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Human rights-based tools to protect the environment and future generations

FINAL REPORT

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Introduction

Constitutional protection of the environment and the long-term interests of future generations are becoming increasingly widespread globally and even in Europe. Half of the EU Member States recognize the right to a healthy environment in their constitutions, and more than 50% of the Member States mention future generations in some form in their constitutions.

The number of rights-based litigation to protect the environment and the lawsuits seeking to protect the long-term interests of future generations is on the rise in several jurisdictions. Environmental rights and the interests of future generations have been invoked in an increasing number of disputes before domestic courts, including environmental litigation and climate lawsuits.[1] However, the protection that domestic legal systems afford to these rights may differ substantially in terms of their rules on standing, the scope of protection, the judicial enforceability of the provisions, the intensity of judicial review, and applicable remedies. Adjudicating such cases raises a number of difficult questions for judges from both procedural and substantive points of view.

Furthermore, the Parliamentary Assembly of the Council of Europe called for recognizing a standalone right to a healthy environment in Europe.[2] Member States are currently debating the need and feasibility of the right's recognition within the Council of Europe's system. State representatives often voice concerns about the operability of the right to environment and point out the role of the separation of powers and fears that the judicial system may be overwhelmed by a flood of litigation. This throws questions regarding the functioning of this right, including its judicial enforcement, into the limelight, together with possible overlaps and synergies between domestic and international forms of protection.

The protection of future generations also enjoys renewed political and judicial attention, as evidenced by important policy and judicial developments regarding the protection of future generations, at the domestic, European, and international levels. The outcome document of the UN Summit of the Future, held in New York between 22-23 September 2024, contains a 'Declaration on Future Generations', and the UN Secretary General proposed to appoint a Special Envoy to for Future Generations to support the implementation of this Declaration. Meanwhile, in the European Union, the President of the EU Commission announced the appointment of a new commissioner responsible for inter-generational solidarity to ensure that

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[1] For a recent overview of lawsuits protecting future generations see: Katalin Sulyok, 'Transforming the Rule of Law in Environmental and Climate Litigation: Prohibiting the Arbitrary Treatment of Future Generations' [2024] Transnational Environmental Law 1.

[2] Resolution 2396 (2021) on Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe Available at: https://pace.coe.int/en/files/29499/html

EU policies do not cause harm to future generations. In addition, an international expert group released the non-binding Maastricht Principles on the Human Rights of Future Generations in 2023.[3] In April this year, the European Court of Human Rights (ECtHR) found a violation of the right to private life due to the absence of ambitious domestic climate mitigation measures in *Verein KlimaSeniorinnen v. Switzerland*. The judgment explicitly relies on the principle of 'inter-generational burden-sharing', similar to domestic courts that are also frequently putting the interests of future generations at the heart of their climate litigation judgments.

Against this background, this year's Annual EUFJE Conference aims to better understand how the domestic laws of EUFJE member states protect the environment and future generations, and how courts utilize such human rights-based tools in their practice. This report summarizes the answers received from national judge rapporteurs to the questionnaire circulated before the conference, to identify trends and look for shared opportunities or challenges in the judicial enforcement of such guarantees.

This year, 22 national rapporteurs sent their inputs from the following countries: Albania, Belgium, Croatia, Czechia, Estonia, France, Germany, Greece, Hungary, India, Ireland, Italy, Mauritius, Montenegro, North Macedonia, Norway, Romania, Spain, Sweden, the Netherlands, the UK, and Ukraine. These national reports are complemented by the report of the ECtHR on its own case law.

The following sections explore the extent and exact ways in which the courts of EUFJE member states (and associated members outside Europe) enforce environmental protection and the long-term interests of future generations based on international and domestic human rights guarantees. By weaving the threads together from the national reports with respect to each of the questions of the questionnaire, the report explores five overarching themes: the legal forms of protection (Section 1) and the normative content of the respective provisions in national law (Section 2), enforcement mechanisms (Section 3), procedural questions (Section 4), substantive issues concerning judicial evaluation (Section 5), and broader issues, such as the differences and synergies between the national system of protection and that of the European Court of Human Rights (Section 6).

1. The legal forms and legal bases of protecting future generations and the environment

1.1. Please describe the constitutional and/or statutory provisions enshrining human rights-based tools to protect the environment and the interests of future generations (e.g. the right to a healthy environment). Please include every form of protection even if not couched as a human right. Please also list the general human rights safeguards that are relevant in protecting the environment.

The overwhelming majority of relevant legal systems contain provisions in their constitutions or high-ranking laws[4] on the protection of the environment, and increasingly, such sources also mention future generations in some form. In some jurisdictions, these provisions have been

[3] The Principles are available at https://www.rightsoffuturegenerations.org
[4] In the UK, human rights are guaranteed in the Human Rights Act 1998. In Mauritius, even though the constitution does not contain a provision concerning the protection of the environment, the Environment Act (adopted in 2024) contains a relevant duty, namely that „every person shall use his best endeavours to preserve and enhance the quality of life by caring responsibly for the environment."

added quite recently,[5] or their judicial practice has started to proliferate in the last decade.[6] In some countries, however, human rights-based protection of the environment dates back to the early '90s.[7] In the majority of jurisdictions, it is domestic constitutions that establish relevant human rights guarantees, while in some other EUFJE member states, courts enforce a rights-based protection of the environment solely by applying the European Convention on Human Rights (Convention) as a matter of domestic law,[8] or by taking into account the environmental judgments of the ECtHR by virtue of their statutory obligations to do so.[9]

The constitutional protection of the environment has several legal forms across jurisdictions, such as a human right,[10] or as a duty for the State,[11] a constitutional value,[12] or as a reference in the preamble.[13] Concerns for the environment may be included in the context of provisions on environmental protection,[14] natural resources,[15] landscape and the historical and artistical heritage,[16] common heritage concepts,[17] common ownership concept,[18] sustainable development,[19] a right of public access to lands,[20] or concerning goods of general interest.[21]

Human rights-based protection of the environment seems to emerge as a prominent form of protection among relevant jurisdictions, yet it is not universally recognized in European states. There is no standalone right to environment in Estonia, Italy, the UK, Ireland, Germany, Mauritius, and Sweden.

Even in lack of express recognition, in India, the Supreme Court has interpreted, through the living tree doctrine, the right to life and right to equality as including a right to protection from the adverse effects of climate change as a fundamental right,[22] and the right to life includes the "right to live in a pollution free environment".

States with an express right to environment recognized in the constitution vary in terms of the concrete human rights basis of protecting the environment. In the majority of States, there is a

[5] See amendment to the Constitution of Italy in 2022.
[6] See the environmental practice of Belgian courts, where most decisisons are dated after 2019.
[7] E.g. Hungary
[8] Eg.g in the Netherlands,
[9] UK's Human Rights Act, section 2(1)a).
[10] E.g. Belgium, Croatia, Hungary, Romania, Czechia, India, Greece, France, Albania, North Macedonia, Norway, Spain, Ukraine, Netherlands, Montenegro
[11] E.g. Germany, Czechia, Hungary, Estonia, Greece, Spain, Sweden
[12] North Macedonia, France
[13] Albania,
[14] E.g. in Italy, the Netherlands
[15] E.g. Czechia, Estonia, Montenegro, Hungary
[16] Italian Constitition, Article 9
[17] E.g. Greeck Constoitution, or In France, the preamble of the Charter for the Environment mentions „common heritage of manking", Article P) of the Hungarian Basic Law mentions „common heritage of the nation". The French Environment Code also uses the latter concept.
[18] Ukraine, „The land, its subsoil, atmospheric air, water and other natural resources located within the territory of Ukraine, natural resources of its continental shelf, exclusive (maritime) economic zone are the objects of property rights of the Ukrainian people."
[19] Belgium, France, Sweden, Montenegro
[20] Sweden
[21] North Macedonia. "All the natural treasures of the Republic, the plant and animal life, the goods in general use, as well as objects and items of particular cultural and historical importance determined by law are goods of general interest for the Republic and enjoy special protection."
[22] M K Ranjitsinh v Union of India (2024)

standalone right to a healthy environment,[23] and where such a right is not recognized, courts utilize other human rights safeguards,[24] such as the right to life[25] and physical integrity,[26] right to private life,[27] right to health,[28] right to property,[29] equality and non-discrimination,[30] freedom of expression, rights of indigenous peoples,[31] freedom of movement and residence (which includes by the right to free passage through the countryside),[32] or the rights of children.[33]

Some legal systems specifically guarantee environmental procedural rights such as the right to timely and complete information about the state of the environment and natural resources.[34]

Some constitutions explicitly enshrine an individual duty for environmental protection (Czechia, France, Hungary, Estonia, India,[35] Romania, North Macedonia, Spain).

ENVIRONMENTAL PROTECTION IN THE CONVENTION

Even though there is no standalone right to a healthy environment in the Convention, the ECtHR does afford protection against environmental and climate harm under several provisions, such as the right to life (Art 2), right to private life (Art 8), right to property, right to a fair hearing (Art 6), and freedom of speech (Art 10).

As to their environmental content, Art 2 applies in the context of any activity, whether public or not, where the right to life may be at stake. Art 8 is engaged when severe environmental harm may affect individuals' well-being and prevent them from enjoying their homes in such a way as to adversely affect their private and family lives, even if it does not seriously endanger human health.

More specifically, Art 2 applies to industrial activities and foreseeable natural disasters, not only where actions or omissions on the part of the State have led to a person's death, but also where a person has obviously been exposed to a serious, real and immediate risk to his or her life. The right to private life applies to exposure to pollution and nuisance, where there is a 'direct adverse impact' on private life, family life, or home, caused directly or indirectly by the state, which poses a "serious" risk to the well-being of the individual. In the context of climate change, victims must have a personal and direct impact (a high intensity of exposure to the adverse effects of climate change) and a pressing need to ensure the applicant's protection by the State, owing to the absence or inadequacy of any reasonable measures to reduce harm.

[23] See footnote 10.
[24] Albania, Germany
[25] E.g. India, Germany, Hungary
[26] Germany, Hungary, in Ireland the Irish Supreme Court suggested that the impplied right to bodily integrity may be relevant for environmental cases, but there is no environmental case-law with respect to such a right.
[27] Norway
[28] In Italy, the Netherlands, Czechia, Estonia
[29] E.g. in Germany, Czechia, Estonia, Montenegro
[30] India
[31] One pending court proceedings reported by France is based on an alleged violation of indegenous people's rights. In India some court proceedings also rely on their interets and rights. Spain also referred to such rights.
[32] Czechia
[33] Romania, Norway
[34] Constitution of Czechia, Art. 35(2).
[35] Announced in case-law

Under the right to property, damage to the environment can result in the destruction, deterioration, or decrease in the value of property, for which the state may be responsible, whether the negative effects on the property were the outcome of a failure in the positive obligation to protect property rights or of an interference attributable to the authorities. Property rights may be restricted lawfully on environmental grounds if the restriction complies with the rule of law and pursues a legitimate aim in the general or public interest.

FUTURE GENERATIONS

As to future generations, a growing number of EUFJE Member States have constitutional provisions, or high-ranking statutory laws that mention future generations' interests. This is the case in Albania, Belgium, Estonia, France, Germany, Hungary, Italy, Wales, and Norway. Recognition may take the form of a preambular reference (Albania, Czechia, Estonia), an explicit duty (for example, Hungary, Germany), a standalone legislation (Wales), or a qualifier of human rights obligations (France, Norway,[36] Czechia[37]). In terms of environmental protection, the human rights-based form of protection has become commonplace; in terms of protecting future generations, human rights-based protection is scarce. Instead, legal systems impose various obligations on duty-bearers to protect future generations.

In some countries, judicial practice is the source of protection for future generations. In India, future generations' interests are regularly invoked and protected by the courts without an express constitutional basis. The source of inspiration for such normative references is traced back to international law and the principle of intergenerational equity more specifically. Similarly, in Spain, courts have reportedly referred to inter-generational equity in forestry and nature conservation cases to ensure the sustainable use of natural resources for future generations, even though there is no express constitutional mandate to do so. In Greece, courts reportedly rely on "the legal fiction" of future generations to lend normativity to the eco-centric approach, where nature is deemed in need of protection from disturbing human intervention, and this need is legitimized by invoking the rights of future generations. In Montenegro, courts have also enforced the idea of intergenerational equity and sustainable development without an express reference to future generations in the constitution.

In some EUFJE member states, relevant constitutional provisions on future generations are complemented by statutory law that further specifies the form of legal protection, e.g. in Albania, Belgium, Hungary, Estonia. In Wales, there is a standalone Well-being of Future Generations (Wales) Act of 2015, which is dedicated to setting up a detailed system of obligations for state authorities to meet certain well-being goals. In the Netherlands, several sectoral legislations[38] provide for a duty of care for everybody, including business entities, to take sufficient care of the physical environment. Other jurisdictions also refer to future generations in statutory law.[39]

Even though the number of such future generations provisions is on the rise, such initiatives are not always successful. In the UK, for instance, the Well-being of Future Generations Bill

[36] The right to environment should be guaranteed to future generations as well
[37] Preamble to the Charter of Fundamental Rights states that citizens are aware of their share of *'responsibility towards future generations for the fate of all life on Earth'*.
[38] Environment and Planning Act, Climate Act
[39] E.g. in Ukraine.

has not progressed, which would have created a duty across all government departments on a UK-wide basis to act in a manner that seeks to meet present needs without compromising the ability of future generations to meet their own needs.

Overall, the jurisdictions included in this survey could be grouped into four main categories. (i) In the first group, national legal systems contain the right to a healthy environment but have no explicit constitutional provision on future generations.[40] (ii) In the second group, future generations are mentioned in the constitution, but there is no standalone right to a healthy environment.[41] It is to be noted, however, that some of these States do have other types of provisions on environmental protection in their constitutions. (iii) In the third group, there is both a right to a healthy environment and a constitutional duty to protect future generations,[42] (iv) whereas in the last group, none of these concepts are enshrined in the constitution (this is the case in Ireland,[43] UK, Mauritius, and Sweden.)

2. The normative content of the protection

2.1. Who are the subjects of the right(s) (individual or collective right, ecocentric or anthropocentric), who are the duty-bearers (e.g., only state authorities, or corporations too, whether the right is applicable horizontally, between private persons), and what are the main obligations imposed on the duty-bearers?

THE CONTENT OF THE RIGHT TO ENVIRONMENT

The right is couched in different terms. Variations include the right to a healthy environment (Montenegro, Hungary), the right to a balanced environment that respects health (France), the right to a favorable environment (Czechia), the right to a healthy and ecologically appropriate environment (Albania), the right to environment that meets health and well-being needs (Estonia),[44] the right to access a clean environment and live in a pollution-free environment (India), the right to a healthy and ecologically equilibrated environment (Romania), the right to environment and quality of life (Spain), and the right to a safe environment for life and health (Ukraine). In Sweden, there is no standalone right; however, Article 15 acknowledges that "everyone shall have access to the natural environment in accordance with the right of public access." In Czechia, the components of the right to a favorable environment include the preservation and development of natural wealth.[45]

As to its normative nature, such rights to environment are characterized either as a special right belonging to the third generation of human rights,[46] or as belonging to the category of economic, social and cultural rights, or social rights (e.g. in Czechia, Belgium, Netherlands), and it is deemed to be a mixed right in Greece (comprising individual, social and political rights aspects).

[40] Romania, Spain, Ukraine, North Macedonia, the Netherlands.
[41] Germany, Wales, Estonia, Italy.
[42] Hungary, Albania, Belgium, France, Czechia, Norway.
[43] The Irish Supreme Court has rejected the existence of a right to a healthy environment.
[44] Although this is a statutory right.
[45] Judgment of the Constitutional Court of 25 September 2018, No. Pl. 18/17).
[46] E.g. in Hungary

Czech courts refer to the right to a favourable environment as a right with a relative content, which must be 'interpreted from many aspects and always in the light of the specific case".[47]

The subject of the right to environment is typically everyone. It may be conceived as an individual and/or collective right.

Duty-bearers are typically States and state authorities,[48] however, also increasingly everyone, including business entities, e.g. in Hungary, Netherlands, Greece, France (where an obligation of vigilance is binding on everyone), India, Romania, North Macedonia, and Italy. The Italian constitution also includes a reference, where it provides that private economic activity cannot be carried out to the detriment to health or the environment.[49]

Before the ECtHR, primary duty bearers are states and state authorities, even if competent authorities had handed over to a private entity the management of a public service that was a source of pollution or nuisance. Moreover, The State's responsibility may be engaged even where the pollution or environmental disturbance or risk complained of are the result of the actions of individuals,

ECO-CENTRISM AND ANTHROPOCENTRISM

The right to a healthy environment is predominantly conceptualized as an anthropocentric right in EUFJE member states as well as in the practice of the ECtHR. Notably, the Convention's protection does not currently extend to cases concerning preservation of biodiversity and nature as such, or the general deterioration of the environment.

However, in some States, such as in France, Greece, Spain and India, there is room for a more eco-centric interpretation. In France, the Conseil d'État interpreted Article 1 of the Charter of the Environment in a case concerning the law relating to the conditions for placing certain plant protection products on the market in the event of a health hazard for sugar beet. It noted that neonicotinoid-type products have an impact on biodiversity (birds, pollinating insects), water and soil quality and human health and that there is a need to protect these "subjects" as well.[50] In India, due to the deep sociological practice of treating the environment as a living being, some statutory rights are interpreted in an eco-centric manner.

In Greece, the "ecocentric" approach means that environmental goods are deemed to have intrinsic value; therefore, their protection constitutes an end in itself, which is independent of any human motive or interest. Nature is considered to fall outside of and above human history.

The most far-reaching eco-centric formulation can be found in Spain, where the Mar Menor Lagoon was granted legal personality, which goes beyond traditional eco-centric methods. Spanish legislation recognized the Mar Menor and its basin as having a legal personality in 2022 (Ley 19/2022). This grants the lagoon a set of rights, including the right to exist, evolve naturally, and receive protection. The law allows any citizen or legal entity to act on behalf of the Mar Menor in legal proceedings to enforce its rights, empowering individuals and environmental groups to hold polluters and authorities accountable. The focus is shifting from

[47] Judgment of the Constitutional Court of 25 October 1995, No. Pl. 17/95.
[48] E.g. Belgium, Germany, Hungary, Norway, Sweden
[49] Article 41(2)
[50] Decision of 10 December 2020 (DC no. 2020-809).

protecting the environment for human benefit to recognizing the intrinsic value of the ecosystem itself and established measures to tackle pollution, to improve water quality, and to restore the lagoon's health.

The right to environment is sometimes interpreted as a subjective right, as in Czechia, whereas in other States, it is not seen as a source of subjective rights, or the role of subjective rights is expressly limited. In Belgium, this means that courts can only review the constitutionality of a legislation on that basis indirectly, together with a subjective right. In Hungary, individuals can file a constitutional complaint on the sole basis of the right to a healthy environment; however, the Constitutional Court has interpreted the right as primarily having objective content (which is not dependent upon the complainant; hence, in this sense is not subjective), which lies in the non-regression principle.

The non-regression principle (or standstill obligation) is a peculiar normative content afforded to the right to environment in Belgium and Hungary. In Belgium, the court interprets this principle flexibly, which does not prohibit insignificant regression from the level of statutory protection. Even a significant step back in the level of protection would be constitutional if it is in the public interest, save for instances when the new legislation would run against obligations under EU law or international law. In Hungary, it is in principle less flexible, however, it does not operate as an absolute prohibition, as the legislature may relax statutory standards if strictly necessary and proportionate to certain predefined legitimate aims.

NEGATIVE AND POSITIVE OBLIGATIONS

Positive obligations are increasingly acknowledged and specified by courts in several jurisdictions with slight variations. In Spain, for instance, the positive obligation of the state lies in safeguarding inherited natural wealth, ensuring the prudent use of natural resources, protecting natural wealth, and protecting against interference with the environment that prevents the realization of the basic needs of human life. Article 24 of the Greek Constitution enshrines a right of everyone in the natural and cultural environment and, at the same time the State's obligation to protect and take preventive or enforcement action under the principle of sustainability.

In Estonia, positive duties are more confined as they only extend to "*reasonable* measures" to ensure that the environment can provide for health and well-being needs; otherwise, the content of the right is not defined, giving rise to concerns about its ambiguity. The statutory right adds only one clarification, namely that "non-compliance of the environment with the health and well-being needs is presumed where the limit value of the quality of the environment has been exceeded."

Positive obligations are particularly relevant in the context of climate change. The extent of positive obligations is different vis-à-vis domestic and extraterritorial individuals.[51]

HORIZONTAL EFFECTS

Judicial practice is wide-ranging as to affording horizontal effect to respective constitutional provisions. In the Netherlands and Hungary the rights concerned have no horizontal effects. In

[51] Germany

Estonia, the constitutional provision establishing an individual duty to protect the environment cannot be applied directly because it is too abstract, but guides the interpretation of the law. In Germany, whether environmental provisions apply horizontally has not yet been determined.

The respective provisions may apply horizontally in Belgium, Greece, and France. In France, only the obligation of vigilance has a horizontal effect, whereas other standards for constitutional protection of the environment and future generations have not yet been declared applicable to all citizens by the Constitutional Council. The horizontal effect of the duty of care means that the owner who wants to ensure the preservation of a tree can invoke Article 2 of the Charter for the Environment against the owner of a neighbouring land. In a ruling handed down by the Nantes court, the judge applied article 2 of the Charter directly to set aside an article of the Civil Code relating to the maximum height of trees planted less than two metres from the dividing line of the neighbouring property. After noting that the tree in question contributed to the preservation of the local ecosystem and benefited the community through the environmental benefits it derived from all vegetation, the judge, basing his decision on article 2 of the Charter - the duty of every person to take part in preserving and improving the environment - rejected the request to reduce its height to two metres, which in his view would have caused ecological damage.[52]

CONTENT OF RIGHTS UNDER THE CONVENTION

In an environmental pollution context, the right to life under the Convention poses the following obligations: to put in place a legislative and administrative framework designed to provide effective prevention and deterrence against threats to life, and the duty to set up an effective judicial system capable of establishing the facts, holding accountable those at fault, and providing appropriate redress to the victim. The right to private life entails negative obligations for the State to refrain from interference with the right by a public authority[53], where an interference is only lawful if it is in accordance with the law and necessary in a democratic society for the purpose of at least one of the aims listed in Art. 8 § 2. The State also has positive obligations to take "all the necessary measures" to protect the rights secured under Article 8[54]. These rights apply horizontally between private persons as well.

States have a negative obligation not to interfere with the exercise of rights and a positive obligation to take all appropriate steps to safeguard life, physical integrity, private life and property in the context of hazardous activities, known to and occurring under the responsibility of the public authorities (public or private)[55], imminent and clearly (foreseeable) identifiable natural disasters[56], and climate change[57]. As to procedural rights, there is a requirement of access to court[58], and an obligation to enforce or ensure the enforcement of judicial decisions concerning neighbourhood noises[59], an obligation of the public authority to give access to

[52] Decision of the Constitutional Council, *on 3 October 2023, no. 296/23.*
[53] See for example: *Yevgeniy Dmitriyev v. Russia*, 2020, § 53
[54] See for example: *Cordella and Others v. Italy*, 2019, § 173
[55] See, for example: *Durdaj and Others v. Albania*, 2023, § 260
[56] See, for example: *Erdal Muhammet Arslan and Others v. Türkiye*, 2023, §§ 129-133
[57] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], 2024, § 59
[58] Verein KlimaSeniorinnen Schweiz and Others v. Switzerland [GC], 2024, § 626
[59] See for example, *Apanasewicz v. Poland*, 2011, §§ 72-83

information held by the latter[60], whereas decision-making process must be fair and such as to afford due respect for the interests of the individual as safeguarded by Article 8[61].

FUTURE GENERATIONS

The normative content of constitutional protection of future generations varies greatly.

- a provision imposing public trust duties on state authorities (Hungary, India[62]),
- sustainable development (France, Montenegro),
- solidarity between generations (Belgium),
- a legal qualifier of state authorities' environmental duty (Germany),
- in the context of protecting the "environment, biodiversity and ecosystems' (Italy),
- a list of detailed obligations for state authorities to take "appropriate steps" towards realizing precisely defined "well-being objectives" for future generations (Wales)
- "Sustainable environment for future generations" (Albania),
- intergenerational justice including the right to access a clean environment (India),
- intergenerational equity (Hungary).
- In India, it also includes a duty of everyone to protect the environment and use it with prudence and with a regard for later generations.
- In Norway, the notion of future generations is only explicitly mentioned in relation to the states' duty to manage *natural resources* on the basis of comprehensive long-term considerations,

Importantly, most respective jurisdictions do not use the human rights language for the protection of future generations. Rare exceptions seem to include France, where the 'right to live in a balanced environment that respects health', as declared in Article 1 of the Charter for the Environment, is interpreted as including the preservation of the rights of future generations. In Norway, the concept of future generations is also mentioned in the context of the right to environment, and in Czechia, the preamble of the Charter of Fundamental Rights mentions future generations.

In the Convention's system, under the current text and caselaw, the Convention does not protect future generations. However, in the specific context of climate change, the Court has stressed the importance of taking future generations into account, underscoring the concept of intergenerational equity. In the case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], 2024, § 420, the Court noted that:

> "[The obligation to protect the climate system for the benefit of present and future generations of humankind] must be viewed in the light of the already existing harmful impacts of climate change, as well as the urgency of the situation and the risk of irreversible harm posed by climate change. In the present context, having regard to the prospect of aggravating consequences arising for future generations, the intergenerational perspective underscores the risk inherent in the relevant political

[60] See, for example, *Association Burestop 55 and Others v. France*, 2021, § 59
[61] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], 2024, § 539(b)
[62] In India, the public trust doctrine was announced by the Supreme Court over rivers, forests, seashores and the air.

decision-making processes, namely that short-term interests and concerns may come to prevail over, and at the expense of, pressing needs for sustainable policy-making"[63].

As the ECtHR report also stresses, future generations are not themselves rightsholders, and they are mentioned on the basis of substantive rights only.

2.2. What types of interests do fall under the scope of the protected needs of future generations?

First, future generations' interests are predominantly protected by courts in the context of environmental concerns (including biodiversity, water management, and waste management), for example, in Albania, Hungary, Germany, Italy, France, and Montenegro. In France, it is deemed to be in the collective interest of future generations to live in a balanced, healthy environment. Similarly, future generations and environmental protection are considered "a single related concept" in Albania. Moreover, there is a court judgment in France,[64] which seem to implicitly extend the right of future generations to sustainable water management, so that the right of these generations to live in a healthy environment can potentially be applied to many areas in the future.

Some constitutions expressly provide a list of natural assets that should be protected for future generations. E.g. the public trust provision in Hungary mentions forests, soil, groundwater and freshwater resources, clean air, biodiversity, but also cultural heritage. In India, the public trust doctrine requires preserving forests, seashores, air, and rivers for the public and preventing private ownership, as these resources belong to future generations as well. In Norway, future generations have been mentioned in cases concerning the use of natural resources. In Montenegro, future generations should be guaranteed access to natural resources.

German courts specified an obligation of the present generation to "preserv[e] the natural foundations for future generations" and that such natural foundations of life should be left to posterity in such a condition that later generations are "not forced to engage in radical abstinence".

Dutch law uses the concept of "habitable planet", including flood and water management, population policy, planning system, traffic, housing, scenic beauty and nature conservation.

Second, another typical field in which the interests of future generations are featured concerns energy resources. French courts have referred to future generations in cases concerning LNG terminals, nuclear waste disposal, and renewable energy generation (windmills).

The third context concerns climate protection. In Italy, there is an obligation to take into account the rights of future generations in case of pollution that cause long-term harm, such as climate change, and climate litigation often feature future generations also in the Netherlands,

[63] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC] 2024 §420
[64] Strasbourg Administrative Court on 7 November 2023, no. 2307183

Belgium, France, Estonia,[65] and Spain. Before the ECtHR, future generations were invoked by the Court solely in the context of climate change.[66]

In some jurisdictions, future generations' interests include the protection of cultural heritage (e.g. in Italy, Montenegro, Hungary).

Finally, the interests of future generations have been invoked by Belgian courts in the context of budgetary policy judgment, pension reform, spatial planning, energy, and climate policy. Similarly, in Estonia, the preambular reference to future generations uses this concept in the context of "their social progress and general welfare".

2.3. Does your legal system provide for a definition of 'future generations'? If not, how do courts grasp this notion?

None of the respective domestic legal systems defines future generations.

In light of the decisions handed down by the French Constitutional Council, it appears that it is understood to mean all generations yet to be born without any time limit being set, as well as generations already born, but too young to act themselves. The basis of this protection lies in Article 1, interpreted in light of paragraph 7 of the preamble to the Environmental Charter.

In Hungary, there is no definition, the Constitutional Court uses the term to refer to long-term environmental interests and the need to preserve key environmental assets for the future. Even though in Hungary, the exact scope and normative meaning of relevant interests are subject to legal interpretation by the Constitutional Court and the Ombudsman for Future Generations.

Wales has the most clearly defined normative content for the long-term interests that warrant legal protection, which are embodied in certain well-being objectives. The Welsh Act refers to the considerations of the economic, social, environmental, and cultural well-being of future generations. However, it does not define future generations, as its rules are process-focused, rather than outcome-based. The Act compels state authorities to take appropriate steps towards the stated goals.

Interestingly, the ECtHR does provide a definition of 'future generations', being individuals not alive today. In this way, the Court distinguishes them from "those currently living"[67]. Future generations are particularly vulnerable to climate change. As the Court states: "it is clear that future generations are likely to bear an increasingly severe burden of the consequences of present failures and omissions to combat climate change […] and that, at the same time, they have no possibility of participating in the relevant current decision-making processes"[68].

One respondent judge noted the need to develop future generations as a standalone focus, "not just an accessory of environmental protection."[69]

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[65] The Supreme Court of Estonia made reference to restriction of rights in the future, which in the context of case includes the rights of persons not yet born, in a reasoning resembling the findings of the Neubauer case.
[66] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC] 2024, §§ 521-526
[67] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC] 2024 §419
[68] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC] 2024 §420
[69] See input of Albania

Overall, several respondents noted that constitutional responsibility for future generations allows (or even prompts) the legislatures, and the courts, to take a longer-term perspective as opposed to the lived reality of the markedly short-termist political process.[70] Explicit reference to future generations opens up a long-term time horizon for evaluating the cumulative effects of state decisions.

It has also been emphasized that the concept of future generations is by no means a marginal or merely rhetorical issue even in some of those jurisdictions, where it has not yet been enshrined in the constitution.[71] Despite the lack of express mention of future generations, such as in the Netherlands, several pieces of legislation protect their interests indirectly and the courts do pay regard to them. Also in India, there is no legal definition, but the courts frequently utilize this concept. In Montenegro, although the legal framework does not directly define future generations, court decisions and administrative measures reportedly increasingly recognize the need to protect those interests through the long-term preservation of natural resources and ecosystems.

2.4. If your legal system contains separate provisions for protecting the environment and future generations, what are the differences between their scope of protection?

In France, these two forms of protection largely overlap. While this appears to be true in other relevant jurisdictions as well, given that the concept of future generations is often invoked by courts in an environmental context (see Section 2.2), there can be some important differences.

A major difference often lies in differing extent of justiciability. The right to a healthy environment is often justiciable, whereas in some jurisdictions, such as in Belgium, the general policy objective that mentions inter-generational fairness, in itself, cannot serve as a basis for judicial review. The same is true for Hungary, where constitutional complaints can only be based on the right to environment but not on the provision mentioning future generations.

A further difference may lie in the normative content. In Hungary, for instance, the right to environment entails a negative action on part of the legislature, in as much as it is not allowed to step back from the statutory protection already provided. However, it is much harder to argue for taking protective steps against newly emerging hazards under the non-regression principle. In contrast, Article P), the public trust doctrine enshrined therein, entails a proactive duty, which means that the legislature has a duty to adopt legislation even against newly emerging threats, such as climate change.

2.5. Do the relevant forms of protection include remedy against environmental harm already occurred or do they protect against the risk of future harm as well?

Environmental rights and correlative duties are typically interpreted as offering protection against the risks of future harm. This has emerged from judicial practices in Germany, Belgium, Hungary, the Netherlands, France, Czechia, Estonia, Romania, and Norway.

This is in line with the Convention, where the obligation to protect life also applies where the right to life is threatened by natural disaster and the danger is imminent and clearly

[70] E.g. see answers received from Germany and Italy.
[71] See input received from Spain.

identifiable[72]. In the context of climate change, the notion of imminent harm must be applied by properly taking into account the specific nature of climate change-related risks, including their potential for irreversible consequences and corollary severity of harm. The "real and imminent" test may be understood as referring to a serious, genuine and sufficiently ascertainable threat to life, containing an element of material and temporal proximity of the threat to the harm complained of by the applicant[73].

By contrast, in the UK, where no human right to a healthy environment is guaranteed, statutory obligations mainly provide remedies against environmental harm already occurred. The only exception may be the statutory obligation to set carbon budgets aimed at achieving net zero by 2050, which would have implications for future generations; however, the Act does not mention this term.

2.6. Are the provisions mentioned above justiciable? Are there any specific issues related to the justiciability of these provisions?

In the majority of jurisdictions, the right to a healthy environment, or the constitutional duty to protect the environment, is justiciable. This has been confirmed, inter alia, by Hungary, Germany, France, and Estonia. In some jurisdictions, due to the novelty of such provisions, there is no relevant judicial practice yet. (e.g. in Italy). In Hungary, the provision on the protection of future generations is also justiciable.

The only exception among jurisdictions recognizing a right to environment seems to be the Netherlands, where it is construed as a social fundamental right, which is not justiciable before the courts. However protection can still be offered by universally binding fundamental rights treaties such as the ECHR.

3. Enforcement mechanism

3.1. What types of courts do hear cases invoking these rights? (constitutional courts or ordinary courts as well?)

In some States, only Constitutional Courts hear disputes based on violations of environmental rights or refer to such rights in their reasoning (for example, Hungary, Montenegro).

In other jurisdictions, both the Constitutional Court (or Supreme Court) and ordinary courts hear rights-based complaints, such as Germany, Belgium, France, Spain, Romania, and Sweden.

In the UK, judicial review claims based on an alleged breach of Convention rights are often heard at first instance in the High Court. As there is no constitutional court in Norway either, right-related cases are heard by ordinary courts. In the Netherlands, the constitution is applied by ordinary courts, which can review the constitutionality of the legislative acts of local authorities but not that of formal laws. Regulations can be challenged before both administrative courts (indirectly through the review of a specific decision) and civil courts (directly through tort law).

[72] See, for example: Erdal Muhammet Arslan and Others v. Türkiye, 2023, § 114-115
[73] Verein KlimaSeniorinnen Schweiz and Others v. Switzerland [GC] (2024, §§ 511 et 513).

Special enforcement powers and institutions exist in India. The Supreme Court has been overseeing the protection of a forest and has issued several interim directions for the last 20 years. In addition, the National Green Tribunal was established as a sui generis, quasi-judicial body with wide-ranging powers, including preventive and remedial powers, to enforce the environmental rights flowing from Article 21 of the Constitution.

3.2. In what types of procedures? (e.g. abstract constitutional review, individual constitutional complaint, administrative proceedings, tort cases, etc.)

Jurisdictions vary in terms of the types of proceedings available to raise a rights-based complaint.

In some jurisdictions, plaintiffs can launch individual constitutional complaints for breaches of environmental rights (for example, Germany, Hungary, Ukraine, Montenegro). In some countries, it is possible to launch an abstract constitutional review procedure to scrutinize whether a piece of legislation conforms to constitutional environmental rights (e.g. Hungary, France, Belgium (only together with other rights), Ukraine, India, Montenegro), whereas such an individual constitutional complaint mechanism is excluded in North Macedonia.

In some of the states included in this survey, only in concreto constitutionality review could be launched, but not an abstract review, such as in Norway. In the Netherlands, a constitutional review of formal laws enacted by the government or parliament is not allowed, but rights-based arguments can be raised in tort cases. In the UK, rights-based claims can only be raised in judicial review cases.

In some jurisdictions, special proceedings and powers exist to enforce environmental rights. For instance, class action lawsuits for violation of fundamental rights brought in the public interest in India. Moreover, the Belgian constitutional court also has the power to consider relevant provisions mentioning future generations ex officio in proceedings launched on other legal grounds. There is a right of action for the protection of the environment vested with the President of the Court of First Instance in Belgium. In accelerated proceedings, the public prosecutor, an administrative authority or an environmental organization with legal personality can ask the President to order the cessation of actions that constitute, or threaten to constitute, an obvious breach of environmental law. In a judgment, the Supreme Court considered that the purpose of the Act was not only to prevent damage to the environment but also to ensure a viable environment for the population, so that the protection of the environment also extends to the protection of town and country planning.[74] According to the Court, the Act not only makes it possible to order the cessation of illegal works that impair the environment but also that the works already completed be undone if such an injunction is necessary to prevent further damage to the environment.

3.3. Are there non-judicial bodies mandated with the promotion of these rights in your jurisdiction? (e.g. ombudspersons, legislative committees, long-term planning or impact assessment mechanisms?)

[74] Judgment of 8 November 1996 (Cass., 8 November 1996, n° C.95.0206.N, Eurantex nv / Boterstraatcomité vzw)

In many states, ombuds institutions are important advisory, advocacy institutions, which may handle citizens' environmental complaints: Albania, Hungary, Belgium, Estonia, Greece, North Macedonia, Norway, Ukraine, Spain, UK, Czechia, Montenegro.

The Spanish Ombudsman, for instance, may call for the prevention, compensation, repair of damage and restoration of the environment. This Office is concerned with the adequate and sustainable maintenance of natural resources (water, coasts and beaches, mountains, protected areas, fauna and flora) and about pollution and environmental impact (noise, dumping, waste).

The Czech Ombudsman may take actions related to protection of the environment or promotion of the right to a favourable environment. is entitled to access the court and bring an action against administrative decision if he or she demonstrates a compelling public interest in bringing it. Similarly, the Prosecutor General is entitled to bring action against administrative decisions if he or she finds a compelling public interest in bringing it. In practice, both institutions used this competence for environmental protection.

In Hungary, there is an Ombudsman for Future Generations. The Ombudsman has a mandate to intervene in administrative environmental court proceedings, or to launch ex post constitutional review proceedings before the Constitutional Court. The office investigates complaints and engages in advocacy for future generations.

In Wales there is a Commissioner for Future Generations. In India, the National Green Tribunal is a special enforcement mechanism.

France has two independent legal bodies. The Economic, Social and Environmental Council, made up of representatives from all economic, social, political and cultural backgrounds, which can make recommendations to the government. Furthermore, the High Council for the Climate, created in 2018, is responsible for assessing public policies in this area and ensuring that France complies with its European and international commitments, in particular the 2015 Paris Agreement on reducing greenhouse gas emissions. It is composed of scientific, technical, and economic experts.

In addition, the Special Rapporteur for the Defence of Environmental Defenders, created under the Aarhus Convention in October 2021, may also intervene in court proceedings to respond to the increasing number of violations of environmental defenders' rights and protect them against any form of harassment, persecution, or criminalization. The rapporteur's competence extends to the States parties to the Convention if they are suspected of violating the rights provided for in the Convention, but when the suspected violations originate from an international company, the competence extends to the territory in which the company's subsidiaries or contractors operate. For example, the Special Rapporteur intervened in the Total in Uganda case, in which Friends of the Earth and Ugandan associations denounced Total's oil projects in Uganda and Tanzania and in particular the massive population displacements they involved. They brought an action before the civil courts on the basis of the law on due diligence, seeking an injunction against Total Energies to identify the risks of serious violations of human rights and fundamental freedoms, the health and safety of individuals and the environment

resulting from the activities of its subsidiaries and their subcontractors in carrying out the Tilenga and EACOP projects.[75]

3.4. Who are the main types of plaintiffs and respondents?

PLAINTIFFS:

Jurisdictions vary in terms of whether private individuals or NGOs are typical plaintiffs enforcing environmental rights. In Germany, the plaintiffs of rights-based litigation in environmental cases are predominantly individuals (with the exception of administrative court proceedings in which NGOs are able to establish standing more easily).

In contrast, NGOs are driving rights-based litigation in Romania, North Macedonia, Norway, and recently also in Czechia. Over the past decade, more than 100 environmental NGOs have successfully initiated legal proceedings in Czechia. NGOs appear to be the dominant type of environmental plaintiff in France and Estonia. Given that, at present, children are unable to act alone under the rules of civil, criminal, and administrative proceedings, associations set up by adults can defend their interests most effectively (France).

The special types of plaintiffs include the following:

- 25% of the Members of Parliament (members of the opposition), and the Hungarian Commissioner for Fundamental Rights (on the proposal of its deputy, the Ombudsman for Future Generations) may also launch an ex post constitutional review proceedings of environmental laws, together with the Hungarian Commissioner for Fundamental Rights (in Hungary),
- Business entities who believe that an environmental legislation constitutes an excessive infringement of their fundamental rights (Belgium)
- Municipalities also enjoy access to justice to protect the environment, which derives from their right to self-government (Czechia). In 2015, in a case concerning the enlargement of the Václav Havel Airport in Prague, a corresponding part of the Spatial Plan of the Prague Region was challenged by five municipal districts, two individuals, and four institutes of the Academy of Sciences of the Czech Republic.[76]

Before the ECtHR, complainants have primarily been private individuals in environmental pollution cases, whereas in climate litigation, NGOs are able to establish standing more easily.

RESPONDENTS

Typical respondents are state authorities or local authorities.

Special rules exist in Czechia, where the government can only be sued for its omission as a duty-bearer under the right to a favorable environment only if it acts as an administrative authority. In *Klimatická žaloba*, a case which represented the most high-profile climate litigation to date, the Supreme Administrative Court ruled that the government cannot be taken before the court for inactivity in fight against climate change as it merely coordinates the

[75] The case is still being heard by the Paris judicial court
[76] Judgment of the Supreme Administrative Court of 21 November 2018, No. 2 As 81/2016-156.

ministries. Therefore, individual ministries are the main duty-bearers in climate change related cases.[77]

3.5. What type of decisions can be made in these cases? (e.g. finding non-compliance, ordering to change the law, restoration, penalty payment)

In the majority of jurisdictions, all types of remedies specified in national laws can be granted in such cases. In the case of a violation of environmental rights, courts may find non-compliance with the rights, mandate a change in the law or policy, or declare laws violating the rights invalid.

3.6. Are there any statistics available on the number of such cases?

None of the domestic jurisdictions reported public statistics on the number of environmental rights-related cases.

Before the ECtHR, more than 400 environmentally relevant cases have been brought.

3.7. Are there any specific issues related to the enforcement of these rights by the courts?

In some jurisdictions, courts have special powers to promote enforcement, such as penalty payments to encourage compliance with judgments, which is also possible in certain jurisdictions, such as Belgium and India. Belgian courts may also issue interim measures and deliver judgments within a few days in cases of extreme urgency.

Several problems have been referred to in national reports, including the separation of powers, which may limit the courts' ability to impose certain concrete obligations on the legislature (see Section 5.1. below), or the ambiguity of the rights, which limits their effectiveness (in Estonia). Some jurisdictions experience problem with the execution of judgments in rights-based cases. For instance, the government may counteract the court's finding that are seen as controversial through legislation.[78] The enforcement of restoration measures can face significant hurdles (e.g. in Spain).

In India, implementation challenges include (i) conflicting priorities, which hinder strike a fair balance as mandated by sustainable development; (ii) resistance of powerful industry or political actors; (iii) lack of environmental data, which hinders proper enforcement of court orders; (iv) the fact that marginalized groups lack means to ensure enforcement of court orders; and (v) limited public awareness hindering the enforcement of environmental rights. Even though there are no official statistics, however, a study showed that 40-50% of decisions

[77] Judgement of the Supreme Administrative Court of the Czech Republic of 20 February 2023, No. 9 As 116/2022-166.

[78] In the UK, this was mentioned on a more general level and not with respect to environmental cases. In Hungary, the Parliament adopted an amendment to a water management legislation that goes against a previous decision of the Constitutioanl Court on protecting groundwater reservoirs.

rendered between 2015-2020 by the National Green Tribunal in environmental matters saw significant delays in enforcement and some of them have not been implemented at all.

In Norway, the Supreme Court also highlighted that given how decisions involving basic environmental issues often require a political balancing of interests and broader priorities, democracy considerations suggest that these decisions should be made by popularly elected bodies, and not by the courts.

Spain has reported problems with the rights of nature legislation and its enforcement. The Mar Menoor law is notably short and lacks detailed provisions on enforcement mechanisms, making it difficult to translate the legal personality concept into practical actions. It does not explicitly outline how it is integrated into existing environmental regulations and administrative procedures, which creates confusion and potential conflicts between different legal frameworks. Additionally, the designated body responsible for enforcing Mar Menor's rights has not been clearly established, raising questions regarding the effectiveness of addressing violations. Implementing the law requires resources for monitoring, enforcement, and potential restoration projects; however, concerns exist about whether sufficient resources are allocated. Consequently, this regulation is often considered as a "dead letter," as implementation is a real challenge.

Exceptionally, the ECtHR may provide guidance on enforcement in a sentencing judgment. This only occurred in one environmental case, Cordella and Others v. Italy.

3.8. Are there any statistics available on the success rate of these decisions?

Belgium: 250 cases with reference to the right to a healthy environment, 9 cases so far where the non-regression principle was violated. Environmental cases based on the right to a healthy environment are often successful, and the Constitutional Court has always considered the restriction on ownership to be justified in the public interest. At the same time, the court found no violation in cases brought on the basis of solidarity between the generations.

Similarly, constitutional environmental cases are usually successful in Hungary. There is a long track record of successful environmental and future generations cases, the first successful environmental case dates back to 1994.

In contrast, rights-based environmental cases are not successful or entirely missing in other jurisdictions. In the UK, for instance, environmental law juridical review claims have been always almost unsuccessful. For instance, in *R (on the application of Plan B Earth) v Prime Minister* [2021] EWHC 3469 (Admin) it was found to be not arguable that there had been breaches of ECHR articles 2 and 8 in relation to government's alleged failure to take practical and effective measures through policy to align with climate change goals set out in the Paris Agreement. In *R (on the application of Wildfish Conservation) v Secretary of State for Environment, Food and Rural Affairs* [2023] EWHC 2285 (Admin) it was held that there had been no breach of the second claimant's rights under ECHR A1P1 and that the third claimant's rights under ECHR Article 8 was not engaged when the government produced its Storm Overflows Discharge Reduction Plan.

In North Macedonia, the paucity of environmental rights litigation can be attributed to the lack of trust in the judiciary by the general public and the very restrictive requirements imposed by

courts in environmental cases. Environmental cases have a low probability of success, which can have a chilling effect on such lawsuits. There have been no rights-based litigation cases in the Ukraine.

No successful cases have been reported in Italy. The Court of Rome, second civil section, declared a case inadmissible for the lack of jurisdiction due to the separation of powers in the first climate litigation case. The case entertained a civil liability claim under the Civil Code for the failure to adequately address climate mitigation measures, as set out in the Integrated National Plan for Energy and Climate. However, this predates the constitutional amendment.

4. Procedural questions

4.1. In light of the applicable legal requirements, is establishing standing challenging for those affected by environmental pollution or risk of future environmental harm, such as vulnerable individuals, children, and environmental NGOs?

Domestic laws provide various requirements for claiming standing in environmental matters. Most jurisdictions impose restrictive criteria to limit the number of potential plaintiffs.

In the UK, the applicant must have a "sufficient interest" in the matter to bring a judicial review proceedings concerning environmental pollution, which would be met by being directly affected as an individual or as a special interest group representing persons particularly vulnerable to harm from the challenged action/inaction of a public authority.

Individuals must be presently, individually and directly affected in their fundamental rights also in Germany. Individuals must have a "current interest", as opposed to "future interest", to qualify as interested party with standing in the Netherlands.

In some states, establishing standing is especially challenging. In North Macedonia, standing is challenging due to a causation requirement, which is almost impossible to prove in environmental and health related cases.

STANDING OF CIVIL SOCIETY ORGANISATIONS

NGOs may potentially have standing in every jurisdiction provided they meet certain criteria.

The success rate of NGOs, nevertheless, differs. In Belgium, there have been no recent instances in which an NGO has been unsuccessful in claiming standing in administrative cases, although several statutory standing criteria must be met. In Hungary, NGOs are granted a privileged standing. However, statutory standing requirements for environmental NGOs are frequently interpreted in a restrictive manner. This interpretation has resulted in nationwide NGOs being denied standing in cases concerning geographical locations where they have not conducted any activities despite being very active in other parts of the country.

Legitimate interest requirements for standing have been broadly interpreted in some states. For example, in Spain, an environmental NGO was deemed to have a legitimate interest and was consequently granted standing to challenge a pardon in a crime against land use planning.

According to the European Court of Human Rights (ECtHR), legal persons cannot claim to be victims of a Convention violation arising from environmental disturbances or nuisances that can only be experienced by natural persons. Nevertheless, an NGO that is party to domestic proceedings concerning an environmental issue can claim to be the victim of a violation of Article 6 §1 of the Convention.

In climate change cases, before the ECtHR, individuals need to show that one was personally and directly affected by the impugned failures, must be subject to a high intensity of exposure to the adverse effects of climate change, and pressing need to ensure the applicant's individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm. NGOs may have standing to claim 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, if it is: (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.

ACTIO POPULARIS

In the majority of jurisdictions, there is no actio popularis, public interest litigation to protect nature (e.g. Germany, Hungary). Neither is such a possibility before the ECtHR.

In contrast, in India, standing requirements in public interest litigation cases brought by any individual are quite relaxed to promote access to justice, but petitioners must demonstrate that they have a well-funded case, pursuing justice in a good cause and not for coveting publicity and popularity. A plaintiff may be directly or indirectly affected by environmental pollution, and third parties may claim protection for the rights of the public at large.

4.2. How do courts in your jurisdiction handle the scientific evidentiary questions inherent in adjudicating such disputes?

Several judge rapporteurs did not report any special rules applicable to evidentiary proceedings in rights-based litigation. Standard practices include using the courts' own experts, party-appointed expert reports, or consulting the scientific evidence already in the case file.

Special rules were reported from Germany, where the courts in climate ligation cases refer to the findings of the IPCC reports. In India, the National Green Tribunal consists of two full-time expert members. In Hungary, the Constitutional Court in environmental rights-based litigation cases often relies on the reports of prestigious scientific organizations, such as the Hungarian Academy of Sciences.

ECtHR relies on the findings of domestic courts and competent domestic authorities[79], and assesses the evidence in its entirety. In many cases, the Court uses a combination of data from different sources[80]. In the cases when the decisions of the domestic authorities are obviously inconsistent or contradict each other, the Court has to assess the evidence in its entirety[81]. In this aim, the Cour may have regard to a violation of not only domestic[82] but also international pollution standards[83], take account of medical certificates as well as expert assessments, studies and reports, including those drawn up by private experts[84]. As regards climate change, it has pointed to the particular importance of the reports prepared by the intergovernmental panel of independent experts[85]. The Court generally applies the "beyond reasonable doubt" standard of proof: may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact[86].

4.3. What are the admissibility criteria applied in such cases? (e.g. de minimis requirement in cases concerning environmental pollution)

Usually, the ordinary admissibility criteria apply. Typically, proof of harm already occurred is not necessary, a legitimate interest in the contested act is sufficient, which is appraised by courts in a case-by-case manner.

The ECtHR appears to be the only jurisdiction that explicitly uses the de minimis criteria in environmental human rights adjudication. In order to be actionable, environmental harm must attain a minimum level of severity under Article 8.[87] Under Article 2, respective risk to life must me "serious"[88], and in the context of climate change, "real and imminent"[89].

5. Substantive questions concerning the judicial evaluation in such disputes

5.1. Given that such cases often involve a review of the State's environmental policy measures, the justiciability of such lawsuits may be limited, for instance with reference to the separation of powers doctrine. What is the experience of courts in your jurisdiction?

The principle of separation of powers applies in every jurisdiction, which limits the extent of judicial review in the case of complex environmental and climate policy issues. Courts typically confine their reviews, such as conducting internal and external legality reviews, but cannot judge the desirability of pursuing certain policy objectives. (Belgium, Germany). Czech courts explicitly found that *"it is not for the administrative courts themselves to set the standards by which to assess the unlawfulness of the alleged interference."* On this basis, they

[79] *Cordella and Others v. Italy*, 2019, § 160
[80] See, for example, *Pavlov and Others v. Russia*, 2022, §§ 65-71
[81] *Kotov and Others v. Russia*, 2022, § 102
[82] See, for example, *Kapa and Others v. Poland*, § 153, 2021; *Kotov and Others v. Russia*, 2022, § 106
[83] *Fägerskiöld v. Sweden* (dec.), 2008; *Oluić v. Croatia*, 2010, §§ 52-62 and 65; *Frankowski and Others v. Poland* (dec.), 2011
[84] *Oluić v. Croatia*, 2010, §§ 52-62 and 65
[85] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], 2024, § 429
[86] See, for example, Fadeyeva v. Russia, 2005, § 79
[87] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], 2024, § 472.
[88] See for example: *Brincat and Others v. Malta*, 2014, § 82.
[89] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC] (2024, §§ 511 et 513.

refused to concretize the positive obligations of the state in the context of climate mitigation when there was no precise obligation enacted in legislation. An expansive interpretation of the separation of powers doctrine applies in North Macedonia, which bars the courts even from finding a wrongful omission on part of state authorities, as the latter could not be considered an administrative action.

The separation of power is a hotly debated issue in climate litigation cases. A climate litigation claim was dismissed due to separation of powers doctrine in Italy. In France, it did not bar the courts from rendering judgments in climate cases, however, certain judgments were criticized by some commentators, political parties and the French public for exceeding the prerogatives of judges.

Climate litigation judgments suggest that the line between reviewing the appropriateness of the executive's policy and conducting a judicial review is indeed fairly thin. To safeguard against criticism rooted in the separation of powers, the Conseil d'État in its Grande Synthe ruling[90] took great care to base the State's condemnation on non-compliance with national and international legal commitments made by France, i.e. on standards with legal value instead of second-guessing the appropriateness of the State's action or, in this case, inaction.

The separation of powers, usually doctrine, does not exclude the jurisdiction of courts in climate litigation cases; it only rules out certain findings from the courts' remit. For instance, in the Belgian Klimaatzaak case, the Court or First Instance of Brussels found the federal state and the three regions jointly and individually in breach of their duty of care for failing to enact good climate governance. The Court explained that neither European nor international law required the specific reduction targets requested by the plaintiffs and that the scientific report that they relied on, while scientifically meritorious, was not legally binding. The specific targets, therefore, were a matter for the legislative and executive bodies to decide, and the court confined itself to finding a violation. The Court of Appeal, however, later went on to issue an injunction to the Belgian State and the Regions to commit to at least a-55% emissions cut by 2030 compared to 1990 levels.

Against this background, a significant finding was made by the ECtHR in Verein KlimaSeniorinnen Schweiz and Others v. Switzerland [GC] 2024, §412, regarding the doctrine, stressing that it does not rule out the competence of courts in climate matters:

> "Judicial intervention, including by this Court, cannot replace or provide any substitute for the action which must be taken by the legislative and executive branches of government. However, democracy cannot be reduced to the will of the majority of the electorate and elected representatives, in disregard of the requirements of the rule of law. The remit of domestic courts and the Court is therefore complementary to those democratic processes. The task of the judiciary is to ensure the necessary oversight of compliance with the legal requirements. The legal basis for the Court's intervention is always limited to the Convention, which empowers the Court to also determine the proportionality of general measures adopted by the domestic legislature". The ECtHR also added that the Court's competence in the context of climate-change litigation cannot, as a matter of principle, be excluded…. The question is no longer whether, but how,

[90] No. 427301 of 19 November 2020.

human rights courts should address the impacts of environmental harms on the enjoyment of human rights." (§451)

5.2. When can courts find a violation of these rights? What is the extent and role of the margin of appreciation doctrine in such cases?

In virtually every jurisdiction, courts conduct a somewhat limited judicial review of matters of climate and environmental policies by affording the executive a certain margin of appreciation.

For instance, the German Federal Constitutional Court will only find a violation of a duty of protection if no precautionary measures whatsoever have been taken, or if the adopted provisions and measures prove to be manifestly unsuitable or completely inadequate. German administrative courts can only review in the context of climate litigation cases whether the government has adopted its plan for future mitigation measures in a methodologically sound manner, which is not based on unrealistic assumptions and whether the reasons for the forecast results are plausible.[91]

Belgian courts only review whether the decision of the state authority is manifestly unreasonable, in light of scientific expert evidence commissioned by the plaintiff. The margin of appreciation is exceeded only if a decision is so unreasonable that no reasonable authority acting under the same circumstances could have ever come to that conclusion.

In Czechia there is also a wide margin granted to authorities in policy matters. 'The obligation of the State to protect against interference with the environment can be considered as the essence of this right if the interference reaches such a level that it makes it impossible to realise the basic needs of human life."[92]

However, the state's discretion is not absolute. In Montenegro, for instance, courts strike down state decisions that excessively favors economic interests over the right to a healthy environment.

In contrast to more deferential jurisdictions, constitutionality control is very intensive in Greece in the field of environmental law. For many years and until the economic crisis in 2010, the control of the constitutionality in favour of the environmental protection (Article 24 of the Greek Constitution) was quite intensive and the Council of State accepted the unconstitutionality of several law provisions. After the economic crisis, the jurisprudence of the Council of State became more moderate.

Before the ECtHR, Member States do enjoy a wide margin of appreciation in environmental matters[93], and an impossible or disproportionate burden must not be imposed on the authorities without consideration being given, in particular, to the operational choices which they must make in terms of priorities and resources[94].

[91] Germany
[92] Judgment of the Constitutional Court of 26 January 2021, No. Pl. ÚS 22/17.
[93] See, for example, *Płachta and Others v. Poland* (dec.), 2014, § 79
[94] See, for example, *Brincat and Others v. Malta*, 2014, § 101

However, in climate cases, the margin of appreciation becomes a two-tier concept. The ECtHR stressed that "the nature and gravity of the threat and the general consensus as to the stakes involved in ensuring the overarching goal of effective climate protection through overall GHG reduction targets in accordance with the Contracting Parties' accepted commitments to achieve carbon neutrality, call for a reduced margin of appreciation for the States. As regards the latter aspect, namely their choice of means, including operational choices and policies adopted in order to meet internationally anchored targets and commitments in the light of priorities and resources, the States should be accorded a wide margin of appreciation." (§543)

5.3. What are the main legal principles that courts associate with and/or discern from these provisions? (e.g. the precautionary principle, inter-generational equity, etc. For a list of most commonly invoked principles in environmental human rights adjudication please see the Strasbourg Principles on the International Environmental Human Rights Law here)

Some principles emerge in several jurisdictions, whereas others are more specific to certain jurisdictions:

- precautionary principle: UK, Italy, Hungary, France, Czechia, Estonia, Greece, India, Romania, North Macedonia, Norway, Spain, Montenegro, ECtHR
- principle of sustainability/sustainable development: Greece, India, Spain, Montenegro
- principle of sustainable use: Estonia, Romania
- Economic and rational use of natural resources: Hungary, Spain
- principle of proportionality: Estonia, North Macedonia, Montenegro
- intergenerational equity: Hungary, India, Spain, Montenegro, ECtHR
- polluter pays: India, Hungary, Spain
- Principle of full compensation for environmental damage caused (Ukraine, Hungary)
- Prevention principle: Czechia, Hungary, Greece, North Macedonia, Spain
- Public participation: Spain, Hungary, Ukraine
- Non-regression principle: future generations, right to environment (Hungary, Belgium), non-deterioration of the ecological situation (Ukraine)
- Principle of intertemporal preservation of freedom: the reduction burdens are not unevenly distributed over time and between generations to the detriment of the future. It follows from the principle of proportionality that one generation must not be allowed to consume large portions of the CO_2 budget while bearing a relatively minor share of the reduction effort, if this would involve leaving subsequent generations with a drastic reduction burden and expose their lives to serious losses of freedom (Germany)
- Special duty of care: An obligation for the legislature to take into account reliable scientific evidence, such as with respect to the possibility of serious or irreversible impairments (Germany).
- Although it may not qualify as a mere principle, the bulk of litigation in France currently focuses on the content of another duty of care, namely, corporate duty of vigilance.
- duty of legislature to adapt environmental laws to the latest scientific developments (Germany)
- Obligation to participate in international climate protection efforts (Germany)
- Solidarity, cooperation, sustainability, subsidiarity, responsibility, progressivity (Spain)
- Obligation not to use property to the detriment of a person and society (Ukraine)

5.4. How do courts define future generations' interests to be protected and what is their baseline to measure the protected quality of the environment? (such as its 'health' or 'integrity')

Defining the interests of future generations has been an issue for national courts in two main legal contexts: environmental and climate protection.

With respect to climate protection, German courts relied on global average temperature as a key indicator and also considered scientific knowledge substantiating the irreversible adverse impacts of exceeding certain global average temperatures. In addition, the constitutional provision on environmental protection, which also mentions the interests of future generations, has been interpreted as requiring achieving climate neutrality.

In Hungary, the long-term aspirational goals set out in non-binding sectoral strategies must be respected by binding legislation.

In the majority of respective jurisdictions, courts adopt an anthropocentric approach; therefore, their benchmarks for scrutinizing environmental pollution and destruction cases are tied to human health. As for instance the ECtHR stressed, "Article 8 is capable of being engaged because of adverse effects not only on individuals' health but on their well-being and quality of life […] and not only because of actual adverse effects but also sufficiently severe risks of such effects on individuals"[95].

5.5. In the case of conflict with other rights or interests, could environmental rights and the interests of future generations prevail, and if so, in what cases? What is the judicial test for such a balancing?

BALANCING CONFLICTING RIGHTS, LIMITATION OF THE RIGHT

Environmental protection typically does not take absolute precedence over other rights; in the same vein, the right to a healthy environment is not construed as an absolute right. It must be balanced against other rights, however, in such a balancing, environmental rights or interests usually enjoy a special protection.

First of all, environmental interests can prevail over industrial interests. Environmental rights typically clash with individual freedoms, especially the right to conduct business; however, the majority of relevant jurisdictions allow environmental rights to prevail in times of conflict. The right to property, and the right to conduct business can be restricted to give way to the right to environment (e.g. in Italy, Hungary, Czechia, Belgium, Montenegro), and French courts also held that the objective of environmental protection could justify proportionate restrictions on the freedom of enterprise. Under the constitution of North Macedonia, the preservation of nature and the environment is one of the justified reasons for limiting the freedom of the market and entrepreneurship. In Norway, environmental rights and the interests of future generations can, in principle, prevail in cases of conflict with other rights or interests.

[95] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], 2024, § 435

Estonian courts even took the view that the Constitution does not require compensation for any restriction on property imposed on a person in the public interest, such as for nature conservation purposes.

Second, environmental protection goals and human rights to the environment can only be limited due to other competing constitutional requirements. This is the case in France, for instance, where the courts stressed that "the limits imposed by the legislature on the exercise of the right to live in a balanced environment that respects health must be linked to constitutional requirements or justified by an objective in the general interest and proportionate to the objective pursued".[96]

Similarly in Hungary, due to the non-regression principle, which constitutes the main normative content of the right to a healthy environment, the legislature is only allowed to step back from the stringency of environmental protection measures if that is strictly necessary and proportionate to a legitimate aim, such as another fundamental right or a constitutional duty of the State. Several constitutional challenges against laws were successful on environmental grounds based on the non-regression principle. The Constitutional Court quashed several pieces of legislation when the legislature was unable to show such a legitimate aim, which would have justified lowering the stringency of the former environmental laws.

In Czechia, rights can be restricted based on a review of rationality. Courts of Montenegro sometimes use the principle of proportionality to ensure a fair balance between conflicting interests and rights.

Some jurisdictions refer to sustainable development as a benchmark for balancing competing rights and interests. This is the case in Greece, Montenegro, and in India. In Greece, the preservation of the environment is treated as a supreme public interest. In India, the Supreme Court found that industrial development is necessary for further economic well-being; however, such projects must not cause irreparable harm to the environment. Environmental rights normally would take precedence over the right to occupation, trade, or business in India.

FUTURE GENERATIONS

Explicit provisions on future generations allow courts to afford heightened protection to long-term environmental interests against future risks. In France, where the Charter for the Environment specifically mentions “future generations”, courts interpreted its normative content as to meaning that “the preservation of the environment must be sought in the same way as the other fundamental interests of the Nation and that the choices made to meet the needs of the present must not compromise the ability of future generations to meet their own needs.”

In the context of climate change, environmental interests may enjoy a progressively heightened weight in the balancing. In Germany, the Federal Constitutional Court stressed that climate protection duties are accorded increasing weight as climate change intensifies.

At the same time, it has also been pointed out by respondents that, given that it is already difficult to guarantee the rights of present generations, it is even more difficult to effectively

[96] See input received from France.

guarantee the rights of future generations. This difficulty stems from a lack of consensus on the hierarchy of the principles at stake, such as legal certainty, good faith, and legitimate expectations.

However, in Greece, environmental protection is considered a superior public interest, capable of trumping all other public interests. This concept has been present in many Greek court judgments over the last few decades.

5.6. If national case-law is available, please describe some of the most important cases, where these guarantees informed the substantive judicial assessment.

In France, the Constitutional Council ruled on the question of whether the legislative provision (Article L.542-10-1 of the Environmental Code) authorising the creation of a deep geological radioactive waste disposal centre, without any guarantee of the reversibility of the disposal beyond 100 years according to the applicants, constituted a breach of the right of future generations to live in a balanced environment that respects their health.[97] The Council found that this type of storage is likely to cause serious and lasting damage to the environment, and then, basing itself on Article 1 of the Charter and paragraph 7 of the Preamble, ruled that when the legislature adopts measures likely to cause such damage to the environment, it must ensure that the choices made to meet the needs of the present do not compromise the ability of future generations and other peoples to meet their own needs, while preserving their freedom of choice in this respect. It held that "the limits imposed by the legislature on the exercise of the right to live in a balanced environment that respects health must be linked to constitutional requirements or justified by an objective in the general interest and proportionate to the objective pursued". However, since the very purpose of storage was not to shift the burden of waste management to future generations, and there were a number of procedures surrounding the creation and operation of the site that would guarantee the reversibility of storage, Article 1 had not been breached.

There are three pending cases before the French courts, where the claimants refer to the duty of vigilance imposed on everyone to guard against environmental harm. In the first proceedings, Total Energie is sued, to draw up and publish a compliance plan clearly identifying the risks arising from its activity (*contribution to global greenhouse gas (GHG) emissions of up to 1%, pursuit of projects to explore new hydrocarbon deposits, contribution to the depletion of the world's available carbon budget and pursuit of oil and gas development projects, use of CO2 capture and storage technologies, etc.).* in order to draw up a complete and exhaustive risk map. The plaintiffs also requested that Total be ordered to include in its compliance plan measures to mitigate risks and prevent serious harm, with quantified targets for aligning with a GHG emission trajectory compatible with the 1.5°C limit and, in order to achieve carbon neutrality, they proposed such targets or, at the very least, proposed that the defendant set them itself, which would be compatible with the proposals made, in particular, by the IPCC.

The second proceedings are brought against EDF for the impact of its project to install wind turbines in Mexico on the human rights of indigenous peoples. The third lawsuit is targeting Vigie Groupe, formerly Suez, for the impact of activities in Chile that led to a health crisis caused by water contamination.

[97] October 27, 2023, QPC 2023-1066.

In Norway, the case concerned the validity of an administrative decision awarding ten petroleum production licences for a total of 40 blocks or parts of blocks on the Norwegian continental shelf in the southern and southeastern parts of the Barents Sea. The Supreme Court unanimously found that the royal decree was not incompatible with Article 112 of the Constitution or the European Convention on Human Rights.

There have been several relevant proceedings in Spain. The case of Greenpeace vs. Spain in 2020 exemplifies climate litigation, where Greenpeace sued the Spanish government over an inadequate National Energy and Climate Plan, claiming it violated the right to a healthy environment. Although the court ruled in favor of the government, the case underscores the increasing use of human rights arguments in climate action. Water scarcity is another pressing issue, particularly in the southeast, where downstream communities of the Ebro River have accused upstream regions of excessive water withdrawal, affecting their ability to meet basic needs and raising questions about the right to water. The loss of biodiversity is highlighted by the situation in Doñana National Park, a UNESCO World Heritage Site in southern Spain, which is threatened by water extraction for agriculture. Environmental groups argue that this degrades the park's ecosystem, violating the right to a healthy environment, and potentially affecting indigenous communities reliant on the park's resources. Spain has also tackled plastic pollution through recent legislation banning single-use plastics such as plastic bags. While not explicitly framed in human rights language, this legislation aims to protect public health and the environment, aligning with human rights principles. Lastly, the transition to renewable energy poses challenges, such as wind farm construction that might displace local communities or disrupt bird migration patterns, raising concerns about the right to a healthy environment and the rights of indigenous people

In Germany, in addition to the widely cited landmark Neubauer case (or Climate Case) decided in 2021, there are other relevant examples. Another climate case concerned the constitutionality of speed limits on highways as a climate protection measure. A constitutional complaint requiring the legislature to introduce a general speed limit on federal highways as a climate protection measure was found inadmissible. In this case, the court emphasized that the duty of the legislature to protect the environment and reach carbon neutrality will gain relative importance as climate change intensifies and will be relevant in every balancing decision of the government.[98] Another case concerned the energy transition. The Federal Constitutional Court found a law compatible with the Basic Law, which obliged wind turbine operators to allow local residents and municipalities with the opportunity to purchase at least 20% of the shares of the project company. The court found that the legislation fosters a legitimate aim in the public interest, namely, to improve the public acceptance of wind farms, which therefore justifies restricting the wind turbine operators' occupational freedom.[99] There are further pending climate lawsuits before the German Constitutional Court.

6. Broader issues

6.1. In what types of cases are these human rights and obligations invoked within environmental disputes and potentially even beyond? (E.g. biodiversity litigation,

[98] Order of the 3rd Chamber of the First Senate of 15 Dec 2022, 1 BvR 2146/22.
[99] Order of 23 March 2022 (GVerfGE 161, 63)

disputes over water withdrawals, climate litigation, plastic litigation, lawsuits concerning energy transition, etc.)

There is an extremely wide palette of cases in which environmental rights and the interests of future generations are invoked by parties and courts. Some of the recurrent types of disputes are as follows:

- water management, water withdrawal: Albania, Hungary, Greece, Spain, Czechia, Montenegro
- water pollution: France
- pollution (in general): India
- energy transition, renewable energy: Norway, Estonia, Greece, Spain, Germany
- soil pollution: France, North Macedonia, Hungary
- cultural heritage: North Macedonia, Hungary
- nuclear energy: France
- fossil fuel, petroleum production cases: France, Norway
- Forestry: Hungary, India
- Belgium: access to justice, land use, energy transition
- Climate litigation: Italy, Netherlands, Germany, France, Belgium, India, Spain, Montenegro
- Nuclear energy, fossil fuels, water and soil pollution: France
- biodiversity loss, species protection: France, Greece, Spain, Hungary, Czechia
- impact assessment obligations: (Norway)
- corporate duty of care: France, Netherlands
- plastic litigation: Greece, Spain, Montenegro
- building permits and land-use plans: Czechia, Belgium
- noise pollution cases (e.g. construction of windfarms, construction of racetracks, opening of mines) (Estonia)
- indigenous peoples' rights: Norway, Spain

- ECHR rights are applicable to industrial activities (airport litigation[100], nuclear tests[101]) and foreseeable natural disasters (mudslides[102], earthquakes[103]), exposure to pollution[104] and nuisance or to an environmental hazard, and climate change.[105]

6.2. Are there any differences and/or synergies between the protection offered under domestic human rights guarantees and that available under the rights enshrined in the European Convention on Human Rights?

There are differences between the two regimes in some respects and in some jurisdictions. For instance, NGOs may establish standing relatively easily in climate cases before the ECtHR but not before the German Federal Constitutional Court. Vice versa, individuals can have standing in constitutional complaint procedures before the German Federal Constitutional Court whereas individual victim status is extremely restricted before the ECtHR.

Further differences may lie in the details and in the emphases of protection. In several jurisdictions, environmental complaints are not discerned and adjudicated on the basis of the right to private life, but other rights, which explains the different ways of reasoning of courts. (Eg. Estonia, Hungary, etc.)

The above notwithstanding, there are obvious synergies between the domestic protection and the Convention's system. Such synergies were explicitly borne out by the reports of Belgium, Spain, France, Montenegro, and the UK (where courts apply ECHR guarantees without a competing domestic law catalogue of rights). In Norway, the Supreme Court also held that domestic human rights must be interpreted in light of the provisions of the Convention. The Czech courts also closely follow the jurisprudence of the European Court of Human Rights. Evident synergy lies in the interpretation of basic human rights concepts and the expansive approach to the positive obligations of the state.

Furthermore, the Convention is a very important tool to fill the void left by applicable restrictions of domestic law, which prevent courts from directly applying constitutional safeguards of the environment and future generations. In such cases, the Convention can provide comparable guarantees.

The ECtHR's practice is an influential authority even for the Supreme Court of India, which relies on international standards such as the Convention.

Given the synergies between domestic laws and ECHR guarantees and the importance of the ECtHR's case-law as a secondary system of protection, the prevailing approach of the ECtHR to the balancing between environmental and competing interests will have knock-on effects on the inquiry of domestic courts as well in rights-based litigation. This close relationship points to the significance of the impact that international law developments to recognize the right to

[100] See, for example, *Martínez Martínez and Pino Manzano v. Spain*, 2012, § 47-50
[101] See, for example, *Brincat and Others v. Malta, 2012, §80*
[102] See, for example, *Budayeva and Others v. Russia*, 2008, §§ 137 and 142
[103] *Erdal Muhammet Arslan and Others v. Türkiye*, 2023, § 114-115
[104] See, for example, Cordella and Others v. Italy, 2019
[105] See, for example, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], 2024, § 59

environment as a universal human right may have on the ECtHR's balancing. Even though the right to environment is currently not recognized as an explicit and standalone right on the level of the Council of Europe, international trends may nevertheless shape the ECtHR's inquiry, as pointed out by the Court in *KlimaSeniorinnen*:

> "It is also from this dual perspective of the Court's engagement with environmental issues […] that **the relevance of the recent international initiatives for the recognition of the human right to a clean, healthy and sustainable environment** […] should be understood from the perspective of the Convention. It is therefore not for the Court to determine whether the general trends regarding the recognition of such a right give rise to a specific legal obligation […]. Such a development forms part of the international-law context in which the Court assesses Convention issues before it […], notably as regards the recognition by the Contracting Parties of a close link between the protection of the environment and human rights".[106]

[106] KlimaSeniorinnen, §448.