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From Climate Litigation to Climate Justice in Europe: Towards a Catalogue of Climate Human Rights

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"*The effectiveness of environmental rights depends to a large extent on the awareness and knowledge of citizens and judges*."[1]

Now preferred to climate justice, the current trend is instead using the term climate litigation in order to focus on legal litigation in the courts.[2] It can be argued that climate litigation does not provide a settled definition agreed upon by legal experts. Therefore, climate litigation refers to legal actions brought before administrative, judicial and other judicial bodies, before national and international courts – or organizations. that raise issues of law or fact relating to climate change, their mitigation and adaptation efforts.[3] However, climate justice[4] is used to frame global warming as an ethical and political issue, rather than one that is purely environmental or physical in nature.[5] In retrospect, in linking the effects of climate change to concepts of justice, he particularly focuses on environmental justice and social justice by examining issues such as equality, human rights, and collective rights[6]. It aims to address structural, socio-economic and intergenerational inequalities so that parties can equally access broader resources to adapt to and cope with changes in their livelihoods as a result of climate change – regardless of gender, social status, ethnicity or age.

[1] L. Blondiaux, D. Bourg, M.-A. Cohendet, J.-M. Fourniau, The Undisciplined Thought of Ecological Democracy, (ed.), 2020.
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[2] Florencia Ortuzar Greene, "What Makes a Dispute a Climate Dispute?", Inter-American Environmental Defense Association (AIDA), https://aida-americas.org/en/blog/what-makes-a-litigation-a-climate-litigation
[3] J. Setzer and C. Higham (2021) Global Trends in Climate Change Litigation: 2021 Overview. London: Grantham Research Institute for Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science.
[4] Jouzel, J. and Michelot, A. (2020). What climate justice for France? Revue de l'OFCE, 165(1), 71-96. https://doi.org/10.3917/reof.165.0071.
[5] Ridder, Kilian and Schultz, Felix Carl and Pies, Ingo. (2023). Procedural Climate Justice: Conceptualizing a Polycentric Solution to a Global Problem. Ecological economics. 214. 10.1016/j.ecolecon.2023.107998.
[6] Wu, Wei and Zhang, Naishan and Li, Ao and Chen, Yu. (2024). The Path to Global Climate Justice: From the Perspective of the Regional Gap in Embodied Carbon Emissions. Environmental Impact Assessment Review. 105. 107410. 10.1016/j.eiar.2023.107410.

Indeed, "environmental rights"[7] are defined as legal prerogatives aimed at protecting the environment, *lato sensu* - the human living environment, at all levels: local, national and international. Ecology, on the other hand, is a science that studies the relationships between living beings and their environment.[8] When we talk about the legal place of ecology, the authors refer to the way in which ecological concerns are taken into account in court. The current context is marked by a global awareness of environmental issues, whether it is global warming, biodiversity loss or pollution. This awareness has led to a movement to "green" the legal spheres, including litigation. It aims to give more resources to litigants to act in favour of the protection of their environment. From a jurisprudential point of view, the courts have a major and growing role to play in clarifying the scope of environmental principles, resolving conflicts of norms and guaranteeing the effectiveness of the rights enshrined in the 3rd generation of rights, including environmental protection.[9] The development of clear and consistent case law on these issues is essential to ensure legal certainty and predictability of judicial decisions, both of which are essential for the effectiveness of environmental rights.

Therefore, the environment is deemed to have an effect on the individual. Indeed, the quality of the air, water, the sound environment, but also the fauna and flora, are all elements that can act on the health and well-being of everyone. From this observation was born the protection of the environment. The purpose of environmental law is the study or development of legal rules relating to the use, protection, management or restoration of the environment in all its forms; terrestrial, aquatic and marine, natural and cultural. The right to the environment is the human right to a healthy environment. It is a fundamental and transversal right, which is in the process of being extended, and whose fields tend to become denser as social, scientific and technical progress progresses.

The development of a right to a healthy environment is recent in modern culture. Its current appreciation in Europe by the courts has been reinforced by a new tool in the legal arsenal: climate law – enshrined in the adoption of the Paris Agreement[10] and its integration into the EU legal order thanks to the European regulation on the European Climate Law in 2021.[11]The result is a clever mix of environmental law, the

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[7] A. MICHELOT, "The right to a healthy environment: a fundamental right?", in S. Maljean-Dubois (ed.), The right to a healthy environment, Bruylant, 2015.

[8] L. C. A. KISS AND J.-P. BEURIER, *"Droit international de l'environnement",* collection Etudes internationales, 2000. In: *Revue Juridique de l'Environnement*, n°1, 2001. pp. 160-161. www.persee.fr/doc/rjenv_0397-0299_2001_num_26_1_3890_t1_0160_0000_3

[9] Handbook on Human Rights Education with Young People, Council of Europe, The Evolution of Human Rights, " *the idea behind the third generation of rights is that of solidarity [...] In much of the world, conditions such as extreme poverty, war, environmental and natural disasters have meant that there has been only very limited progress on human rights. For this reason, many people felt that the recognition of a new category of human rights was necessary: these rights would ensure that societies, particularly in developing countries, had the appropriate conditions to be able to ensure the rights of the first and second generation that had already been recognized. The specific rights that are most often included in the category of third-generation rights are the rights to development, peace, a healthy environment, participation in the exploitation of the common heritage of mankind, communication and humanitarian aid* " https://www.coe.int/en/web/compass/the-evolution-of-human-rights#:~:text=The%20specific%20rights%20that%20are,to%20communication%20and%20humanitarian%20assistance.

[10] Paris Agreement on the United Nations Framework Convention on Climate Change, December 12, 2015, TIAS No. 16-1104

[11] Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law')

right to a healthy environment and climate law. The link between environmental law and climate law should be nuanced. While climate law has developed from environmental concerns, it differs from them in its purpose and specific legal mechanisms. The European Court of Human Rights (ECHR) tends to assess climate and environmental issues separately, mainly by mobilising the fundamental rights guaranteed by the Convention. Conversely, the Court of Justice of the European Union (CJEU) seeks to bring the two branches together, in particular through the application of the European regulation on the European Climate Law (2021). This doctrinal distinction is essential to understand the contemporary issues of climate litigation, which cannot be reduced to a simple extension of environmental law, but implies an adaptation of the legal frameworks and obligations of States.[12]Subsets seem to be based on the assessment and interpretation made by the different courts, pushing them to distinguish themselves from each other, sometimes to complement each other, or to confront each other. This tension is illustrated in particular by the variety of scope of the legal texts that relate to it and the interpretation made by the national courts, the CJEU and the ECHR. Thus, it is possible to note that the Paris Agreement aims to maintain a right to pollute[13] as long as global warming has not reached the symbolic barrier of 1.5° by the end of the century.[14] It is therefore above all a law that is anthropocentric, whereas the purpose of environmental law *in the strict sense* is to protect biodiversity, fauna and flora, and natural resources.[15] Halfway, or in a combined reading, the right to a healthy environment is based on a complex, multifactorial composition of human rights protection. It appears as a conciliatory bridge between ecocentrism and anthropocentrism.[16]

Developed at different scales and in different legal systems, environmental law covers the hierarchy of norms, including international law, EU law and national law. Climate litigation covers various areas, such as air, water and sea law, land law, biodiversity, nature protection, but also fishing, hunting, energy, noise and sanitation law. According to the Universal Declaration of Human Rights and the[17] International Covenant on Economic[18], Social and Cultural Rights, "everyone has the right to a standard of living adequate for the health and well-being of himself and his family", read in conjunction with article 28, " *everyone has the right to the social and international order such as his rights and freedoms [...] can be fully realized*.[19]

[12] MARTA TORRE-SCHAUB, "The Dynamics of Climate Litigation: Anatomy of an Emerging Phenomenon", Mare & Martin, 2018

[13] Paris Agreement on the United Nations Framework Convention on Climate Change, 12 December 2015, TIAS No. 16-1104, Preamble: "Taking into account the imperatives of a just transition for the ***workforce and the creation of*** decent and quality jobs in accordance with nationally defined development priorities"; "Recognizing also that ***sustainable lifestyles and sustainable patterns of consumption and production***, with developed country Parties leading the way, play an important role in addressing climate change."

[14] F. BUTTEL, A. HAWKINS, A. POWER, "From Limits to Growth to Global Change. Constraints and Contradictions in the Evolution of Environmental Science and Ideology", *Global Environmental Change*, 1990, p. 57-66; A. Boutaud, N. Gondran, *Les limites planètes*, Paris, La Découverte, 2020, 111 p.

[15] E. REHBINDER. The positioning of the doctrine in environmental law in Germany. In: *Revue Juridique de l'Environnement*, special issue, 2016. Doctrine in environmental law. pp. 283-295. DOI: https://doi.org/10.3406/rjenv.2016.7025

[16] C. PERRUSO, "The right to a healthy, clean and sustainable environment under international law", 2024: https://www.conseil-constitutionnel.fr/publications/titre-vii/le-droit-a-un-environnement-sain-propre-et-durable-saisi-par-le-droit-international

[17] Article 25 of the Universal Declaration of Human Rights

[18] Article 12(2)(b) of the ICESCR requires States Parties to improve " *all aspects of environmental and industrial hygiene* ".

[19] Article 28 of the Universal Declaration of Human Rights

Damage to the environment is likely to infringe on these rights. Similarly, in addition to man-made damage to the environment, poor environmental conditions can be harmful to humans. The most telling and current example is that of global warming. This is why the environment must be protected, in particular, by the means provided for in climate litigation.

Countries around the world are slowly becoming aware of the importance of protecting the environment. Many treaties have been signed in recent years; International environmental law today includes more than three hundred multilateral conventions or treaties, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which aims to protect fauna and flora from human activities[20], known as the Washington Convention, the Convention for the Protection of the Marine Environment of the Baltic [21]Sea Area, the so-called Helsinki Convention and the Stockholm Convention on Persistent Organic Pollutants aimed at banning certain pollutants. The main one is the Aarhus Convention[22] on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters[23], which is an international agreement on environmental information to the public. This Convention is one of the first to mention the human right to a healthy environment.[24] It is true that some international conventions, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington Convention) or the Aarhus Convention, do not directly address the issue of climate change. However, their mention is justified by the fact that they participate in the construction of a global legal framework for environmental protection, of which climate litigation is an extension. The Aarhus Convention, for example, innovates by enshrining the right of access to information and justice in environmental matters, which facilitates the emergence of climate disputes in Europe. However, it is still relevant to note that climate change is mainly addressed by specific instruments, such as the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, which form the basis of international climate law.[25]

Many countries have also equipped themselves with various forms of legal tools for environmental protection, although there is currently no specialised jurisdiction in Europe. France is distinguished by an extensive codification of environmental law, embodied in the Environmental Code, adopted in 2000, which brings together all the legislative and regulatory texts relating to environmental protection. This codification, often referred to as "Franco-French", aims to make the law more accessible and coherent, but it remains an exception in Europe, where most states favour a more sectoral or dispersed approach.[26]

[20] Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973: "*Recognizing* that peoples and States are and should be the best protectors of their wild fauna and flora"

[21] Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1992

[22] Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (OJ L 124, 17.5.2005, pp. 4–20)

[23] S. KRAVCHENKO (2007). " *The Aarhus Convention and innovations in compliance with multilateral environmental law and policy.* » Colorado Journal of International Environmental Law and Policy

[24] J-P MARGUÉNAUD. The Aarhus Convention and the European Convention on Human Rights. In: *Revue Juridique de l'Environnement*, special issue, 1999. The Aarhus Convention. pp. 77-87. DOI: https://doi.org/10.3406/rjenv.1999.3595

[25] Paris Agreement on the United Nations Framework Convention on Climate Change, December 12, 2015, TIAS No. 16-1104

[26] M. PRIEUR, "Environmental justice in France and Europe", in Droit de l'environnement, Dalloz, 2022.

In addition, there is currently no specialised jurisdiction in environmental matters at the European level. In France, some administrative courts (administrative courts, administrative courts of appeal, Council of State) are competent to deal with environmental disputes, but there is no environmental court as such. At the European level, the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECHR) intervene on environmental issues from time to time, but without institutional specialisation. This lack of a specialised court can be an obstacle to the effectiveness of climate litigation, due to the increasing technicality of cases and the need for in-depth expertise.

Through the cases submitted to it, the European Court of Human Rights (*hereinafter referred to as the "Court*") creates two types of obligations relating to the environment and binding on the State: on the one hand, the State must not infringe the rights and freedoms guaranteed by the European Convention on Human Rights (*hereinafter the Convention* on Human Rights).); Secondly, it must act and take appropriate measures to prevent the violation of rights and freedoms. States must therefore intervene with individuals to prevent these abuses and, otherwise, they could be condemned. A new jurisprudential policy is taking shape here. In order to ensure the effectiveness of the law, the Court requires the Member States of the European Union to strike a fair balance in their regulations between the economic interest of the country and the interest of the applicants and, through them, of the environment.

The Convention does not provide for an explicit right to a clean and healthy environment, but when a person is directly and seriously affected by noise or pollution, the extent to which the Convention provides protection within the framework of the set of explicitly granted rights may be questioned. It is therefore necessary to assess the Court's practice in that regard.

European climate case law has been structured around the ability of judges to interpret fundamental rights in the light of environmental and climate issues. The European Court of Human Rights (ECHR) has long refused to recognise an autonomous right to a healthy environment, but it has gradually developed indirect protection by mobilising rights guaranteed by the Convention (right to life, private and family life, property, to an effective remedy, etc.).[27] French legal commentators, in particular JP Marguénaud, emphasize that the ECHR shows an "inventiveness" to go beyond the conventional framework and respond to contemporary environmental challenges, while remaining cautious about accessing to *actio popularis* and the status of victim.[28]

The recent *Klima Seniorinnen and Carême cases* handed down by the ECHR mark a historic turning point: for the first time, the ECHR condemns a state (Switzerland) for climate inaction. The *Klima Seniorinnen Association*, which brings together more than 2,000 elderly women, and four individual applicants, brought the case before the Court, citing the adverse effects of heatwaves on their health and well-being. The Court recognises that Article 8 of the Convention imposes a positive obligation on States to protect citizens from the serious effects of climate change. It expands the standing of climate associations, while maintaining strict criteria for the recognition of the status of individual victim. Switzerland is condemned for not having adopted

[27] MARTA TORRE-SCHAUB, "The Dynamics of Climate Litigation: Anatomy of an Emerging Phenomenon", Mare & Martin, 2018

[28] JP MARGUÉNAUD AND S. NADAUD, "Chronicle of the case law of the European Court of Human Rights (March 2023 - March 2025)", Revue Juridique de l'Environnement, 2025

sufficient measures, including the lack of a carbon budget and effective mitigation policies.[29] This judgment is welcomed by legal writers as a major step forward, but it also raises questions about the scope of the decision and its implementation in the other Member States.

Conversely, in the other high-profile case,[30] Damien Carême, former mayor of Grande-Synthe, referred the matter to the ECHR to denounce France's climate inaction, considering that the State's shortcomings posed a risk of submersion in his municipality. He invoked the violation of the right to life and the right to respect for private and family life. The Court ruled that the application was inadmissible, mainly because Damien Carême was no longer a resident of the municipality at the time of the decision, and therefore did not meet the criteria of a direct victim. This decision illustrates the ECHR's caution about the status of victim and the difficulty of access to climate justice for individuals, while associations seem better placed to act.

French legal doctrine analyses climate litigation as an emerging phenomenon, supported by civil society and NGOs in the face of the inaction of States. Marta Torre-Schaub insists on the "mobilisation of the law"[31] and judicial activism as levers to change climate responsibility, both at the administrative level and before international courts.[32] Thus, JP Marguénaud, in his columns and analyses, highlights the creativity of the ECHR but also its limits: protection remains indirect, dependent on the ability of the applicants to link their injury to a right guaranteed by the Convention. He points out that the *Klima Seniorinnen* judgment paves the way for increased judicial proceedings, but that the question of victim status and *actio popularis* remains central.

European climate case law is characterised by a dynamic and evolving interpretation of fundamental rights, making it possible to adapt the Convention to climate issues. However, the Court remains cautious: it requires applicants to prove that they are "sufficiently affected" by the climate damage, which limits access to justice for collective actions or NGOs acting in the public interest.[33] European climate case law is undergoing major changes. The *Klima Seniorinnen and Carême cases* illustrate both the openness of the ECHR to climate justice and the persistent obstacles for individual applicants. French legal doctrine, which is very active on the subject, sheds light on the issues of liability, access to the judge and the effectiveness of climate rights, while calling for a change in the legal framework to respond to the climate emergency.

Faced with the absence of an autonomous right to a healthy environment in the Convention, how does the ECHR adapt fundamental rights to respond to climate challenges?

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[29] ECtHR, no. 53600/20, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 2024, §§ 519 and 544 ECLI:CE:ECHR:2024:0409JUD005360020

[30] JP Marguénaud and S. Nadaud, "Chronicle of the case law of the European Court of Human Rights (March 2023 - March 2025)", Revue Juridique de l'Environnement, 2025

[31] Marta Torre-Schaub, "The Dynamics of Climate Litigation: Anatomy of an Emerging Phenomenon", Mare & Martin, 2018

[32] C. Portier, "Climate litigation in French law: what foundation(s), what responsibility(s)?", Revue Juridique de l'Environnement, 2020

[33] ECtHR, no. 53600/20, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 2024, §§ 519 and 544 ECLI:CE:ECHR:2024:0409JUD005360020

The article aims to critically assess the extent of the protection afforded to individuals by the Court with respect to a clean and healthy environment. To that end, the article analyses, in the first place, the aspects of admissibility in the absence of direct reference to a right to a healthy and safe environment. Second, it follows the use of substantive rights that the Court allows claimants to use to connect with the environment. The first right that we focus on is the right to life, then to property and how judges have managed to link it to the defence of one's environment. It should also be mentioned that the applicants frequently invoke Article 3 of the European Convention on Human Rights, relating to the prohibition of inhuman and degrading treatment, in the context of climate litigation. However, the ECHR is very cautious on this basis: it rejects most of the applications on the grounds that environmental damage, although serious, does not generally reach the threshold of seriousness required to constitute a violation of Article 3. The Court prefers to mobilise other rights, such as the right to life (Art. 2) or the right to respect for private and family life (Art. 8), to address the consequences of climate change on individuals. This restrictive position is regularly commented on by legal commentators, which underline the difficulty of obtaining recognition on the basis of Article 3 in climate cases.[34] He also referred to freedom of expression and the right to privacy. In addition, and finally, the article will address the use of procedural rights by the Court to have a viable climate justice.

With hindsight, the article aims to link a catalogue of violated rights to the protection of the environment, the climate and its litigants. It also highlights the creativity of judges in adapting the Convention to current issues, in a context of increasing case law.[35]

Doctrinal analysis and dynamic interpretation of laws must be used to analyse and understand the phenomenon of climate litigation in order to establish the need for climate justice. As its main objective is to contribute to the desacralization of a rather opaque legal system, the jurisprudential analysis will make it possible to unveil and comment on a broad overview in order to establish a catalogue of rights for litigants to access climate justice. Finally, the method of comparative legal analysis is essential to establish the catalogue that will serve as a basis for litigants.

1. Aspects of admissibility: the initial lack of direct reference to the right to a healthy environment in the Convention

Although the concern for environmental protection is quite old, the development of the right to the environment is relatively recent. In fact, environmental concern did not appear in multilateral international relations until the Stockholm Conference of 1972. For this reason, neither the European Convention on Human Rights, adopted in Rome on 4 November 1950, nor its Protocols, contain any reference to a right to the environment as such or allude to the concept of the environment. Indeed, when the Convention was drafted, environmental issues were not a major concern and international environmental law did not yet exist[36]. Moreover, one of the

[34] JP MARGUÉNAUD AND S. NADAUD, "Chronicle of the case law of the European Court of Human Rights (March 2023 - March 2025)", Revue Juridique de l'Environnement, 2025

[35] At the time of writing the article, the focus should be on the current (in)famous case law Duarte Agostinho and others v. Portugal and 32 other states. This is a historic trial, in terms of the number of defendants (32), who will have to answer for their alleged failure to protect litigants against climate change.

[36] A. HIRONAKA "The Origins of the Global Environmental Regime", Greening the Globe: World Society and Environmental Change, ed. (2014), Cambridge University Press, doi: 10.1017/CBO9781139381833.003

characteristics of the right to the environment at the international level is that it is a law based on the proclamation of norms and rules whose practical scope is not always easy to determine. However, such a right is difficult to enforce before an international court, in particular a court responsible for ensuring the protection of human rights such as the European Court of Human Rights.

In response to the growing concern of States for the environment, several attempts have been made to enshrine this right in the Convention, but all have failed. The original rejection dates back to 2003, when the Parliamentary Assembly launched the idea of an additional protocol to the Convention mentioning the protection of the environment, enshrining environmental judicialization.[37] The Council of Ministers rejected this proposal[38]. This means that neither the Convention nor the protocols directly contain obligations for states. Eicke believes that it has deprived litigants of both their fundamental rights to a safe, clean, healthy and sustainable environment, but also of their procedural rights to actively assert these rights in court.[39] While the proposal for an additional protocol to the European Convention on Human Rights on the protection of the environment was rejected in 2003, it should be stressed that more recent initiatives show a renewed commitment to anchor a right to a healthy environment within the Council of Europe. For example, in 2021,[40] the Parliamentary Assembly of the Council of Europe adopted Recommendation 2211, calling on member states to explicitly recognise this fundamental right. In addition, the Committee of Ministers adopted the Recommendation CM/Rec(2022)20 on human rights and environmental protection,[41] which encourages States to ensure an environment of sufficient quality to allow a dignified life. These initiatives illustrate the current momentum towards a formal recognition of the right to a healthy environment at European level, even though no additional protocol has yet been adopted.

The protection of this right is, however, indirectly taken into account by the European Court of Human Rights when environmental damage infringes a right guaranteed by the European Convention on Human Rights. However, the Court remains limited in its field of intervention in environmental matters. While today the Court's mechanisms[42] open up great opportunities for environmental defenders, because of the large number of people to whom it is addressed, they are limited by the condition that their application is admissible. Indeed, since the concept of environmental protection is not recognized as such in the Convention, many cases have been declared inadmissible. Given the absence of a direct reference to the environment in

[37] T. EICKE "Climate Change and the Convention: Beyond Admissibility", Review of the European Convention on Human Rights 3, 1 (2022): 8-16, doi: https://doi.org/10.1163/26663236-bja10033 : there was no legal basis for the environment but Protocol 1 (with property rights) helped judges use it as another tool for environmental protection.

[38] R. DESGAGNÉ, "Integrating Environmental Values into the European Convention on Human Rights." American Journal of International Law 89, No. 2 (1995): 263-94. https://doi.org/10.2307/2204204.

[39] T. EICKE "Climate Change and the Convention: Beyond Admissibility", Revue de droit de la Convention européenne des droits de l'homme 3, 1 (2022): 8-16, doi: https://doi.org/10.1163/26663236-bja10033

[40] Council of Europe, Parliamentary Assembly Recommendation 2211 (2021)

[41] Committee of Ministers, Recommendation CM/Rec(2022)20

[42] Although the Court was reluctant to apply the precautionary principle, in the case of Öneryldiz v. Turkey, it considered that it gave " a *singular place to regulation that is appropriate in the light of the particularities at stake, in particular constituting a level of risk to human life*". It opens up space for the responsibility of the State. However, the principle of transgenerational responsibility, equity and solidarity, and the principle of environmental non-discrimination, have not yet been fully applied by the Court. One of the ways to guarantee the right to a healthy environment would be to use, not exclusively, or exhaustively, the principles of prevention, precaution with non-regression and the *principle in dubio pro natura*. (Council of Europe, Parliamentary Assembly, Anchoring the right to a healthy environment: the need for stronger Council of Europe action, 2021)

the Convention, it is not surprising that the Court initially rejected applications before it concerning alleged infringements of environmental law, mainly on the grounds that it lacked jurisdiction *ratione materiae*.

Thus, in *the case of X and Y v. Germany*[43], the Court held that the application was inadmissible on the ground that "no right to nature conservation is, as such, guaranteed by the Convention".[44] It thus specified that the applicant had to demonstrate that the damage caused to the environment constituted a violation of a right provided for in the Convention in order for the application to be declared admissible[45]. Although the applicants in the present case were members of an environmental protection organisation, which owned part of the land intended for nature observation, they complained of the use of the adjacent swamps for military purposes, which could hinder the protection of the environment by causing pollution. Furthermore, the Court held that "as regards the present complaint, no right to the preservation of nature is as *such* included among the rights and freedoms guaranteed by the Convention and in particular by Articles 2, 3 or 5 invoked by the applicant".[46] Therefore, indirectly, the Court has assumed jurisdiction over environmental damage *caused by ricochet*, that is, through the protection of human rights.[47]

The Court reaffirmed this idea in its judgment *in Hamer v. Belgium*[48], in which it affirmed that the environment has a value and that "economic imperatives and even certain fundamental rights, such as the right to property, must not take precedence over environmental considerations, especially when the State has adopted laws in this area". It confirms a constant and sustained interest in public opinion, and consequently in the public authorities[49]. In this way, it has shown that it can, where appropriate, rely on other environmental legislation to serve as an argument for environmental concerns and developments. In order for their application to be admissible, the applicants now plead a violation of a right recognized by the Convention or its Protocols.

In recent cases, the Court has tried to keep the floodgates closed, focusing on a *ratione personae approach*.[50] For example, it carefully and continuously assesses whether or not applicants are "sufficiently affected" by the alleged violations, with respect to their right to life, privacy and an effective remedy. Although climate change is a global phenomenon, it is irrelevant whether the claim is "inextricably linked to communities on the frontlines of crisis in the Global South" in determining the scope

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[43] ECtHR, inadmissibility decision, 1976, no. 7407/76, *X and Y v. Federal Republic of Germany*, ECLI:CE:ECHR:1976:0513DEC000740776.

[44] ECtHR, inadmissibility decision, 1976, no. 7407/76, *X and Y v. Federal Republic of Germany*, ECLI:CE:ECHR:1976:0513DEC000740776.

[45] Idem, the Court held "that the application is incompatible ratione materiae with the provisions of the Convention within the meaning of art. 27 (2)."

[46] ECtHR, inadmissibility decision, 1976, no. 7407/76, *X and Y v. Federal Republic of Germany*, ECLI:CE:ECHR:1976:0513DEC000740776.

[47] ECtHR, 1994, no. 16798/90, López Ostra v. Spain, ECLI:CE:ECHR:1994:1209JUD001679890: The Court uses human rights to protect human health and has made the link between human health and the environment.

[48] ECtHR, 2007, no. 21861/03, *Hamer v. Belgium*, ECLI:CE:ECHR:2007:1127JUD002186103

[49] Ditto: " *The public authorities then had the responsibility to take the necessary measures in good time to ensure that the environmental protection measures they had decided to implement were not rendered ineffective. Restrictions on property rights are therefore permitted, provided, of course, that a reasonable balance is struck between the individual and collective interests at stake.* »

[50] ECHR, Article 34 on the right of individual petition

of litigants' right to family life.[51] Similarly, with regard to methane emissions from agriculture, and irrespective of the fact that the consumption of soy feeds on a UK factory farm is a key driver of deforestation in the Amazon basin[52], the Court found that the claimants were, once again, not sufficiently affected by the alleged infringements.

The Court cautiously assesses the direct damage caused to litigants and the *standing of a person to bring proceedings* in climate litigation. He also felt that a nonprofit leading a campaign against animal exploitation: the food industries as "the main source of ecosystem destruction and climate change, mass extinctions and animal abuse, threats to human health, equality, food security and peace",[53] had not reached the threshold to be sufficiently affected.

The Court aims to maintain a balance to avoid an avalanche related to climate litigation by taking a very narrow, if not strict, approach to the litigant to be sufficiently affected – in person (*personae*) and substantially (*materiae*) rather than extraterritorially (*loci*).[54] The Court aims to decline victim status in order to increase its relevance. Indeed, the concept of victim is a dynamic concept that is shaped through cases. The article will focus on the declination of the status of recognized victim used in climate disputes – direct victim, indirect victim and indirect victim. It will further analyse the substantive rights that can be invoked to mitigate climate-related risks in court.

1.1. The declination of victim status in climate litigation

This trend established by the Court is reaffirmed in its most recent cases. Indeed, the status of victim[55] is an autonomous concept and granted *stricto sensu*. The status of victim is to be defined in article 34 of the Convention, which deals with the question of who can bring a complaint before the Court. This is "any person, non-governmental organization or group of individuals who claim to be victims of a violation by the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto".[56]

The concept also protects litigants if the allegation is a failure to take sufficient steps required by a positive obligation. The assessment of victim status in relation to an allegation of omission requires a comparison of the measures adopted by the state with what is required under the international obligation – in this case, climate-related rights, interpreted in light of current conditions and the "best available science".[57]

The remaining basis for victim status is that individuals are "personally affected" by the offending measure if they are in a situation of "high environmental risk",[58] in which the environmental threat "becomes potentially dangerous to the health and well-being of those exposed to it". The Court implements different categories of victimization –

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[51] ECtHR, inadmissibility decision, 2022, no. 35057/22, " *Plan B. Earth and Others v. the United Kingdom* "
[52] ECtHR, inadmissibility decision, 2022, No. 36959/22, " *Humane Being and Others, v. United Kingdom* "
[53] ECtHR, inadmissibility decision, 2022, No. 32068/23, " *Asociación Instituto Metabody v. Spain* "
[54] ECtHR, inadmissibility decision, 2022, No. 36959/22, "Humane Being and Others, v. United Kingdom": the applicants failed to prove that deforestation in the Amazon basin had affected their health. Their requests were deemed inadmissible.
[55] Article 34 of the ECHR
[56] Article 34 of the ECHR
[57] Paris Agreement (adopted on 12 December 2015) UN Doc FCCC/CP/2015/L.9/Rev.1.
[58] ECtHR, Cordella and Others v. Italy, 24 Jan. 2019, Nos. 54414/13 and 54264/15

direct, indirect, by ricochet. The article will also address the case where no victim status is granted.

1.1.1. Variation of victim status – the direct victim

The distinction made by the Court between the applicants is entangled with the ability of each to assert, in a well-argued and detailed manner, that, in the absence of adequate precautions taken by the authorities, the degree of probability of damage occurring is such that it may be regarded as constituting a violation, provided that the consequences of the act complained of are not too remote. In practice, the Court is aware of the scope of the obligations depending on the circumstances of each case. These are the circumstances of the case and the Court assesses "the intensity of the violations, their seriousness, their harmfulness to people and the environment".[59] The Court found that natural persons were not subject to a sufficiently intense infringement.[60] It is possible to advance that a direct victim is defined as an individual or entity whose rights are immediately and personally affected by the alleged violation. The applicant must demonstrate that the authorities' failure to act, or their actions, have created a probable and proximate risk of harm. The seriousness and intensity of the alleged breach are assessed on a case-by-case basis.

For example, in the *case of Verein Klima Seniorinnen Schweiz and Others v. Switzerland*, the Court denied the four individual applicants the status of victim, while the association, which was also an applicant before the Court, had the right to lodge the complaint. In so doing, it has, in particular, broadened the concept of the status of "victim" within the meaning of Article 34 of the Convention and has created positive obligations (under Article 8 and, possibly, Article 2) with regard to "the effective protection by the authorities of the State against serious adverse effects on their lives, their health, well-being and quality of life resulting from the adverse effects and risks caused by climate change".[61] Therefore, the public authorities must respect the obligation of prevention and vigilance to avoid a violation of a right enshrined in the Convention.

By taking a casuistic approach in each case, the Court assesses the intensity of the alleged breaches in relation to the scope of the duty. It takes into consideration the seriousness and harmfulness to human health and the environment. Such an analysis allows the Court, on the one hand, to interpret the Convention dynamically, but also, on the other hand, to create uncertainty for individuals as to the decision on applications brought before the courts, since it is based on case-law. It allows for another differentiation of the status of victim – the indirect victim.

1.1.2. Variation of victim status – the indirect victim

An indirect victim is a person whose rights are violated as a result of the violation of the rights of others. This status has been held by the Court mainly in cases of the death or disappearance of a family member, irrespective of his or her right to inherit and most often in the context of a possible violation of the inviolable rights of the Convention.[62] In addition, the Court accepts that the death of the victim after the

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[59] C. COURNIL. The environment in the European Court of Human Rights. The European Convention on Human Rights, Article by article commentary, inPress. ffhal-04546175f

[60] Ibid., § 59

[61] ECtHR, no. 53600/20, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 2024, §§ 519 and 544 ECLI:CE:ECHR:2024:0409JUD005360020

[62] ECtHR, no. 7678/09, *Van Colle v. the United Kingdom*, 13 Nov. 2012

application has been lodged gives the right to his or her relatives or heirs to continue the proceedings if they have a legitimate interest in doing so.[63] In hindsight, an indirect victim status can be defined as a person whose rights are affected as a consequence of harm to another, typically in cases involving the death or disappearance of a family member. The Court allows relatives or heirs to continue proceedings if they have a legitimate interest, and, in exceptional circumstances, may permit applications on behalf of vulnerable individuals.

In exceptional circumstances, the Court accepts that an application may be filed on behalf of the victim, where the person intending to make the application would not have the authority to do so. While the Court has adopted this very broad interpretation of the right of appeal for the benefit of the victim's relatives, it now recognises that the vulnerability of an individual justifies the possibility of a legal person representing him, even if the latter had died before the application was lodged. This solution will only be extended in an extremely rare way, as the concept of indirect victim cannot be recognized in favor of the legal person. It is in order to protect the applicant from an imminent risk to his life (art. 2) or to his physical integrity (art. 3) that the Court accepts motions on the basis of article 39.[64] While deportations and extraditions are the most important part of the dispute, the dangers invoked are numerous: persecution linked to sexual orientation or health.

1.1.3. Variation of victim status - a complex judicialization of climate victims

The Court's declination of victim status suffers as well as the advantages for litigants, in the sense that indirect victims are recognized, as well as victims by *ricochet*. In rare cases, the Court has recognized individuals as victims who have not yet suffered harm but would likely do so without judicial intervention. This approach reveals a cautious openness to broader standing, though the Court generally resists *actio popularis* (generalized public interest standing). Indeed, the Court has granted this status to persons who have not yet suffered from the violation of their right but who would certainly be victims of it without its intervention[65], as well as to others who could, no doubt, suffer from it, revealing a kind of recognition of the *actio popularis*[66]. The Court endeavours to maintain a very delicate balance between ensuring effective protection of the rights contained in the Convention; Without granting, through the criteria of victim status, to lean, de facto, towards the acceptance of actio *popularis*.[67] In *G.C. Burden v. the United Kingdom*, the Court recognized that the existence of a law or practice, even in the absence of an individual act of enforcement, may present a sufficiently real risk of violation for individuals to justify

[63] ECtHR, no. 33071/96, *Jan Malhous v. Czech Republic*, 13 Dec. 2000

[64] Article 39 of the Court's interim measures allows the President of the Section, or its Vice-President designated as a duty judge, to indicate to the State the provisional measures which it considers *"to be taken in the interests of the parties or in the proper conduct of the proceedings" (§ 1). The Committee of Ministers is informed (§ 2) and the Parties are invited to provide information (§ 3). The practical instructions made available to the applicants attest to the Court's intention to maintain the exceptional nature of these measures. Thus, any request must be reasoned, i.e. it must set out precisely the elements of fact or law justifying the applicant's fears and the risks to which he or she is exposed*. »

[65] On the risk of death row syndrome in the event of extradition: *Soering v. the United Kingdom*, 7 July 2015, 1989, no. 14038/88; on the danger of no longer being able to receive health care following deportation: *D. v. the United Kingdom*, 2 May 1997, no. 30240/96

[66] Leading case-law: ECtHR, no. 14234/88, *Open Door and Dublin Well Woman v. Ireland*, 29 Oct. 1992

[67] ECtHR, no. 53600/20 *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 2024, §484 ECLI:CE:ECHR:2024:0409JUD005360020

their status as victims.[68] However, he does not accept that the motions are based solely on conjecture.[69]

Contrary to a logic tending to limit the flow of individual applications, the Court has opened up the referral to a greater number of applicants, through the concept of victim and the power of representation. In addition, requests for interim measures should be given priority, on the basis of its Rules of Procedure, if serious violations of fundamental rights are likely to occur.

The only crucial factor common to these very rare recognized and legitimate cases of "highly exceptional circumstances"[70] is an apparent departure from the mandatory requirement that the alleged victim must have been "directly affected" in the past by the measure in question, or, to the extent that it applies in cases of positive obligations, by the inaction of the respondent government.[71] Following the implementation of the Paris Agreement, Switzerland has not adopted a nationally determined contribution to combat its greenhouse gas emissions.[72] To prevent an excessive influx of climate litigation, the Court adopts a strict approach: applicants must show that they are “sufficiently affected” by the alleged violation, both personally and substantially. The harm must not be too remote, and generalized or extraterritorial claims are typically excluded. The Court’s dynamic interpretation of victim status is shaped by evolving case law, but it remains cautious in expanding access to justice, especially for collective actions or NGOs acting in the public interest.

In short, the absence of explicit reference to this right in the European Convention on Human Rights and its Protocols can be explained by the historical context of their adoption, at a time when environmental issues were not yet at the forefront of international concerns. Thus leaving a legal gap that the European Court of Human Rights is trying to fill through a dynamic interpretation of existing rights, this indirect approach, although limited, makes it possible to protect individuals from environmental damage by linking them to fundamental rights recognized by the Convention.

2. The inclusion of climate rights in the ratione materiae of the Convention: a comprehensive catalogue for an effective climate litigation

As explained above, environmental and by extension climate rights are not enshrined *as such* in the Convention.[73] For the judges of the ECHR, it was therefore a question

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[68]ECtHR, no. 13378/05, *G.C. Burden v. the United Kingdom*, 29 April 2008, ECLI:CE:ECHR:2008:0429JUD001337805

[69] ECtHR, no. 53430/99, *Christian Federation of Jehovah's Witnesses of France v. France*, 6 November 2001,

[70] SEPARATE OPINION OF JUDGE EICKE in the *case of* Verein KlimaSeniorinnen Schweiz and Others v. Switzerland

[71] *Friends of the Environment Ireland v. Government of Ireland and Ors* [2020] IESC 49 (31 July 2020)

[72] Article 4.2 of the Paris Agreement

[73] The closest protection of a healthy environment enshrined in this way is to be found in Protocol No. 1 on the right to property. The Court's case-law provides for indirect protection of a right to the environment by limiting itself to punishing only environmental offences which simultaneously entail a violation of other human rights already recognized in the Convention. The Court therefore favours an anthropocentric and utilitarian approach to the environment that prevents any protection of the natural elements per se.

of linking and interpreting the rights enshrined in the Convention to enshrine protection for a healthy environment. In concrete terms, the Court has adopted a so-called "indirectly" approach: it examines whether an environmental attack also infringes one or more rights guaranteed by the Convention. For example, serious pollution of a living environment may be considered as an infringement of the right to respect for private and family life (Article 8), as in the case of López *Ostra v. Spain*. Similarly, a major environmental risk can be analysed from the perspective of the right to life (Article 2), as in the case of *Oneryildiz v. Turkey*. The right to property (Protocol No. 1), freedom of expression (Article 10) and the right to an effective remedy (Article 13) are also used in certain climate disputes.

This method allows the Court to adapt the Convention to climate issues without creating an autonomous right to a healthy environment. It thus guarantees indirect but real protection for litigants in the face of environmental damage, while respecting the initial text of the Convention. However, this approach has limitations: it assumes that the applicant can demonstrate that the environmental damage directly infringes a recognized fundamental right, which explains the difficulty of access to climate justice for individuals.[74]

In summary, the inclusion of climate rights in the scope of the Convention is based on a dynamic and evolving interpretation of existing rights, allowing the ECHR to respond, on a case-by-case basis, to the new challenges posed by climate change. However, the Committee of Ministers of the Council of Europe notes that environmental damage is increasingly an obstacle to the realisation of first- and second-generation human rights at the individual level and in society as a whole, thus undermining the common values that the Council of Europe is mandated to defend.[75] These damages are recognised in national environmental litigation procedures, both in Europe and beyond. There is a compelling reason to strengthen and update the Council of Europe's legal arsenal and to link actions at national level to commitments under relevant international treaties, such as the UNFCCC (United Nations Framework Convention on Climate Change) and the Paris Agreement.[76]

At the level of the European Convention on Human Rights, the Court's practice highlights the use of ***five distinct rights*** related to the protection of climate rights by litigants. The legal arsenal, or catalogue as favoured in this article for an effective remedy, is composed of the right to life, property, speech, privacy and to a fair trial or an effective remedy.

2.1. Right to life

The Court recalls that the Convention imposes an obligation on the State to take the necessary measures where the risk to the life and well-being of persons is proven, immediate and known to the State.[77]

Although the Court interprets the Convention very broadly, it cannot rely on an environmental text. The protection of the environment by the Convention can therefore only be indirect, through rights recognized in the Convention, i.e. through

[74] ECtHR, 9 April 2024, Damien Carême v. France, No 7189/21 ECLI:CE:ECHR:2024:0409DEC000718921

[75] Recommendation CM/Rec(2022)20 of the Committee of Ministers to member States on human rights and environmental protection: " *Convinced that everyone has the fundamental right to liberty, equality and adequate living conditions, and to an environment of sufficient quality to permit a dignified life and well-being in which these rights and freedoms can be fully realized*."

[76] Paris Agreement on the United Nations Framework Convention on Climate Change, December 12, 2015, TIAS No. 16-1104

[77] Article 2 of the ECHR

protection against *ricochets* . The Court therefore defines the right to the environment through the rights recognized in the Convention.

The Court also accepts the possibility of examining whether damage to the environment may constitute an infringement of the right to life, enshrined in Article 2 of the Convention. For example, in the Grand Chamber's judgment in the case of *Oneryildiz v. Turkey*[78], the applicant complained that a methane explosion in a landfill where he lived with his family had resulted in the death of nine family members. The Court concluded that the right to life had been violated by the Turkish State, which should have taken all necessary measures to protect the lives of persons under its jurisdiction. This is the landmark case in which the Court established a link between the right to life and the right to the environment.[79]

2.2. Right to property

The Court sees the link between the right to the environment and the right to property. The latter is not incorporated into the Convention, but is included in Additional Protocol No. 1, according to which every natural or legal person has the right to the peaceful enjoyment of his property.[80] This right can be invoked when a person's property and environment have been unjustifiably violated.

In the case of *Oneryildiz v. Turkey*[81] , the Court recognized that by failing to take adequate measures to limit environmental damage, the State had harmed the property of the victims, even though it had been implemented illegally. Property therefore deserves to be protected regardless of its status. However, this should not be taken to mean that the Court recognizes a right to be maintained in a pleasant environment: it is currently impossible for a plaintiff to invoke an infringement of his property by alleging an infringement of his immediate or global environment.[82]

In addition, the Court has held, in particular in the *case of* Fredin v. Sweden[83], that the protection of the environment is a matter of public interest, which may justify the deprivation of property[84]. Arguably, the plaintiffs were not formally expropriated. Moreover, the consequences of the withdrawal were not serious enough for there to have *been a de facto expropriation*. For example, in the absence of an impediment to any reasonable use of the land; The plaintiffs retained ownership of the gravel resources. It left them the possibility for them to continue to exploit them, the exploitation of which was made uncertain by the amendments to the 1973 law. In a note dated 14 May 1984, the State authority (*prefecture*) indicated two possible ways of interrupting the exploitation of the gravel pit: to stop the extraction as soon as possible, because of the degradation of the environment and the existence of sufficient gravel resources in the area, or to continue it for a few years, which would restore the site to a natural appearance. Given that a certain level of flexibility was

[78] ECtHR, 2004, No. 48939/99, *Oneryildiz v. Turkey*, ECLI:CE:ECHR:2004:1130JUD004893999

[79] ECtHR, 2004, no. 48939/99, *Oneryildiz v. Turkey*, ECLI:CE:ECHR:2004:1130JUD004893999, § 64: the Court emphasised that it " *must first of all clarify that the violation of the right to life is possible in relation to environmental issues, linked not only to the areas invoked by the Government, but also to other areas which may give rise to a serious risk to life or to the various aspects of the right to life". life.* »

[80] Additional Protocol No. 1 to the ECHR

[81] ECtHR, 2004, No. 48939/99, *Oneryildiz v. Turkey*, ECLI:CE:ECHR:2004:1130JUD004893999

[82] ECtHR, 2003, no. 36022/97, *Hatton v. the United Kingdom*, ECLI:CE:ECHR:2001:1002JUD003602297: The Court even refused to adopt a " *particular approach to a special status that would be accorded to human rights in environmental matters.* »

[83] ECtHR, 1991, no. 12033/86, *Fredin v. Sweden*, ECLI:CE:ECHR:1991:0218JUD001203386

[84] ECtHR, 1991, no. 12033/86, *Fredin v. Sweden*, ECLI:CE:ECHR:1991:0218JUD001203386, § 48

granted to litigants by the State, the Court did not consider the deprivation of property to be disproportionate. It must be inferred from this that a measure taken by the State is capable of restricting the right to property if it serves the protection of the environment.

2.3. Freedom of speech

Another fundamental right that is increasingly invoked in the context of the environment is freedom of expression. Indeed, states cannot impose censorship on an issue of environmental interest.

In the case of *Mamère v. France*[85], the Court noted that the conviction of Mr Mamère for complicity in the defamation of a public official constituted an interference with the exercise of his right to freedom of expression guaranteed by the Law of 29 July 1881 on the freedom of the press. In the present case, the applicant, an elected politician, had been found guilty of defaming a senior official of the Central Service for Protection against Ionizing Radiation in a television programme in which the accident at the Chernobyl nuclear power plant had been mentioned. The Court emphasises here that the applicant's remarks concerned matters of general interest, namely the protection of the environment and public health. The Court emphasised that, in view of the extreme importance of the public debate in the course of which the remarks had been made, the applicant's conviction for defamation could not be regarded as proportionate and therefore as "*necessary in a democratic society*".[86] The Court thus concluded that there had been a violation of Article 10, affirming once again that the environment is a matter of general interest, and showing that everyone has the right to communicate on this subject, but also to be informed of the social debates that concern him.[87]

In addition, States have an obligation to inform individuals about environmental issues themselves. In the case of *Tatar v. Romania*, referring to national and international law, the Court affirmed that the Romanian State had an obligation to inform the persons concerned of the consequences and risks of industrial activities for the environment.[88] Indeed, a significant quantity of contaminated cyanide (100,000 m3) was discharged into the tailings water. The company that operated the gold mine has not ceased operations. Similarly, after the disaster, the Romanian authorities should have informed the population concerned of the consequences of this accident and of the measures taken to prevent further accidents. Similarly, in the case of *Fadeyeva v. Russia*[89], in the face of an environmental situation recognized as worrying, the Court reaffirmed the principle of the public's right of access to environmental information. [90] In this case, the Severstal steel plant belonged to the Ministry of Metallurgy of the Russian Soviet Federative Socialist Republic (RFSSR). It was – and still is – the largest steel company in Russia, providing, directly or indirectly, jobs for around 60,000 people. In order to limit the areas where the pollution generated by steel production was likely to be excessive, the authorities had demarcated, for the first time in 1965, a buffer zone – "the health safety zone" – around the site where the steel installations were located. A decree of 10 September

[85] ECtHR, 2007, no. 12697/03, *Mamère v. France*, ECLI:CE:ECHR:2006:1107JUD001269703
[86] ECtHR, 2021, No 36366/14, *Ghailan and Others v. Spain*, ECLI:CE:ECHR:2021:0323JUD003636614
[87] ECtHR, 2021, No. 41139/15, *Akdeniz v. Turkey*, ECLI:CE:ECHR:2021:0504JUD004113915
[88] ECtHR, 2009, No. 67021/01, *Tătar v. Romania*, ECLI:CE:ECHR:2009:0127JUD006702101
[89] ECtHR, 2003, No. 55723/00, *Fadeyeva v. Russia*, ECLI:CE:ECHR:2003:1016DEC005572300
[90] Article 5§1 of the Aarhus Convention: " *Each Party shall ensure that: a) Public authorities possess and update environmental information relevant to their functions.* »

1974 issued by the Council of Ministers of the RFSSR required the Ministry of Metallurgy to relocate, by 1977 at the latest, the inhabitants of the health security zone who resided in sectors Nos. 213 and 214, which was not done. In 1990, a programme on "Improving the quality of the environment in Cherepovets" was adopted by the RFSSR government. He said that "the concentrations of toxic substances in the city's air are several times higher than acceptable standards" and that the death rate of the residents of Cherepovets is higher than average. On 3 October 1996, the Government of the Russian Federation adopted Decree No. 1161 on the Special Federal Programme "Improvement of the Quality of the Environment and Public Health in the Cherepovets Regions" for the period 1997-2010. The decree also stated that "the environmental situation of the city results in a continuous deterioration of public health". According to a letter from the Mayor of Cherepovets dated 3 June 2004, the Severstal steel plant was responsible for more than 95 per cent of the industrial emissions measured in the city's air in 1999. The State had access to this information but did not disclose it and did not relocate the complainant to a safer area, as the State has held by successive national decrees.

2.4. Right to privacy

The first of the rights alleged to have been violated by the applicants is the right to respect for private and family life. The Court regularly recognises this right by invoking the right to respect for private and family life, enshrined in Article 8 of the Convention. According to this article, " *everyone has the right to respect for his private and family life, his home and his correspondence* ".[91] The main purpose of this article is to protect the individual against arbitrary interference by public authorities, but also includes obligations for the State to guarantee respect for the private or family life of individuals.[92]

The Court therefore considers that environmental damage may constitute a failure by the State to respect this right, as illustrated by the *case of López Ostra v. Spain*. [93] The question arose here as to whether the nauseating and permanent odours emanating from a defective sewage treatment plant constituted a violation of the Convention on the rights of the litigant. The Court has ruled that serious damage to the environment can affect people's well-being and deprive them of the enjoyment of their homes in a way that infringes on their private and family life. It also clarified that this principle applies even if the nuisance in question does not have the effect of endangering the health of the person, since the mere interference with the enjoyment of the home is sufficient to qualify as a violation by the State. As the right to housing is recognized by the Convention, the State must comply with it, and thus protect property from the environment.

In addition, in its judgment in *Tatar v. Romania*[94], the Court also affirmed a violation of Article 8 of the Convention. In this case, he does not blame the State for direct facts, but for a lack of regulation, which could harm the environment. In this case, a leak of polluted water had occurred as a result of an accident at a gold ore extraction site, polluting nearby rivers and killing living organisms in those rivers. The Court examined the case from the perspective of Article 8 of the Convention, which, according to the Court, " *may be applicable in environmental matters whether the*

[91] Article 8 of the ECHR
[92] Ditto
[93] ECtHR, 1994, no. 16798/90, *López Ostra v. Spain*, ECLI:CE:ECHR:1994:1209JUD001679890
[94] ECtHR, 2007, No. 67021/01, *Tatar v. Romania*, ECLI:CE:ECHR:2007:0705DEC006702101

pollution is directly caused by the State or whether the State's responsibility arises from the lack of adequate regulation of private sector activity ".[95] In line with the evolution of its case-law, the Court has emphasised here that " *where a person is directly and seriously affected by noise pollution or other forms of pollution, a question may arise from the point of view of Article 8* ".[96] As these nuisances can deprive individuals of the enjoyment of their homes, their private and family life is infringed. The Court therefore concluded that the Romanian authorities had failed in their obligation to assess the risks of the activity and to take measures guaranteeing the rights of individuals to respect for their private life and their home and, more generally, to the enjoyment of a healthy and protected environment. The latter right is defined independently of the others: the Court expressly recognizes the right of everyone to enjoy a healthy environment.[97]

2.5. Right to a fair trial and an effective remedy

Finally, the right to the environment can be considered through different procedural rights granted to individuals, such as Article 6 of the Convention, which guarantees the right to a fair trial, and Article 13[98], which guarantees the right to an effective remedy. Thus, under Article 6 § 1[99], applicants may invoke the right to have their case heard within a reasonable time.

This was the case, for example, in the case of *Zimmermann and Steiner v. Switzerland*[100]. The parties were seeking a ruling on whether the length of the proceedings was considered reasonable. The Court answered in the affirmative the complaint based on the length of the procedure for compensation for damage caused by air and noise pollution caused by an airport close to the homes of individuals.

The issue of lack of access to jurisdiction has also been raised quite frequently in environmental matters, for example in the case of *Arrondelle v. the United Kingdom*.[101] In the present case, the applicant claimed that her exposure to the intensity, duration and frequency of noise from an airport and a motorway located not far from her home had affected her privacy and constituted a violation of Article 8 of the Convention; although the domestic law of the time did not provide for the possibility of taking legal action against the nuisance caused by civil aviation, on landing and departure.

The restrictive interpretation of the Convention, which some scholars attribute in part to a lack of interest in environmental issues, resulted in the use of the "*ricochet*" interpretation to grant the rights it encountered to adapt more dynamically to the challenges posed to the Court, in light of the varying imperatives facing our society.

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[95] ECtHR, 2021, No. 56138/16, *Jarrand v. France*, ECLI:CE:ECHR:2021:1209JUD005613816

[96] ECtHR, 2017, no. 38342/05, *Jugheli and Others v. Georgia*, ECLI:CE:ECHR:2017:0713JUD003834205,

[97] ECtHR, 2017, no. 38342/05, *Jugheli and Others v. Georgia*, ECLI:CE:ECHR:2017:0713JUD003834205, §62

[98] ECHR, Article 13

[99] ECHR, Article 6§1

[100] ECtHR, 1983, no. 8737/79, *Zimmermann and Steiner v. Switzerland*, ECLI:CE:ECHR:1983:0713JUD000873779

[101] ECtHR, 1980, no. 7889/77, *Arrondelle v. the United Kingdom*, ECLI:CE:ECHR:1980:0715DEC000788977: the applicant, owner of a house located near Gatwick airport and a motorway, complained of noise pollution, infringing her right to privacy and her property and that noise pollution was reducing the value of her house on the housing market. The Court found that there had been a violation of Article 8 and Protocol No. 1 on property rights.

3. Conclusion

Ultimately, the European Court of Human Rights assesses the rights granted to the environment in an evolving way. Indeed, he expands them as and when the cases are submitted to him. The recognition it gives to the environment is more and more frequent, although variable, is becoming more and more precise, which makes it possible to erect it into a freedom falling within the scope of the Convention on Human Rights.

The Court raises the hopes of some environmental defenders, but also their disappointment. The Court's contribution to the implementation of international environmental law remains limited, due to the characteristics of this branch of law; However, it makes an indirect contribution in this area. The Court thus specifies the environmental extensions of the rights guaranteed by the Convention. The decline in the Court's victim status is a definite step towards the effectiveness and development of climate justice. A "Praetorian Environmental Code" is thus tending to emerge. Accordingly, the Court recognizes that the right to the environment is linked to the fundamental freedoms protected by the Convention.

Its recent developments constitute an increasingly precise contribution to the implementation of international environmental law. In its judgment in Fredin *v. Sweden*[102], the Court recognized for the first time that it was aware *that today's society is increasingly concerned about the environment*. The countries that make up the European Community first wondered whether it was not possible to protect environmental rights in the same way as human rights, because they are very anthropocentric and not nature-centered. However, this was never done; As no European right to the environment is recognised as such, the protections granted are only indirect.

The existence of this right is increasingly recognized by the Court by referring to human rights as a fundamental freedom in their application. The *case of Duarte Agostinho and Others v. Portugal and others*, is another example of the unclear accessibility for individuals to bring climate-related cases before the Court. Indeed, this case has become emblematic of the climate litigation before the ECHR. In this case, six young Portuguese people brought a case against 33 European states before the Court, arguing that their climate inaction violated their fundamental rights, including the right to life and respect for private and family life. The Court ultimately found the application inadmissible, mainly on grounds of territorial jurisdiction and admissibility: it considered that the applicants could not invoke the extraterritorial responsibility of all the respondent States, and that the causal link between national climate policies and the alleged harm was not sufficiently direct. This decision illustrates the difficulty of access to climate justice for individuals at the European level: the Court adopts a restrictive approach to admissibility, requiring applicants to demonstrate that they are directly and personally affected by the contested policies. The "unclear accessibility" referred to here refers to the uncertainty for litigants as to whether their application will be examined on the merits, due to the strict criteria applied by the ECHR in terms of jurisdiction and victim status.[103]

[102] ECtHR, 1991, no. 12033/86, *Fredin v. Sweden*, ECLI:CE:ECHR:1991:0218JUD001203386

[103] MARTA TORRE-SCHAUB, "The Duarte Agostinho case: a missed turning point for European climate justice?", Revue Juridique de l'Environnement, 2024.

This can be explained by the Court's desire to continue to analyse the claims submitted to it in a casuistic and restrictive manner. Climate litigation may be a growing trend, but climate justice is not.