Environment: Need for Enhanced Action by the Council of Europe, Recommendation 2211 (2021), [Internet]. [cited 2023 February 4]. Available from: <https://pace.coe.int/en/files/29499>; PACE’s resolution and recommendations also propose an additional Protocol to the European Social Charter on the right to a healthy environment, which would recognize the interrelationship between the protection of social rights and environmental protection.

16 Assembly debate on 29 September 2021 (27<sup>th</sup> sitting) (see Doc. 15367, report of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Mr Simon Moutquin). [Internet]. [cited 2023 February 4]. Available from: <https://pace.coe.int/pdf/658d3f594762736ba3c0f378798b2c9529cf4be34aa45a8c38616ecd18fa80c0/resolution%202396.pdf>

17 The Right to a Healthy Environment: PACE Proposes Draft of a New Protocol to the European Convention on Human Rights [Internet]. [cited 2023 February 4]. Available from: <https://pace.coe.int/en/news/8452/the-right-to-a-healthy-environment-pace-proposes-draft-of-a-new-protocol-to-the-european-convention-on-human-rights->

18 Assembly debate on 29 September 2021 (see Doc. 15351, report of the Committee on Political Affairs and Democracy, rapporteur: Mr George Papandreou). [Internet]. [cited 2023 February 4]. Available from: <https://pace.coe.int/pdf/3402d96e0ea3b8ffd6a6baa26727f9e1cf650da3f427eaac56bb41b5ee682a23/resolution%202397.pdf>

19 Assembly debate on 29 September 2021 (see Doc. 15351, report of the Committee on Political Affairs and Democracy, rapporteur: Mr George Papandreou). Text adopted by the Assembly on 29 September 2021. [Internet]. [cited 2023 February 4]. Available from: <https://pace.coe.int/pdf/3402d96e0ea3b8ffd6a6baa26727f9e1cf650da3f427eaac56bb41b5ee682a23/resolution%202397.pdf>

need to increase citizens' active participation and ensure further involvement of all people in the conduct of public affairs, the Assembly refers to its Resolution 1746 and Recommendation 1928 (2010) 'Democracy in Europe: crisis and perspectives', in which it called on all Council of Europe member States to establish participatory and deliberative mechanisms, such as citizens' juries or conferences, to facilitate citizens' participation in decision making on a public matter that is of urgent concern to them."

Adopting a third resolution based on a report by Zia Altunialdiz "Addressing issues of criminal and civil liability in the context of climate change,"<sup>20</sup> the Assembly proposed that, given the climate crisis and the importance of holding private and public actors accountable for their contributions to climate change, there should be strengthened civil and criminal liability for "actions that could affect climate change or cause serious damage to the environment." It should be noted that, in general, international standards for ensuring the realization and protection of a person's right to a healthy natural environment include measures of legal liability for causing environmental damage or creating pollution, even if no individual is at fault. This principle of responsibility without fault is enshrined in accordance with the provisions of several international legal acts, including the UN General Assembly Resolution No. 70/1 of 25 September 2015.<sup>21</sup>

The Resolution<sup>22</sup> also states that "The Assembly has always endeavoured to promote environmental protection and to promote the role of the Council of Europe, which was responsible, inter alia, for drawing up the Convention on the Protection of the Environment through Criminal Law (ETS No. 172) and the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (ETS No. 150). Therefore, it is disappointed that these two conventions have not attracted the number of ratifications necessary to enter into force." The Assembly emphasized that "moreover, recalling the United Nations 'Guiding Principles on Business and Human Rights – Implementing the United Nations "Protect, Respect and Remedy" Framework' ('United Nations Guiding Principles'), the Committee of Ministers Recommendation CM/Rec(2016)3 on human rights and business, and its own Resolution 2311 (2019) and Recommendation 2166 (2019) 'Human

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20 Assembly debate on 29 September 2021 (27<sup>th</sup> sitting) (see Doc. 15362, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Ziya Altunyalidiz). [Internet]. [cited 2023 February 4]. Available from: <https://pace.coe.int/pdf/d267ce9b45e2010542623e352d362bc7733875c6bf1c94dfc1e7a659a478f68f/resolution%202398.pdf>

21 UN General Assembly Resolution No. 70/1 of 25 September 2015, Transforming Our World. 2030 Agenda for Sustainable Development. [Internet]. [cited 2023 February 4]. Available from: <http://sdg.org.ua/ua/resources-2/344-2030-2015>

22 Assembly debate on 29 September 2021 (see Doc. 15362, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Ziya Altunyalidiz). [Internet]. [cited 2023 February 4]. Available from: <https://pace.coe.int/pdf/d267ce9b45e2010542623e352d362bc7733875c6bf1c94dfc1e7a659a478f68f/resolution%202398.pdf>



rights and business – what follow-up to Committee of Ministers Recommendation CM/Rec (2016)3’, the Assembly stresses that it is now widely recognised that businesses have responsibility for human rights abuses, including in the environmental field, and that the victims of such abuses shall have access to an effective remedy.”<sup>23</sup>

The fourth resolution, based on Edith Estrela’s (Portugal, SOC) report, “The climate crisis and the rule of law,”<sup>24</sup> called on the Council of Europe to help develop “climate resilience” to combat global warming by promoting the rule of law. The Assembly recalled its reflections on the notion of the rule of law, in Resolution 1594 (2007), “The Principle of the Rule of Law,” and Resolution 2187 (2017), “Venice Commission’s Rule of Law Checklist.” It reiterated that its core elements are legality, including a transparent, accountable, and democratic process for enacting law; legal certainty; the prohibition of arbitrariness; access to justice before independent and impartial courts, including judicial review of administrative acts; respect for human rights; non-discrimination; and equality before the law. These are to be always respected.

Finally, the document states: “The Assembly emphasizes the importance of the involvement of parliaments. Renewing the ground-breaking commitment to combating the climate crisis, which it made through Resolution 1292 (2002), it calls for the establishment of a parliamentary network operating under its auspices. Its task will be to inspire and follow the action taken by national authorities to honour the strong commitments they have made vis-à-vis the climate crisis while fostering the mutual enrichment of ideas and setting up regular opportunities for parliamentarians in Europe and on other continents to pool their experience.”<sup>25</sup>

At the annual session of the Committee of Ministers in Turin on 20 May 2022, the Committee of Ministers stressed the importance of the Council of Europe’s activities in the field of human rights protection and a healthy

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23 Assembly debate on 29 September 2021 (see Doc. 15362, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Ziya Altunyaldiz). Text adopted by the Assembly on 29 September 2021 [Internet]. [cited 2023 February 4]. Available from: <https://pace.coe.int/pdf/d267ce9b45e2010542623e352d362bc7733875c6bf1c94dfc1e7a659a478f68f/resolution%202398.pdf>

24 Assembly debate on 29 September 2021 (see Doc. 15353, report of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Ms Edite Estrela; and Doc. 15354, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Norbert Kleinwaechter). [Internet]. [cited 2023 February 4]. Available from: <https://pace.coe.int/pdf/dd08ec7501675ecf11211b44d1e0d8f0ce18a8cbcf2948efd616ed3b1ae942bf/resolution%202399.pdf>

25 Assembly debate on 29 September 2021 (see Doc. 15353, report of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Ms Edite Estrela; and Doc. 15354, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Norbert Kleinwaechter). [Internet]. [cited 2023 February 4]. Available from: <https://pace.coe.int/pdf/dd08ec7501675ecf11211b44d1e0d8f0ce18a8cbcf2948efd616ed3b1ae942bf/resolution%202399.pdf>

environment, in particular the preparation of the draft Recommendation of the Committee of Ministers on Human Rights and the Environment.<sup>26</sup> The interim draft Recommendation called on all Member States of the Council of Europe to recognize “the right to a clean, healthy and sustainable environment as a human right.” During its session in May 2022, the Committee of Ministers also emphasized the importance of the Council of Europe considering “the need and expediency of a further instrument in this area,” such as the new Protocol to the ECHR.<sup>27</sup> The 4th Summit of Heads of State and Government of the Council of Europe took place in Reykjavík, on 16 and 17 May 2023. The leaders decided to establish a Register of damage caused by the Russian Federation’s aggression against Ukraine and agreed to strengthen the Council of Europe and its work in the field of human rights, democracy and the rule of law by adopting a declaration on the situation of the children of Ukraine, democracy principles, recommitting to the European Convention on Human Rights and developing tools to tackle emerging challenges in the area of technology and the environment.<sup>28</sup>

Meanwhile, in July 2022, the UN General Assembly adopted a historic resolution recognizing the right to a clean, healthy, and sustainable environment as a universal human right. The UN General Assembly resolution had a historically high level of support: 161 states were in favour, 0 were against and 8 abstained.<sup>29</sup> The General Assembly resolution was prompted by a UN Human Rights Council resolution of October 2021 that recognized the same right, and which had the support of more than 1,100 civil society organizations, children, youth, and indigenous peoples.<sup>30</sup> On 8 October 2021, at the UN headquarters, the General Assembly stated that climate change and environmental degradation are among the most pressing threats to the future of humanity.<sup>31</sup> The resolution called on states to step up efforts to ensure

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26 Volume of Decisions of the 132<sup>nd</sup> Session of the Committee of Ministers (Turin, Italy – 20 May 2021), Council of Europe Doc. CM/Del/Dec(2022)132/3ci, [Internet]. [cited 2023 February 4]. Available from: [https://search.coe.int/cm/Pages/result\\_details.aspx?Reference=CM/Del/Dec\(2022\)132/3ci](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Del/Dec(2022)132/3ci)

27 Steering Committee for Human Rights, Drafting Group on Human Rights and Environment, ‘Revised text of the draft Recommendation on Human rights and the environment’ (10 January 2022), Council of Europe Doc. CDDH-ENV(2022)02 [Internet]. [cited 2023 February 4]. Available from: <<https://rm.coe.int/steering-committee-for-human-rights-comite-directeur-pour-les-droits-d/1680a521ee>>.

28 Summits of Heads of State and Government of the Council of Europe [Internet]. [cited 2023 September 23] <https://www.coe.int/en/web/cm/summits>

29 Resolution adopted by the United Nations General Assembly on 28 July 2022, UN Doc. A/RES/76/300, [Internet]. [cited 2023 February 4]. Available from: <https://undocs.org/en/A/RES/76/300>.

30 Resolution adopted by the United Nations Human Rights Council on 8 October 2021, UN Doc. A/HRC/RES/48/13, [Internet]. [cited 2023 February 4]. Available from: <https://undocs.org/A/HRC/RES/48/13>.

31 The human Right to a Clean, Healthy, and Sustainable Environment: Resolution adopted by the Human Rights Council on 8 October 2021 [Internet]. [cited

the right to a clean, healthy, and sustainable environment.<sup>32</sup> It also included a convincing and in-depth overview of the arguments in favour of the legal right to a healthy natural environment, applied at the national, European, and international levels.<sup>33</sup>

Thus, it can be concluded that humanity is currently attempting to ensure the recognition of the right to a healthy natural environment and its optimal implementation through international instruments.

**II. The practice of the ECtHR and the Aarhus Convention Compliance Committee.** As already mentioned, the European Convention on Human Rights (1950) does not enshrine the right to a healthy environment as such. Environmental issues are dealt with indirectly, in fact, through the European Court of Human Rights' interpretation of the Convention, providing limited protection due to already recognized human rights.

For example, the Court has expanded the right to life guaranteed by Article 2 to include the right to protection against risk arising from dangerous industrial activities.<sup>34</sup> Likewise, it considered that the right to private and family life enshrined in Article 8 includes the right to protection from serious harm to the natural environment.<sup>35</sup> One good example of this type of conclusion was "Tatars v. Romania," a case on environmental damage from exceeding the established standards for air pollution through excessive emissions of sodium cyanide. This occurred due to non-compliance with environmentally safe production technologies at a gold mining enterprise ("Transgold SA," which in 2004 was reorganized into "Aurul SA") in Baia Mare in Romania. These activities caused environmental damage to the ecosystems of the Tisza and Danube rivers, as well as the populations of Hungary, Ukraine, Serbia, and Romania. Expert studies and the conclusions of the interstate court estimated the total amount of environmental damage at more than US\$150 million. Despite the existence of a decision awarding compensation for environmental damage caused to the relevant states, proceedings were initiated for compensation to affected individuals. The ECtHR concluded that a violation of the

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2023 February 4]. Available from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/289/50/PDF/G2128950.pdf?OpenElement>

32 In historic move, UN declares healthy environment a human right [Internet]. [cited 2023 February 4]. Available from: <https://www.unep.org/news-and-stories/story/historic-move-un-declares-healthy-environment-human-right>

33 The Environmental Rights Recognition Project [Internet]. [cited 2023 February 4]. Available from: <https://deliverypdf.ssrn.com/delivery.php?ID=220090127065006097-12711709112009606405403808903704804201010308708111901107111208309310004-203312200904504706601912506511113023052078043034093126113092093004103096089081046043006079127089006067016114001073083016125000097078006125065007101075107074112112&EXT=pdf&INDEX=TRUE>

34 ECHR, Öneriyildiz v. Turkey, Application № 48939/99, judgement of 30 November 2004.

35 ECHR, Lopez Ostra v. Spain, Application № 16798/90, judgement of 9 December 1994.

right to a safe environment has a direct consequence of a violation of the human right to health, private, and family life, as it harms a person's well-being.

In its reasoning for the satisfaction of the environmental rights of the plaintiffs in “Tatars v. Romania,” the ECtHR determined that the business entity (the gold mining company) could not achieve a fair balance of private interest (ensuring the applicant's right to housing and favourable conditions for the well-being of her family) and public interest (processing of toxic waste). Therefore, despite the presence of special properly executed permits for this form of use of natural resources of national importance, this was determined by the court as a violation of the requirements of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The court has ruled similarly in other cases, where the provision of the right to a healthy natural environment was realized through the interpretation of the rights enshrined in the Convention:

- 1) Right to life (Article 2 of the Convention):
  - Dangerous industrial activities (*Öneryıldız v. Turkey*).
  - Dumping of toxic waste (*Di Caprio and Others v. Italy* (no. 39742/14) and three other applications).
  - Exposure to nuclear radiation (*L.C.B. v. the United Kingdom* (application no. 23413/94)).
  - Greenhouse gas emissions (*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (no. 53600/20); *Duarte Agostinho and Others v. Portugal and 32 Other States* (no. 39371/20); *Carême v. France* (no. 7189/21)).
  - Industrial emissions and health (*Smaltini v. Italy*; *Locascia and Others v. Italy* (no. 35648/10)).
  - Natural disasters (*Murillo Saldias and Others v. Spain*; *Viviani and Others v. Italy*; *Özel and Others v. Turkey*; *Kolyadenko and Others v. Russia*; *Budayeva and Others v. Russia*).<sup>36</sup>
  - Petroleum activities (*Greenpeace Nordic and Others v. Norway* (no. 34068/21)).
- 2) Prohibition of inhuman or degrading treatment (Article 3 of the Convention):
  - Passive smoking in detention (*Florea v. Romania*; *Elefteriadis v. Romania*).
- 3) Right to liberty and security (Article 5 of the Convention): *Mangouras v. Spain*.
- 4) Right to a fair trial (Article 6 of the Convention):
  - Access to court (*Athanassoglou and Others v. Switzerland*; *Gorraiz Lizarraga and Others v. Spain*; *L'Érablière asbl v. Belgium*; *Howald Moor and Others v. Switzerland*; *Karin Andersson and Others v. Sweden*; *Stichting Landgoed Steenberg and Others v. the Netherlands*).
  - Failure to enforce final judicial decisions (*Kyrtatos v. Greece*; *Apanasiewicz v. Poland*; *Bursa Barosu Başkanlığı and Others v. Turkey*).

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<sup>36</sup> On 16 September 2022, the Russian Federation ceased to be a Party to the Convention.

- 5) Right to respect for private and family life and home (Article 8 of the Convention):
  - Dam construction threatening archaeological site (Ahunbay and Others v. Turkey).
  - Environmental risks and access to information (Guerra and Others v. Italy; McGinley and Egan v. the United Kingdom; Roche v. the United Kingdom; Vilnes and Others v. Norway; Brincat and Others v. Malta).
  - Greenhouse gas emissions (Duarte Agostinho and Others v. Portugal and 32 Other States (no. 39371/20); Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (no. 53600/20); Carême v. France (no. 7189/21)).
  - High-voltage power line (Calancea and Others v. the Republic of Moldova; Thibaut v. France).
  - Industrial pollution (Lopez Ostra v. Spain; Taşkın and Others v. Turkey; Fadeyeva v. Russia;<sup>37</sup> Giacomelli v. Italy; Tătar v. Romania; Dubetska and Others v. Ukraine; Apanasewicz v. Poland; Cordella and Others v. Italy).
  - Mobile phone antennas (Luginbühl v. Switzerland).
  - Noise pollution (Air traffic and aircraft noise (Powell and Rayner v. the United Kingdom; Hatton and Others v. the United Kingdom; Flammenbaum and Others v. France); Road traffic noise (Deés v. Hungary); Neighbouring noise (Moreno Gómez v. Spain); Wind turbines and wind energy farms (Fägerskiöld v. Sweden); Industrial noise pollution (Borysiewicz v. Poland); Rail traffic (Bor v. Hungary)).
  - Emissions from diesel vehicles (Greenpeace e.V. and Others v. Germany).
  - Soil and water contamination (Dzemyuk v. Ukraine).
  - Urban development (Kyrtatos v. Greece).
  - Waste collection, management, treatment, and disposal (Brânduse v. Romania; Di Sarno and Others v. Italy; Locascia and Others v. Italy (no. 35648/10)).
- 6) Freedom of expression / Freedom to receive and impart information (Article 10 of the Convention): Steel and Morris v. the United Kingdom; Vides Aizsardzības Klubs v. Latvia; Association Burestop 55 and Others v. France.
- 7) Freedom of assembly and association (Article 11 of the Convention): Costel Popa v. Romania.
- 8) Right to an effective remedy (Article 13 of the Convention): Hatton and Others v. the United Kingdom.
- 9) Protection of property (Article 1 of Protocol No. 1 to the Convention): Fredin (no. 1) v. Sweden; Pine Valley Developments Ltd and Others v. Ireland; Beinartovič and Others v. Lithuania; Pop and Others v. Romania; Yaşar v. Romania; National Movement Ekoglasnost v. Bulgaria.

To date, the ECtHR has considered several cases against Ukraine related to environmental protection. There have been only a few decisions,

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<sup>37</sup> On 16 September 2022, the Russian Federation ceased to be a Party to the Convention.

but they are especially valuable. These are the cases “Dubetska and Others v. Ukraine” (application No. 30499/03, decision of 10.02.2011), “Hrymkovska v. Ukraine” (application No. 38182/03, decision of 21.07.2011) and “Dzemyuk v. Ukraine” (application No. 42488/02, decision of 04.09.2014).

Even though the European Convention on Human Rights does not enshrine any right to a healthy environment as such, the European Court of Human Rights has been called upon to develop its case law in environmental matters because the exercise of certain Convention rights may be undermined by the existence of harm to the environment and exposure to environmental risks.<sup>38</sup>

At the time of writing, several cases are still being considered by the ECtHR. One of these is *KlimaSeniorinnen v. Switzerland*.<sup>39</sup> After exhausting all national remedies available, with the final decision from the Swiss Supreme Court communicated to the parties in May 2020, on 26 November 2020, the group Senior Women for Climate Protection Switzerland took the Swiss government to the European Court of Human Rights on the grounds that their health was threatened by heatwaves made worse by the climate crisis. They also requested the case to be treated under the expenditure procedure pursuant to Article 41 of the Rules of the Court. The application listed three main complaints: Switzerland’s inadequate climate policies violated the women’s right to life and health under Articles 2 and 8 of the ECHR; the Swiss Federal Supreme Court had rejected their case on arbitrary grounds, in violation of the right to a fair trial under Article 6; and the Swiss authorities and courts had not dealt with the content of their complaints, in violation of the right to an effective remedy in Article 13.

The ECtHR preliminary accepted the case, communicating this to the Swiss government on 25 March 2021. The ECtHR gave the case priority status and called on Switzerland to submit a response by 16 July; it duly did so. On 21 September, the International Commission of Jurists (ICJ) and the Swiss Section of the ICJ submitted a third-party intervention providing observations on the effects of climate change on the right to life and the right to respect for private and family life and for the home, and the positive obligations of States resulting from these rights. The intervention considered principles of international environmental law, among other issues. The European Network of National Human Rights Institutions (ENNHRI) also submitted a third-party intervention.

On 13 October, the petitioner replied to the Swiss government’s response to the ECtHR, arguing that the Swiss government had failed to protect the Applicants’ rights to life and private life under Articles 2 and 8 of the ECHR,

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38 Environment and the Convention on Human Rights [Internet]. [cited 2023 February 4]. Available from: [https://www.echr.coe.int/documents/fs\\_environment\\_eng.pdf](https://www.echr.coe.int/documents/fs_environment_eng.pdf)

39 *KlimaSeniorinnen v. Switzerland* (ECtHR) [Internet]. [cited 2023 February 4]. Available from: <http://climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-council-and-others/>

by failing to adopt the necessary legislative and administrative framework to do its share to prevent a global temperature increase of more than 1.5°C above pre-industrial levels.

On 26 April 2022, the Chamber of the European Court of Human Rights relinquished jurisdiction in favour of the Grand Chamber of the Court. The case would be examined by the ECtHR's Grand Chamber of 17 judges as it raised a serious question affecting the interpretation of the Convention (Article 30 ECHR). On 2 December, the applicants submitted a petition highlighting observations on the facts, admissibility, and the merits. Three days later, several organizations, including the Sabin Centre for Climate Change Law, submitted third-party interventions to the case.<sup>40</sup>

**Conclusion.** After analysing the above cases, we can indicate that the practice of the ECtHR is based on the following conclusions:

- 1) The State has a positive obligation to regulate and control environmental problems that violate the rights provided for in the Convention.
- 2) Protection of the environment (environmental rights) may become a legitimate goal of limiting other interests (Article 8 and Article 1, Paragraph 1) (balance of individual and public interests).
- 3) The state has a duty to ensure open access to information on serious risks to the environment and people, ensuring public participation in decision-making and access to legal remedies.

In 2002, the Meeting of the Parties to the Aarhus Convention established the Committee for Compliance with the Aarhus Convention, consisting of nine members. The independence of the activities of the Committee is guaranteed by the fact that its members act in a personal capacity and are not official representatives of governments. One of its main tasks is to consider compliance with the provisions of the Aarhus Convention and make recommendations to countries. The Committee may conclude that a state is complying with the provisions of the Convention, has not complied with the provisions of the Convention in a particular case (situation), or is not complying with the provisions of the Convention at all. The Committee then prepares recommendations, which may even apply in a case where a country is recognized as complying with the provisions of the Convention.

Such recommendations are considered by the Meeting of the Parties, which may take one of the following decisions:

- 1) Provide the state with recommendations.
- 2) Oblige the State to provide the committee with a strategy for compliance with the Convention and a report on the implementation of such a strategy.
- 3) Adopt a declaration of non-compliance.

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<sup>40</sup> Climate Change Litigation Databases [Internet]. [cited 2023 February 4]. Available from: <http://climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-council-and-others/>

- 4) Issue a warning.
- 5) Suspend the rights and privileges of the country as a result of the suspension of the Convention.
- 6) Adopt other non-confrontational, non-judicial, and advisory measures that may be appropriate.

The democratic legitimacy of this mechanism lies in the fact that even representatives of the public have equal rights with representatives of state governments in the procedure of consideration where the committee can initiate a case – the right to provide evidence and explanations, to have access to committee meetings and draft decisions of the committee, and to participate in the Meeting of the Parties and monitor the implementation of its decisions. Members of the public may initiate cases of violation of the Convention by the country of which they are citizens (or in which a public organization is registered) or by another country party to the Aarhus Convention.

Only twice since the Committee's founding has it applied radical measures such as issuing a warning, in relation to Ukraine and Turkmenistan. It should, however, be noted that the Aarhus Convention specifies that appeal procedures should not be associated with exorbitantly high costs. States that are party to the Convention should facilitate the establishment of appropriate assistance mechanisms to remove or mitigate financial or other obstacles to access to justice. Therefore, although the Committee's practice is quite small, it is valuable that it touches on issues of financial obstacles to access to justice. In particular, the most interesting cases related to the financial costs of the parties have been cases against Spain (ACCC/C/2009/36, ECE/MP.PP/C.1/2010/4/Add.2, ACCS/2008/24, ECE/MP.PP/C.1/2009/8/Add.1) and the United Kingdom (ACC/C/2008/23, ECE/MP.PP/C.1/2010/6/Add.1, SSS/S/2008/27; ECE/MP.PP/C.1/2010/6/Add.2, ACC/S/2008/33; ECE/MP.PP/C.1/2010/6/Add.3, ACC/S/2008/33; ECE/MP.PP/C.1/2010/6/Add.3).

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## Ensuring the Human Right to a Healthy environment: normative regulation and practice

### Abstract

This article examines the regulatory practice and the practice of the ECtHR in ensuring the right to a healthy environment. At the present stage of humankind, the question of understanding a person as part of an ecosystem is increasingly being raised. In this regard, it is important to emphasize that the current state of international legal regulation of environmental relations strongly indicates the need for serious reforms to international environmental law, primarily in terms of increasing the effectiveness of existing mechanisms for environmental cooperation between states and creating new mechanisms for such cooperation.

It has been established that environmental rights are implemented primarily through the formation of international policy and legislation, especially the EU's strategic position on the environment. This was legally enshrined in the Treaty on the European Community, which declared the EU's aspirations for a high degree of protection, improving the quality of the environment and people's standard of living. Over time, this became a starting point for the environmental policy and law of the EU, and then a duty for the implementation of national environmental legislation.

It is indicated that the scientific recognition and normative consolidation of environmental rights in international law are important for the development of international

ideological concepts of environmental protection, based on the ideas of solving environmental problems in the interests of the individual and all humankind. This is also salient for the formation of a system of international environmental law.

A striking example of an international treaty that secures environmental human rights is the Convention of the United Nations Economic Commission for Europe on Access to Information, Public Participation in Decision-Making and Access to Justice on Environmental Issues, adopted on 25 June 1998, in Aarhus, Denmark (the Aarhus Convention). This identified three main types of environmental rights considered as important factors in the development of democracy: public access to environmental information; public participation in the decision-making process on environmental issues; public access to justice on environmental issues. These rights are implemented primarily through the formation of international environmental policy and international environmental legislation, especially the EU's strategic position on the environment. This was legally enshrined in the Treaty on the European Community, which declared the EU's aspirations for a high degree of protection, improving the quality of the environment and people's standard of living. Over time, it became a starting point for the environmental policy and law of the EU, and then a duty for the implementation of national environmental legislation.

**Keywords:** human rights, healthy environment, law enforcement practice, normative regulation.

## Zapewnienie prawa człowieka do zdrowego środowiska – przepisy normatywne i praktyka

### Streszczenie

Artykuł analizuje regulacje prawne i praktykę orzeczniczą ETPC dotyczącą zagwarantowania prawa do zdrowego środowiska. Wskazuje się, że na obecnym etapie rozwoju społeczeństw coraz częściej podnosi się kwestię rozumienia jednostki jako części ekosystemu. W związku z tym należy podkreślić, że obecny stan regulacji prawnej międzynarodowych stosunków środowiskowych uwidacznia potrzebę poważnej reformy, przede wszystkim pod względem zwiększenia skuteczności istniejących mechanizmów współpracy środowiskowej państw i stworzenia nowych mechanizmów takiej współpracy.

Realizacja tych praw polega przede wszystkim na kształtowaniu międzynarodowej polityki ochrony środowiska i odpowiedniego ustawodawstwa, a w szczególności na utrzymaniu strategicznej pozycji UE w dziedzinie środowiska, która została prawnie zapisana w Traktacie o Wspólnocie Europejskiej. Chodzi o deklarowaną przez Wspólnotę i chęć dążenia do zwiększenia zakresu ochrony środowiska, poprawy jego jakości i polepszenia standardu życia ludzi. Założenie to było punktem wyjścia do tworzenia polityki środowiskowej i prawa ochrony środowiska UE, a następnie wdrażania krajowego ustawodawstwa środowiskowego w poszczególnych państwach.

Wskazuje się, że naukowe uznanie i normatywna konsolidacja praw środowiskowych w prawie międzynarodowym są ważne dla rozwoju międzynarodowych koncepcji ochrony środowiska, opartych na ideach rozwiązywania problemów środowiskowych w interesie jednostki i całej ludzkości. Jest to również istotne dla tworzenia międzynarodowego systemu prawa ochrony środowiska.

Uderzającym przykładem międzynarodowego traktatu, który zabezpiecza prawa człowieka w zakresie ochrony środowiska, jest Konwencja Europejskiej Komisji Gospodarczej

Organizacji Narodów Zjednoczonych o dostępie do informacji, udziale społeczeństwa w podejmowaniu decyzji oraz dostępie do sprawiedliwości w kwestiach dotyczących środowiska, przyjęta w dniu 25 czerwca 1998 r. w Aarhus (Dania) (konwencja z Aarhus). Określono w niej trzy główne rodzaje praw środowiskowych uznawanych za ważne czynniki rozwoju demokracji: publiczny dostęp do informacji o środowisku, udział społeczeństwa w procesie podejmowania decyzji dotyczących kwestii środowiskowych i publiczny dostęp do wymiaru sprawiedliwości w kwestiach środowiskowych. Prawa te są wdrażane przede wszystkim poprzez kształtowanie międzynarodowej polityki ochrony środowiska i międzynarodowego prawodawstwa w zakresie ochrony środowiska, w szczególności poprzez utrzymanie strategicznej pozycji UE w dziedzinie środowiska.

**Słowa kluczowe:** prawa człowieka, zdrowe środowisko, praktyka egzekwowania prawa, regulacje normatywne