CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

The Congress Le Congrès
COUNCIL OF EUROPE CONSEIL DE L'EUROPE

43rd SESSION

Report
CG(2022)43-15final
26 October 2022

Original: English

A FUNDAMENTAL RIGHT TO THE ENVIRONMENT: A MATTER FOR LOCAL AND REGIONAL AUTHORITIES
Towards a green reading of the European Charter of Local Self-Government

Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (Monitoring Committee) and Current Affairs Committee

Rapporteurs:[1] Belinda GOTTARDI, Italy (L, SOC/G/PD)
Levan ZHORZHOLIANI, Georgia (R, NR)

Resolution 489(2022) 2
Recommendation 484(2022) 4
Explanatory memorandum 6

Summary

The ongoing fallout from global warming, loss of biodiversity and pollution poses a serious risk to the enjoyment of basic human rights, including the right to life, health, and private and family life. This has sparked recognition of the potential of a human rights-based approach to tackling climate change. At both the national and international level, there is growing momentum for the recognition of the right to a healthy environment as a fundamental human right. Local and regional authorities have a significant role to play in protecting this right because of their proximity to the everyday lives of their citizens and their responsibility to respond to environmental challenges at the local level.

This report recommends adopting a 'green' approach to reading the Charter. This entails empowering local and regional authorities to take a more active role in fighting climate change and affording them greater support as they deal with its consequences. The report also suggests formalising these rights in an additional protocol to the Charter. This protocol would ensure that local and regional authorities possess sufficient competences, resources, and authority to tackle climate change within their existing remits. The protocol would also legally acknowledge the right of local authorities to be properly consulted and participate in environmental decision making, in order to ensure coordinated and effective strategies across all levels of government.

In addition, the report outlines ways in which the Congress itself can respond to climate change, such as, incorporating an assessment of the local role in environmental protection into country monitoring reports and facilitating the exchange of best practices among grassroots authorities.

Finally, the report calls on national governments to strengthen awareness among local authorities of their role in environmental protection. It also encourages local authorities to abide by their existing human rights and environmental obligations through the formulation of local-specific strategies to combat and manage climate change and achieve the ambitions of the United Nations Sustainable Development Goals in their communities and regions.

1. L: Chamber of Local Authorities; R: Chamber of Regions;
EPP/CCE: European People's Party Group;
SOC/G/PD: Group of Socialists, Greens and Progressive Democrats;
ILDG: Independent Liberal and Democratic Group;
ECR: European Conservatives & Reformists Group;
NR: Members not belonging to a political group of the Congress.

RESOLUTION 489 (2022)[2]

1. The Congress of Local and Regional Authorities of the Council of Europe (hereinafter "the Congress") refers to:

a. The Convention for the Protection of Human Rights and Fundamental Freedoms and the European Court of Human Rights' relevant case-law regarding the environment;

b. The European Social Charter (revised) (ETS No. 163, 1996);

c. The European Charter of Local Self-Government (ETS No. 122, 1985) and its Additional Protocol on the right to participate in the affairs of a local authority (ETS No. 207, 2009);

d. The European Landscape Convention (ETS No. 176, 2000);

e. The Convention on the Conservation of European Wildlife and Natural Habitats (ETS No. 104, 1979);

f. the United Nations Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (Aarhus, 1998);

g. Recommendation CM/Rec(2022)20 of the Committee of Ministers to member States on human rights and the protection of the environment, adopted on 27 September 2022;

h. the final Declaration by the Committee of Ministers on Environmental Protection and Human Rights, adopted on 27 February 2020;

i. Congress Resolution 465 (2021) "2021-2026 Priorities of the Congress of Local and Regional Authorities", in particular as regards the priorities on environmental issues and climate action in cities and regions and on reducing inequalities;

j. Congress Resolution 490 (2022) "The Human Rights Handbook for local and regional authorities on the environment and sustainable development";

k. Congress Resolution 452 (2019) on the Revised Code of Good Practice for Civil Participation in the Decision-making Process;

l. the Sustainable Development Goals (SDGs) of the United Nations 2030 Agenda for Sustainable Development, particularly Goal 3 for good health and well-being, Goal 6 for clean water and sanitation, Goal 7 for affordable and clean energy, Goal 11 for sustainable cities and communities, Goal 13 for climate action, Goal 14 for life below water, Goal 15 for life on land, Goal 16 for promoting peaceful and inclusive societies for sustainable development and Goal 17 for partnership for the goals.

2. The Congress points out that:

a. The deterioration of the environment, climate change, pollution and loss of biodiversity are posing a serious risk to the fundamental rights, including the right to life, health, quality private and family life or home in various communities across the world. Human beings are dependent on a healthy and safe environment for their survival.

b. Adopting a human rights-based approach to the protection of the environment and sustainable development and delivering a resilient and sustainable ecosystem is a shared responsibility of local, regional and national authorities, both governments and parliaments, for future generations.

c. The recognition of the right to a safe and sustainable environment as a human right is increasingly manifesting itself in international and domestic law, notwithstanding the absence of an international treaty that would enshrine this right. Some countries have incorporated the right to a healthy environment in their constitutions. The European Court of Human Rights has interpreted in a "green" or ecological way some articles of the European Convention on Human Rights.

2 Debated and adopted by the Congress on 26 October 2022, 2nd Sitting (see Document CG(2022)43-15, explanatory memorandum), co-rapporteurs: Belinda GOTTARDI, Italy (L, SOC/G/PD) and Levan ZHORZHOLIANI, Georgia (R, NR).

d. Climate change litigation initiated by citizens and NGOs, notably against laws, regulations or policies adopted at the central or federal level or, on the contrary, the relevant authorities' inaction or lack of action in the climate change sector, is becoming a feature of both domestic and international courts.

e. Local and regional authorities have an essential role to play, both in urban and rural areas, in the efforts to tackle the climate crises, as they are closest to the citizens and are best able to respond to local problems.

f. Local and regional authorities have expressly attributed competences in this policy field, which means they can take specific steps and measures to protect the environment. As public authorities, they also bear their share of responsibility in meeting environmental obligations under international environmental and human rights law and member States' commitments to the SDGs.

g. In addition, finding solutions to the climate crisis and building resilience to climate impacts can only be achieved through successful local and regional initiatives for sustainability and green transition with strong citizen participation.

3. The Congress acknowledges that:

a. Good local governance goes hand in hand with effective consideration of environmental protection and the fight against global warming, areas in which local and regional authorities have certain competences.

b. There is also a need to strengthen the right of local authorities to participate in environmental decision making, by legally acknowledging this right in an additional protocol to the Charter.

4. In the light of the above, the Congress calls on the local and regional authorities of Council of Europe member States to:

a. further address climate change and environmental protection, within the limits of their competences, while adopting a human rights-based approach to climate change mitigation and adaptation efforts at subnational level;

b. strengthen participation of citizens in environmental decision making at subnational level, by actively involving them in planning, devising and implementing relevant local policies and regulations and by ensuring proper access to environmental information in subnational governments' possession. Ensure representative participation of a wide range of stakeholders in the consultation process to make it responsive, inclusive and effective;

c. enhance intermunicipal and interregional cooperation to combat climate change and its impacts and ensure sustainable, resilient and inclusive livelihoods;

d. join or adhere to national or international networks and associations active in environmental rights protection and fighting the climate crises;

e. get involved in the preparation and implementation of the domestic action plans to achieve the SDGs commitments.

5. The Congress also asks:

a. its statutory bodies to contribute to the elaboration of a draft additional protocol to the Charter, pending the decision of the Committee of Ministers, with the aim of acknowledging and strengthening the right of local authorities to participate in decision making on environmental issues and climate change;

b. its Monitoring Committee to pay special attention to the role of local government in upholding environmental rights and tackling climate change in its country-specific monitoring reports on the application of the Charter in Council of Europe member States;

c. to organise a Congress conference on environmental rights and climate change at local level in the near future.

RECOMMENDATION 484(2022)[3]

1. The Congress of Local and Regional Authorities of the Council of Europe (hereinafter "the Congress") refers to:

a. The Convention for the Protection of Human Rights and Fundamental Freedoms and the European Court of Human Rights' relevant case-law regarding the environment;

b. The European Social Charter (revised) (ETS No. 163, 1996);

c. The European Charter of Local Self-Government (ETS No. 122, 1985) and its Additional Protocol on the right to participate in the affairs of a local authority (ETS No. 207, 2009);

d. The European Landscape Convention (ETS No. 176, 2000);

e. The Convention on the Conservation of European Wildlife and Natural Habitats (ETS No. 104, 1979);

f. the United Nations Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (Aarhus, 1998);

g. Final Declaration by the Committee of Ministers on Environmental Protection and Human Rights, adopted on 27 February 2020;

h. Congress Resolution 465 (2021) on the2021-2026 Priorities of the Congress of Local and Regional Authorities, in particular as regards the priorities on environmental issues and climate action in cities and regions and on reducing inequalities;

i. Congress Recommendation 362 (2014) on Adequate financial resources for local authorities;

j. Recommendation CM/Rec(2022)20 of the Committee of Ministers to member States on human rights and the protection of the environment, adopted on 27 September 2022;

k. Recommendation CM/Rec(2011)11 of the Committee of Ministers to member States on the funding by higher-level authorities of new competences for local authorities;

l. the Sustainable Development Goals (SDGs) of the United Nations 2030 Agenda for Sustainable Development, particularly Goal 3 for good health and well-being, Goal 6 for clean water and sanitation, Goal 7 for affordable and clean energy, Goal 11 for sustainable cities and communities, Goal 13 for climate action, Goal 14 for life below water, Goal 15 for life on land, Goal 16 for promoting peaceful and inclusive societies for sustainable development and Goal 17 for partnership for the goals.

2. The Congress points out that:

a. The deterioration of the environment, climate change, pollution and loss of biodiversity are posing a serious risk to the fundamental rights, including the right to life, health, quality private and family life or home in various communities across the world. The survival of humankind is under threat due to escalating climate crises and its consequences.

b. Effective multi-level governance, adopting a human rights-based approach to the protection of the environment and sustainable development and delivering a resilient and sustainable ecosystem is therefore a shared responsibility of local, regional and national authorities, both governments and parliaments, for future generations.

c. Citizens and NGOs worldwide have been requesting from governments at all levels more ambitious climate change mitigation measures and policies that comply with human rights principles and obligations. Climate change litigation is becoming a feature of both domestic and international courts.

d. The recognition of the right to a safe and sustainable environment as a human right is increasingly manifesting itself in international and domestic law. Many States have already recognised and committed to

3 Debated and adopted by the Congress on 26 October 2022, 2nd Sitting (see Document CG(2022)43-15, explanatory memorandum), co-rapporteurs: Belinda GOTTARDI, Italy (L, SOC/G/PD) and Levan ZHORZHOLIANI, Georgia (R, NR).

the right to a healthy environment in their domestic legislation. Even though the European Convention on Human Rights does not explicitly enshrine the right to a healthy environment as such, the European Court of Human Rights has interpreted the Convention in a “green” or ecological way when developing its case-law in environmental matters.

e. Local and regional authorities have expressly attributed competences in environment-related policy fields, which means they can take specific steps and measures to tackle the climate crises and contribute to sustainable development. They therefore bear their share of responsibility in meeting the States’ obligations and commitments under multilateral instruments and agreements on human rights and the environment.

f. Since we cannot conceive of good local governance without due consideration of environmental issues, there is a need of a “green” interpretation and implementation of the Charter, that is, in a way to create enabling conditions for subnational authorities to respond effectively to climate change challenges and progress towards achieving internationally agreed global environmental goals and commitments to the SDGs. There is also a need to strengthen the right of local authorities to participate in environmental decision making, by acknowledging this right in an additional protocol to the Charter.

3. In the light of the above, the Congress calls on the Committee of Ministers to invite the respective national authorities of the member States of the Council of Europe to:

a. adopt a “green” approach towards reading and implementing the Charter under the angle of environmental protection, notably by empowering local authorities to react to environmental issues arising in their communities, in line with the subsidiarity principle, and providing them with adequate financial resources. This would acknowledge the critical role of local and regional authorities in responding to environmental and climate change challenges, especially in urban areas, based on human rights principles;

b. increase efforts to engage local and regional authorities in environmental decision making through effective consultation in line with the requirements of the Charter to ensure a coordinated, comprehensive and urgent response to global climate crises;

c. improve awareness raising on the need to integrate climate change measures into their local policies as well as strengthen local and regional institutional capacity to devise and implement effective strategies and policies of climate change mitigation, adaptation and impact reduction on the basis of a sustainable model of development;

d. take all appropriate measures to support subnational authorities in implementing their obligations stemming from multi-lateral environmental agreements and progressing towards internationally agreed Sustainable Development Goals. Where necessary, take targeted action to support those local and regional authorities most vulnerable to pollution, environmental degradation or insecurity related to disasters;

e. sign and ratify, for countries who have not yet done so, the Additional Protocol on the right to participate in the affairs of a local authority to protect and facilitate the exercise by citizens of their participatory rights on environmental matters and sustainable development.

4. The Congress also invites the Committee of Ministers to ask the European Committee on Democracy and Governance (CDDG) and/or another appropriate body of the Council of Europe to draw up, in consultation with the Congress, an additional protocol to the Charter that would seek to enhance the right and capacities of subnational authorities to respond effectively to the environmental challenges and to this end, in particular, legally acknowledge their right to be duly consulted and participate in environmental decision making.

5. The Congress calls on the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to take account of this recommendation and its explanatory memorandum in their activities relating to Council of Europe member States.

EXPLANATORY MEMORANDUM

Contents

1. THE ENVIRONMENT AND HUMAN RIGHTS – GENERAL OVERVIEW 7

2. RECOGNITION OF A “HUMAN” OR “FUNDAMENTAL” RIGHT TO THE ENVIRONMENT 7
2.1 A “human” right to the environment: meaning and consequences 7
2.2 Recognition of the right to the environment in international treaties and conventions 9
2.2.1 Situation at global level 9
2.2.2 Situation at regional (European) level 10
2.3 Recognition of environmental rights in domestic constitutional law (Europe) 12
2.4 Recognition of the right to the environment in Council of Europe law 14
2.4.1 The environment as a human right in the context of the European Convention on Human Rights 14
2.4.2 Other Council of Europe materials 15

3. CLIMATE CHANGE AND HUMAN RIGHTS 17
3.1 Introduction 17
3.2 Emergence of a human rights dimension linked to the climate change crisis 17
3.3 Relevant case law at European Union level 20
3.4 Human rights and climate change litigation in the Council of Europe 21
3.5 Climate change rights and the Parliamentary Assembly of the Council of Europe. 22

4. LOCAL DIMENSIONS OF HUMAN RIGHTS TO THE ENVIRONMENT, INCLUDING CLIMATE-RELATED MATTERS 23
4.1 Role of local authorities in the conserving the environment and combating climate change 23
4.2 Towards a green reading of the European Charter of Local Self-Government 24
4.3 Actions of the Congress of Local and Regional Authorities in the field of environmental rights 27
4.4 Local co-operative networks in environmental issues and sustainable development 28
4.5 Local good practices in environmental matters and climate change

5. CONCLUSIONS AND RECOMMENDATIONS 32
5.1 Conclusions 32
5.2 Recommendations 33

1. THE ENVIRONMENT AND HUMAN RIGHTS – GENERAL OVERVIEW

1. Environmental concerns are growing in importance in all areas of economic, political and social life. Environmental awareness has developed steadily since the 1970s, and the surge of the climate crisis has amplified calls for urgent action and effective environmental policies. Empowered citizens are organising themselves to speak out on behalf of the environment, and in parallel environmental statutes, treaties, covenants and declarations have been proclaimed or enacted in their hundreds around the world, with countless international organisations set up to tackle the most important environmental problems.

2. There is growing consensus among academics and politicians that citizens should not be passive in the face of environmental crisis, but should play an active role in protecting the environment. They should not have the expectation that political actors will fulfil this role, but should themselves be the holder of real rights to the environment, similar to subjective rights such as "human", "basic" or "fundamental" rights.[4]

3. The intersection between the environment and human rights suggests a number of interesting possibilities of a political, legal and economic nature.

4. First, the possibility of recognising or proclaiming a general human right to the environment, that is the possibility to set up in law a fundamental right to a protected environment, or the right to live in a clean or decent environment. This should not be just a "normal" or statutory right, but a "human", "fundamental" or "basic" one. This is the "subjective" dimension of such a right.

5. Second, the possibility of establishing "procedural" rights in favour of citizens in the protection of the environment, for instance in the domain of access to information, participation in the decision-making process and in access to courts. Citizens would be provided with the tools to engage actively in the protection of the environment.[5]

6. Third, the possibility of establishing a general duty of government to protect the environment, and an obligation on the part of the state to refrain from activities and projects that may harm the environment. This amounts to the "objective" dimension of the right to the environment. Conversely, this equates to the right of citizens to act in legal proceedings to ask for the redress of illegal situations, to demand compensation and apply other forms of injunctions.

7. Fourth, the means by which the different levels and structures of government can be held responsible for protecting the environment, including how local and regional authorities may be granted a specific domain of action or competences. Most environmental problems have a local dimension and local authorities are the level of government closest to citizens.

2. RECOGNITION OF A "HUMAN" OR "FUNDAMENTAL" RIGHT TO THE ENVIRONMENT

2.1 A "human" right to the environment: meaning and consequences

8. Human beings live within a delicate compact of natural and artificial elements, which together make up "the environment", a complex notion for which there is no agreed legal definition. We live within the environment but also form part of it, as rational animals. Moreover, human activity may have an impact on the delicate balance of ecological components and in fact, human beings are unique in their capacity to influence the environment, often irreversibly. This close connection between human beings and the environment where they live may be rationalised in different ways by the legal system. One approach is to identify "rights" and "duties" as the two sides of the complex interactions between humankind and the environment.

9. Thus, citizens have a duty to protect the environment, without harming its ecological elements. Conversely, it is at least theoretically possible to structure the relationship between citizens and the environment in terms of "rights". Under this construct, human beings have some "rights" in connection with the environment: when we speak about "environmental rights", this means the right to live in an environment with certain features, such as an environment that is clean, free from pollution or noxious chemicals. The prospect of a "clean" environment conjures up the notion of an "unspoiled" environment, a natural

4. See Pallemaerts, M. (2005), "Introduction: human rights and environmental protection", in Déjeant-Pons, M. and Pallemaerts, M. (eds), "Human rights and the environment", Council of Europe Publishing, Strasbourg, pp. 11-22.
5. See Déjeant-Pons, M. and Pallemaerts, M. (2005), "Human rights to environmental procedural rights", in Déjeant-Pons, M. and Pallemaerts, M. (eds), "Human rights and the environment", Council of Europe Publishing, Strasbourg, pp. 23-46.

environment that is not degraded by development or anthropogenic activities that disrupt the ecological balance. The right to live in an environment that is "sustainable", in addition, conveys the idea of economic development that does not exhaust natural resources. Other sources and materials refer to a "sound" environment or to an "adequate" one.

10. In this sense, the right to the environment is closely related to other human basic needs and core rights, such as the right to health or even the right to live. In effect, living in a polluted environment can ruin our health. Being exposed to harmful pollutants can trigger all sorts of illnesses and living in a degraded environment may jeopardise an individual's growth as a person and the free development of their personality.

11. Due to its connection with the fundamental interests of our lives, the construct of "environmental rights" is a positive prospect, and it has been overwhelmingly accepted in political and legal settings. However, difficulties arise when it comes to developing this idea into a working legal instrument. Among the main conceptual difficulties arising in this field, one may mention the question of who the holder of such a right is (each individual, present and/or future generations, groups, tribes, nations); what "the environment" means (due to the transversal and cross-cutting dimension of the concept); and, especially, what it means in practice,[6] especially when there are conflicting views on what should be done in terms of satisfying collective interests (economy v. environment), or even when it comes to discussing which solutions best protect the environment itself (renewable energy v. fossil fuels, solar v. nuclear energy, etc.). Public authorities and governmental entities have the power to decide on the balance between complex competing interests for the benefit of the community, and in such a scenario, it is not easy to determine what the right to the environment constitutes.

12. Despite these conceptual or theoretical problems, it is undeniable that the recognition of environmental rights has become a clearly distinctive feature of our current political and legal landscape.

13. In articulating such a right, one should start by conceding that environmental rights are not as obvious or "natural" as the right to life or the right to freedom, universally protected and recognised since the 17th century. Environmental rights do not belong to the so-called first generation of rights (i.e. to life, freedom, security, freedom of speech) and they do not belong to the second generation of rights either (i.e. social, economic or cultural rights). They are usually referred to as third-generation rights.

14. The fact that certain environmental rights are recognised in law means that the right to the environment manifests itself in different forms and at different intensities, aligned with a spectrum of protective devices. National realities demonstrate that the interpretation and inception of a human or fundamental right to the environment may adopt difference formats:

a. The most obvious and almost universally accepted approach is to recognise a human right to the environment as an aspiration, a societal goal, a policy guideline, an interpretive tool, or even as a legislative objective. In this sense, the authorities should endeavour not only to protect the environment (preventing its degradation or pollution) but also to improve its quality (by restoring degraded natural sites, countering atmospheric and water pollution, etc.). However, this is essentially a policy guideline that inspires the policies, decisions and legal rules adopted by the political branches (the legislative and the executive) or the interpretations of courts. In this restrictive notion of environmental rights, there are no real legal mechanisms at the disposal of citizens to oppose or to challenge in courts governmental decisions, plans and projects, and there are no specific legal proceedings to make real the "right" to the environment.

b. A second stage in the articulation of a human right to the environment sees the recognition of such a right in national constitutions or statutory law, with some "procedural" protection afforded to the right, for instance the right to participate in decision making, or the right to access environmental information.

c. A final, third stage incorporates the right to the environment in the national constitution as a full "true" or "genuine" human or fundamental right. In addition, there are specific legal proceedings and mechanisms to protect that right, both in the regular courts and in the constitutional courts. Moreover, the rights to access to environmental information and to participate in environmental decision making is fully protected by law and guaranteed by appropriate legal proceedings and remedies.

6. See Kiss, A-Ch. (1976), "Peut-on définir le droit de l'homme à l'environnement ?", *Revue juridique de l'environnement,* 1.

2.2 Recognition of the right to the environment in international treaties and conventions

2.2.1 Situation at global level

15. It is evident that the recognition of a human right to the environment is a growing trend in international and domestic law. Many national constitutions have progressively recognised such a human or fundamental right, expressed in one way or the other: the right to the environment, to a clean environment, to a decent environment, to a sound environment, and the like. The direction of travel is clear: the right to the environment is conquering more and more jurisdictions.

16. Here, we should first analyse the possible recognition of a fundamental right to the environment at global level, that is, by means of a universal declaration of rights, a specific global multilateral treaty and so on.

17. An examination of the relevant international treaties leads to the conclusion that, for the time being, there is no overall and general proclamation of a human or fundamental right to the environment, in the true or technical sense of the word, in a global international environmental treaty. There are different factors at play here. To begin with, there is no such global or general international environmental treaty yet, although there are certainly hundreds of treaties[7] covering a broad variety of subjects, from the protection of the ozone layer[8] to the regulation of international shipments of waste,[9] not to forget the fight against climate change.[10]

18. Consequently, international environmental treaties reflect a situation of fragmentation and specificity, which prevents the recognition of such a human right in a universal, environmental covenant.

19. In order to circumvent the piecemeal nature of the plethora of international environmental treaties, a multinational team of experts and lawyers has been working since 2017 on drafting a general, international treaty, a "global pact for the environment" that could be approved by the UN.[11] Although significant progress has been made, their efforts have not crystallised yet in a final binding treaty. Article 1 of the draft global pact recognises the right to live in an ecologically sound environment.[12]

20. There are certainly international, global declarations on the environment that proclaim the right to the environment in one way or the other, but these documents are not really binding. They are soft-law instruments: we refer to the Stockholm Declaration of 1972 (principle 1)[13] and the Rio Declaration of 1992 (principle 1).[14]

21. The same conclusion may be drawn with regard to international human rights law following an examination of the relevant global international instruments. Neither the Universal Declaration of Human Rights[15] nor the International Covenant on Civil and Political Rights[16] recognise a fundamental or human right to the environment, something that might be explained by the date of their adoption. In reality, awareness about the global environmental crisis only started to develop in the 1970s.

22. On the other hand, the International Covenant on Economic, Social and Cultural Rights[17] mentions the environment. The covenant proclaims the right to life, which involves living in adequate environmental

7. See the encyclopedic compilation of such treaties in Rüster, B., Simma, B. and Bock, M. (eds) (1975), *International protection of the environment: treaties and related documents*, Vols 1-31, Oceana Publications, New York.
8. 1985 Vienna Convention for the Protection of the Ozone Layer.
9. 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.
10. 1992 UN Framework Convention on Climate Change and Paris Agreement of 2015.
11. See https://globalpactenvironment.org, accessed 8 June 2022.
12. Article 1 of the pact, named "Right to an ecologically sound environment" states: "Every person has the right to live in an ecologically sound environment adequate for their health, well-being, dignity, culture and fulfilment."
13. "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations."
14. "Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature."
15. The Universal Declaration of Human Rights was adopted by the United Nations General Assembly and it enshrines the rights and freedoms of all human beings. It was accepted by the General Assembly as Resolution 217 during its third session on 10 December 1948.
16. The International Covenant on Civil and Political Rights is a multilateral treaty as adopted by United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966. It commits the contracting parties to respect the civil and political rights of individuals, such as the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial.
17. The International Covenant on Economic, Social and Cultural Rights is a multilateral treaty adopted by the General Assembly of the United Nations on 16 December 1966 through Resolution 2200A (XXI), and came in force from 3 January 1976.

conditions.[18] However, there is no separate or specific recognition of a human or fundamental right to the environment in this document.

23. In conclusion, the most relevant global declarations and treaties on human rights do not recognise explicitly a "human right" to the enjoyment of a healthy or clean environment.

24. Still, at global level, UN bodies have at different times made declarations and proclamations in favour of the recognition of a fundamental or human right to the environment. It should be reiterated that these documents are not binding legal instruments, but sources of soft law and diplomatic statements. However, they play an important role in this domain as reference documents. They are also evidence that, at least at the political level, there is a certain degree of consensus around these ideas.

25. For the purpose of this report, attention should be paid to the UN General Assembly, the UN Human Rights Council (UNHRC) and the UN Special Rapporteur on human rights and the environment. To begin with, the General Assembly has adopted relevant resolutions in the field. The most important is probably Resolution 45/94, passed on 14 December 1990, which declares that "all individuals are entitled to live in an environment adequate for their health and well-being".

26. Another well-known, more recent document is the General Assembly Resolution 70/1 of 25 September 2015, entitled "Transforming our world: the 2030 Agenda for Sustainable Development". In this resolution, the Assembly adopted a comprehensive, far-reaching and people-centred set of universal Sustainable Development Goals (SDG) and targets. The 2030 Agenda refers at different points to sustainable development and to some rights that may have a direct connection to the human right to the environment, such as the right to health, the right to access to drinking water, and so on. However, there is no explicit mention of a human or fundamental right to the environment.

27. The UN Human Rights Council has also adopted different resolutions on human rights and the environment, namely Resolutions 45/17 of 6 October 2020, 45/30 of 7 October 2020 and 46/7 of 23 March 2021. The most recent UN document is the Human Rights Council Resolution 48/13 of 8 October 2021. This resolution recognises the access to a healthy and sustainable environment as a universal right.[19] In this resolution, the Human Rights Council encourages states: (a) to build capacity for efforts to protect the environment in order to fulfil their human rights obligations and commitments, and to enhance co-operation with other states and stakeholders, on the implementation of the right to a safe, clean, healthy and sustainable environment; (b) to continue sharing good practices in fulfilling human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; and (c) to adopt policies for the enjoyment of the right to a safe, clean, healthy and sustainable environment.

28. In Resolution 28/11 of 7 April 2015, the Human Rights Council recognised the need to clarify some aspects of the human rights obligations relating to the environment and asked the Special Rapporteur on human rights and the environment to continue to study those obligations. As a result, the UN Special Rapporteur presented his framework principles on human rights and the environment to the 37th session of the Human Rights Council.

29. This document lays down 16 principles, covering many different aspects of the connection between the environment and human rights. Principle 1 declares: "States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights." Conversely, Principle 2 proclaims: "States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment." The emphasis is on the obligations of the state, rather than on the subjective dimension of those rights.

2.2.2 Situation at regional (European) level

30. The situation is also disappointing at regional (European) level, since neither the Council of Europe nor the European Union (the two most important international organisations in Europe) have produced a general binding instrument recognising the human or fundamental right to the environment. While the situation of the Council of Europe will be presented later, that of the EU and other relevant European organisations will be addressed here.

18. Under Article 12.2 (b) of the Covenant, the Parties must work towards achieving "The improvement of all aspects of environmental and industrial hygiene".
19. "The human right to a clean, healthy and sustainable environment", Resolution 48/13, adopted by the UN Human Rights Council at its forty-eighth session, 8 October 2021.

31. The EU is an organisation of supranational integration, the origins of which may be traced back to 1951, with the establishment of the European Community of Steel and Coal (CECA). Since that date, the Union has grown both in organisational dimension and in the depth of the (first) economic and (now) political integration of its 27 member states. In the precise domain of environmental protection, the EU has enacted an impressive body of legislation, with more than 300 legal instruments (directives and regulations) covering all possible areas of environmental protection.

32. Despite this impressive environmental *acquis*, the EU has not proclaimed a general human right on the environment yet. Each of the legal instruments relating to the environment have a particular focus and scope (from the regulation of waste to the emissions trading scheme) and consequently do not recognise such a general right. In addition, most of those legal instruments – or directives – are addressed to the member states and impose obligations on them, rather than creating fundamental rights in the juridical sphere of its citizens.

33. In 2000, the EU agreed on a Charter of Fundamental Rights of the European Union, which was only annexed as a Declaration to the Treaty of Nice. Although it was eventually incorporated as a binding legal rule by the Treaty of Lisbon in 2009, the analysis of the EU Charter may be deceiving from the perspective of the connection between human rights and the environment. Specifically, Article 37 of the EU Charter states that "[a] high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development". This wording is very far from declaring a general human right to the environment, rather embodying a general goal for policy makers at the EU level.

34. A general examination of the EU *acquis* in the domain of environmental protection or in the field of human rights leads to the conclusion that the EU has not yet produced a legal document in which the human right to the environment is recognised as such. This does not mean that the impressive corpus of environmental law that has been developed by the EU over the last 50 years has no "human rights" dimension at all. Indeed, the EU has ratified the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention), since the Union is an international organisation endowed with its own legal personality and a "treaty-making power" that is recognised by its founding treaties. There is, thus, within the European continent an international treaty that truly recognises "instrumental" or procedural rights in favour of citizens in the field of environmental protection, negotiated by an international organisation with a European dimension (UNECE). The convention, which was adopted on 25 June 1998 and entered into force on 30 October 2001, has been ratified by 47 states.

35. Consequently, the procedural or instrumental human rights consecrated by the Aarhus Convention are also a part of EU law, and the EU has modified a number of legal instruments (directives on environmental impact assessment and on Integrated Pollution Prevention and Control) to implement the obligations deriving from the Aarhus Convention. Moreover, the Court of Justice of the European Union has been very generous in recognising an important subjective and citizen-based dimension in the implementation and enforcement of the EU's environmental rules. It has developed a liberal or progressive approach in this domain (direct effect, citizens' rights to participate, access to justice, etc.) that is instrumental in ensuring the "active" role of citizens in the protection of the environment.

36. The Aarhus Convention regulates the three pillars of so-called "environmental democracy", which were first recognised in the 1992 Rio Declaration (Principle 10). The convention enshrines the three key dimensions for the efficient involvement of the citizen in the protection of the environment; it grants the public important rights and imposes on the states parties certain positive obligations in those three dimensions.

37. First, the Aarhus Convention grants the right to know, that is, the right of the general public to have access to environmental information, in whatever format and shape, that is held by the government at any level or dimension.

38. Second, the Aarhus Convention wants to protect and ensure the active participation of citizens in environmental decision making. Consequently, it enshrines the right to be heard, that is the right to participate effectively in the decision-making process of governmental agencies and authorities (be it at national or subnational level) when they adopt decisions, plans and regulations concerning the environment.

39. Finally, the Aarhus Convention consecrates the right of environmental non-governmental organisations (eNGOs) and individuals to bring claims to court to protect the environment, whenever the rights to access to information or participation have been disregarded by public authorities, or whenever any governmental

agency takes a wrongful decision that harms or degrades the environment. A generous and broad access to justice on those matters is recognised by the Aarhus Convention.

40. Moreover, these three rights are meant to be instruments for the achievement of a broader goal, namely that of contributing "to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being" (Article 1). The Aarhus Convention, however, does not itself recognise that right explicitly, as it takes it for granted.

41. Due to the specific nature of the obligations embodied in the Aarhus Convention it is usually considered that this international covenant relates to the heart of the relationship between citizens and government. Consequently, the Aarhus Convention is not only regarded as a mere environmental agreement, but also as a binding legal rule about government accountability, transparency and responsiveness.

42. Two aspects of the Aarhus Convention are very relevant for the purpose of this report. On the one hand, practically all the members of the Council of Europe have signed and/or ratified it.[20] On the other hand, the instrumental or procedural environmental rights proclaimed by the Aarhus Convention have a clear connection with the content and the scope of the European Charter of Local Self-Government and with its additional protocol.[21] These ideas will be developed below.

2.3 Recognition of environmental rights in domestic constitutional law (Europe)

43. In many countries around the globe, political actors have introduced a right to the environment (expressed one way or the other) in their domestic constitutions.[22] We will limit our review to the European continent. From this perspective, many European countries with a written constitution have introduced in one way or another a fundamental or human right to the environment. This is the case, for instance, in:

- France: Charter of the Environment annexed to the French Constitution of 1958, as amended, with Article 1 proclaiming the right to live in a balanced environment;[23]
- Germany: Article 21 of the German Constitution of 1949, as amended, provides for the protection of the natural foundations of life and animals (as a duty of the state, rather than a "fundamental" right);
- Portugal: Article 66.1 of the Portuguese Constitution of 1976, as amended;[24]
- Montenegro: Article 27 of the Constitution of Montenegro of 2007;[25]
- Hungary: Article 18 of the Hungarian Constitution (amendment of 1989);[26]
- Sweden: Article 2 of the Swedish Constitution of 1974, as amended;[27]
- Austria: a constitutional law on environmental protection was adopted by the Austrian Parliament in 1984. Although this is not part of the constitution in a technical sense, it is regarded as a binding rule to which regular statutes should conform;[28]
- Republic of Moldova: Article 37 of the Moldovan Constitution of 1994 recognises the fundamental right to live in a healthy environment.[29]
- Georgia: Article 29 Chapter II "Fundamental human rights" of the Georgian Constitution, as amended in 2016, recognises the right to live in healthy environment as a human or fundamental right [30].

20. For a list of signatories of the Aarhus Convention, see https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13&chapter=27&clang=_en, accessed 9 June 2022.

21. Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, Utrecht, 16 November 2009 (CETS No. 207).

22. According to the UN Human Rights Council, more than 155 states have recognised some form of a right to a healthy environment in, *inter alia* international agreements or in their national constitutions, legislation or policies (see Resolution 48/13).

23. "Chacun a le droit de vivre dans un environnement équilibré et respectueux de la santé".

24. "Everyone shall possess the right to a healthy and ecologically balanced human living environment and the duty to defend it".

25. "Everyone shall have the right to a sound environment. Everyone shall have the right to receive timely and full information about the status of the environment, to influence decision making regarding issues of importance for the environment, and to legal protection of these rights."

26. "The Hungarian Republic recognises and implements everybody's right to a healthy environment." Article 70 also mentions environmental protection as an instrument for safeguarding the right to health.

27. "Public institutions shall promote sustainable development leading to a good environment for present and future generations".

28. This law consists of two provisions: Article 1, paragraph 1, "The Republic of Austria declares itself for comprehensive environmental protection"; and Article 1, paragraph 2, "Comprehensive environmental protection means the conservation of the natural environment as a basis of living for humans that is against harmful impact…in particular regarding measures to keep the air, water and soil clean as well as to prevent nuisance through noise."

29. "(1) Every individual has the right to live in an ecologically safe and healthy environment, to consume healthy food and to use safe household appliances. (2) The State shall guarantee to every individual the right to freely access and dissemination trustworthy information regarding the state of the natural environment, and living and working conditions".

30 "(1) Everyone has the right to live in a healthy environment and enjoy the natural environment and public space. Everyone has the right to receive full information about the state of the environment in a timely manner. Everyone has the right to care for the protection

44. At the other end of the spectrum there are some countries whose constitutions do not mention the environment or enshrine any kind of environmental rights whatsoever. The best example is probably Iceland, whose Constitution of 1944 does not mention the environment nor recognise a human or fundamental right to the environment.

45. In general, it may be observed that constitutions that were enacted in the last three decades (e.g. Montenegro) have introduced explicitly, and from the beginning, a fundamental or human right to the environment, which means that this right is protected by a series of legal and political devices, and by specific procedural instruments and proceedings (in regular and/or constitutional courts).

46. Conversely, those constitutions that were enacted between the end of the Second World War and the 1980s have not incorporated, in general, a fundamental right to the environment. In this group of constitutions, some have been subsequently amended to specifically introduce such a right (e.g. France, Germany), while others have not (e.g. Iceland).

47. Even in those countries whose constitutions have not introduced a fundamental right to the environment, the case law of the national constitutional or supreme court has usually interpreted in a liberal way other connected rights (right to life, to health, to privacy, etc.). By "greening" those connected rights, the constitutional or supreme courts have often established a legal framework that is tantamount to the recognition, in practice, of a human right to the environment. As a result, it may be said that such a fundamental right to the environment is recognised in practice by the constitutional or supreme court's case law. Examples include Italy, where the absence of an explicit recognition of the right to a clean environment in the constitution has not prevented the affirmation of the existence of constitutional principles of environmental protection. This has been achieved by making a reference to the protection of property rights, the right to health (Article 32) and the need to protect cultural and landscape heritage (Article 9). These are principles that have been developed in detail by Italy's Constitutional Court.

48. Despite this general trend, there are still European countries whose domestic constitution does mention a right to the environment, which is not considered to be a basic, human or fundamental right in a technical or strict sense. A notable example is Spain. Article 45.1 of the Constitution of Spain, as amended, states that "everyone has the right to enjoy an adequate environment for the development of the person, as well as the duty to preserve it". Other articles also refer to environment-related issues, such as Article 40 (occupational safety and health), Article 43 (the right to health protection) and Article 46 (protection of historic and cultural heritage).

49. The interpretation of Article 45, though, deserves close attention and should not left open to misinterpretation. The Spanish Constitution certainly uses the word "right" (*derecho*), which could lead to the understanding that there is such a fundamental constitutional right. However, the First Title of the Spanish Constitution (devoted to the "rights and liberties") comprises Article 14 to Article 55, and not all of these provisions recognise a right in the sense of a fundamental or subjective human right. On the contrary, within this title there are different kinds of rights and protected goods:

a. On the one hand, there are true or genuine fundamental rights, enshrined in Articles 14 to 29 (non-discrimination the right to life, liberty, privacy, etc.). These rights have the strongest legal protection: they can only be regulated by special acts of parliament requiring reinforced majority voting ("organic statutes"), which can eventually be held to be unconstitutional if they disregard the core of that right, and they have a complete set of legal remedies. Any citizen can claim the protection of those rights in court through a special, summary judicial proceeding, and individuals have direct access to the Spanish Constitutional Court by means of a specific remedy (*recurso de amparo*) if they have exhausted the appropriate judicial proceedings before the ordinary courts.

b. On the other hand, there are "simple" constitutional rights and duties (Articles 30 to 38): for instance, the right to private property, or the right to collective bargaining. These rights have a weaker constitutional protection: they can be regulated by regular acts of parliament (no special majority needed), which can eventually be declared unconstitutional if they disregard their essential features. However, there is no special, summary judicial proceeding to protect them in regular courts, and citizens have no direct access to the Constitutional Court to protect those rights.

---

of the environment. The right to participate in the adoption of decisions related to the environment shall be ensured by law; (2) Environmental protection and the rational use of nature resources shall be ensured by law, taking into account the interests of current and future generations".

c. Finally, there are “guiding principles of social and economic policies” (Articles 39 to 52), including the right to the environment. The only safeguard to that right as accorded by the Spanish Constitution is that (1) “the recognition, respect and protection” of those principles “will shape positive legislation, judicial practice and the activities of the public powers”; and (2) they can only be invoked in courts in the way provided for by the statutes and regulations that develop them (Article 53).

50. From that systematic approach to the First Title of the Spanish Constitution it may be concluded that the right proclaimed therein is not really a genuine fundamental, subjective right, but only a guiding principle that has to shape different public policies. Individuals cannot directly claim the violation of such a right, neither before the regular courts nor before the Constitutional Court. On the contrary, the possibilities of litigation stemming from Article 45 are not full and abstract but have to be exercised in accordance with the secondary legislation regulating sectoral environmental affairs (water protection, environmental impact assessment, air pollution control, etc.).

51. The Spanish Constitutional Court has addressed the interpretative problems stemming from Article 45 on several occasions (e.g. Decisions 64/1982, 227/1988, 66/1991, 243/1993). Perhaps the judgment that best summarises its position is Decision 199/1996 of 3 December. After noting several times the importance of the “right to the environment”, along with the observation that it has been enhanced by the case law of the European Court of Human Rights, the Constitutional Court concluded thus: “we cannot ignore the fact that Article 45 of the Constitution enunciates a guiding principle, but not a fundamental right”. As the Spanish example illustrates, the understanding and practical materialisation of a human or fundamental right may be legally tricky and may adopt different shapes and formats.

2.4 Recognition of the right to the environment in Council of Europe law

52. The Council of Europe is well known as a leader in the protection of human rights and democratic values. This makes it all the more necessary to explore the status of the human right to the environment within such an international organisation. Indeed, the present report was mandated by the Congress of Local and Regional Authorities, a body of the Council of Europe.

2.4.1 The environment as a human right in the context of the European Convention on Human Rights

53. The European Convention on Human Rights[31] (the Convention) is universally recognised as the leading international covenant for the proclamation and protection of human rights. Although there are other agreements in force in other parts of the world, the Convention is the only such covenant in Europe (leaving aside the Charter of Fundamental Rights of the European Union, which is of little help in this domain, as explained above). The Convention provides a systematic and protective approach to the most usual and universal human rights (life, security, privacy, etc.).

54. Despite this broad scope, the Convention does not enshrine a human or fundamental right to the environment, to the protection of the environment, to a decent, balanced or clean environment, or equivalent notions. Nor does it recognise instrumental or procedural environmental rights, as the Aarhus Convention does. One probable explanation is that, when the Convention was agreed in 1950, there was little awareness of environmental issues, and legal materials dealing with the protection of the environment were scarce.

55. This being true, it is also notable that the Convention was later supplemented by a number of protocols (up to 15) and that some of those protocols have amended the Convention. However, none of these has introduced a human or fundamental right to the environment. The reasons must be of a strictly political nature, and there is no need to investigate further. For the purpose of this report, the above statement is still true: the Convention does not explicitly protect the right to the environment or recognise a human or fundamental right to the environment.

56. Although the Convention remains silent on this issue, the European Court of Human Rights, established for the protection, interpretation and judicial implementation of the Convention, has developed very interesting case law since the 1990s. In this case law, the Court has interpreted different provisions of the Convention in an ecological manner or with an environmental approach. The provisions of the Convention that have been interpreted or “used” by the Court to carry out this approach are Article 8 (right to respect for private and family life),[32] Article 2 (right to life) and Article 6 (right to a fair trial). Article 1 of Additional Protocol

31. Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.
32. “(1) Everyone has the right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a

No. 1, which protects private property, has also been used in the reasoning of the Court. This case law is very liberal, and it is arguable whether the Court (through its case law) has recognised implicitly a human right to the environment using "alternative" legal pillars, or whether it has just interpreted broadly some other "genuine" human rights, granting them a somehow "green" dimension.

57. The Court has already ruled on more than 100 environment-related cases, touching on a wide variety of issues including pollution, access to information and natural disasters, resulting in an impressive development of case law fostering the interconnection between the protection of the environment and human rights. The first stages of this development were constituted by the following landmark cases:

- *Powell and Rayner v. The United Kingdom*: judgment of 21 February 1990 (Application No. 9310/81). This case involved the problem of excessive noise produced by Heathrow Airport, but the Court did not find any violation of the Convention;
- *Zander v. Sweden*: judgment of 25 November 1993 (Application No. 14282/88). In this case, on the building and operation of a landfill of waste, the Court found a violation of Article 6 of the Convention;
- *López Ostra v. Spain*: judgment of 9 December 1994 (Application No. 16798/90). In this proceeding, involving the construction of a municipal installation for the depuration of residual waters, the Court found a violation of Article 8 of the Convention;
- *Guerra and Others v. Italy*: judgment of 19 February 1998 (Application No. 116/1996/735/932). In this case, concerning the construction and operation of an industrial installation for the production of pesticides, the Court again found a violation of Article 8;
- *Chassagnou and Others v. France*: judgment of 29 April 1999 (Application Nos. 25088/94, 28331/95 and 28443/95). This litigation involved a French hunting law, and the Court found a violation of Article 1 of Additional Protocol No. 1 (right to property), a violation of Article 11 of Additional Protocol No. 1 (right to form associations) and a violation of Article 14 of Additional Protocol No. 1 (non-discrimination);
- *Coster v. The United Kingdom*: judgment of 18 January 2001 (Application No. 24876/94). This complaint concerned domestic legislation connected to permanent camping. The Court did not find any violation of the Convention;
- *Hatton and Others v. The United Kingdom*: judgment of 2 October 2001 (Application No. 36022/97). This litigation involved a complaint about the excessive noise produced by the night operations of Heathrow Airport. The Court found a violation of Article 8 (privacy) and Article 13 (right to an effective remedy) of the Convention;
- *Moreno Gómez v. Spain*: judgment of 16 November 2002 (Application No. 4143/02). In this litigation concerning excessive noise, the Court found a violation of Article 8 of the Convention.

58. The above rulings form the "classical" line of case law, which has since been reiterated and expanded by the Court, particularly with regard to the protection of Articles 2, 6, 8, 10 and 11 of the Convention, and Article 1 of Additional Protocol No. 1.[33] At the time of preparing this report, the most recent such case is the Court judgment of 14 October 2021 (*Kapa and Others v. Poland*, Application Nos. 75031/13, 75282/13, 75286/13 and 75292/13). This litigation deals with the construction of a motorway. The lack of a timely and adequate response by the domestic authorities to the problem affecting the inhabitants enabled the Court to conclude that the applicants' right to the peaceful enjoyment of their homes was breached in a way that affected their rights protected by Article 8.

59. This ruling confirms the case law of the Court, according to which the right to a healthy environment can be defended using the concept and the instruments of fundamental rights.

2.4.2 Other Council of Europe materials

2.4.2.1 Council of Europe environmental treaties

60. The Council of Europe has adopted a number of treaties covering different elements of environmental protection. We refer here to the following instruments:

- Convention on the Conservation of European Wildlife and Natural Habitats (ETS No. 104, Bern, 1979);

democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

33. For a list of all the judgments and decisions of the European Court of Human Rights relevant to the environment, from 1980 to 2011, see Council of Europe (2012), *Manual on human rights and the environment* (2nd edn), Council of Europe Publishing, Strasbourg, pp. 143-8.

- Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (ETS No. 150, Lugano, 1993);
- Convention on the Protection of Environment through Criminal Law (ETS No. 172, Strasbourg,1998);
- European Landscape Convention (ETS No. 176, Florence, 2000).

61. All these treaties cover a specific or sectoral aspect of environmental protection. Consequently, none of them has the goal of proclaiming a genuine "human" or "fundamental" right to the environment or establishes a set of mechanisms for its protection.

2.4.2.2 Resolutions and recommendations of the Parliamentary Assembly of the Council of Europe

62. The issue of environmental rights has been extensively debated by the top bodies of the Council of Europe. Here we will pay attention to the activities, debates and conclusions of the Parliamentary Assembly.

63. For decades, the Assembly has expressed concern about the rate of environmental degradation and the need to establish firm guidelines and policies. For instance, as early as 1972, the Assembly adopted Recommendation 683 (1972), according to which the Council of Europe should examine the question of whether it is necessary to establish the right to a decent environment as a human right and to draw up an appropriate legal instrument guaranteeing this new right. In this sense, Germany proposed in the inaugural European Ministerial Conference for the Environment (Vienna, 1973) the preparation of an additional protocol to the Convention in order to consecrate the right to a healthy and balanced environment.

64. That same year, the Assembly adopted Recommendation 720 (1973), recommending to draw up principles defining the rights and duties of the individual with regard to his environment and some years later the Assembly recommended again to the Council of Ministers the drafting of a convention on the protection of the environment, including the right to a healthy environment (Recommendation 1052 (1987)). Moreover, in 1990 the Assembly adopted its Recommendation 1130 (1990), proposing to formulate a European charter and a European convention on environmental protection and sustainable development. Article 1 of the proposed Charter stated that "every person has the fundamental right to an environment and living conditions conducive to his good health, well-being and full development of the human personality."[34]

65. Later, the Assembly adopted its Recommendation 1431 (1999), "Future action to be taken by the Council of Europe in the field of environment protection", advocating once more for the need to produce an amendment or an additional protocol to the European Convention on Human Rights concerning the right of individuals to a healthy and viable environment. This paramount suggestion was reproduced in a number of subsequent documents, for instance its Recommendation 1885 (2009), "Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment".

66. Concern about environmental protection and its connection with human rights has been a subject of constant attention for the Assembly. We may refer to three recent documents:

1) Doc. 15349, of 23 August 2021, "Combating inequalities in the right to a safe, healthy and clean environment".[35] In this report, coupled with a resolution, the Assembly identified critical areas of inequality in access to a safe, healthy and clean environment and made recommendations on their mitigation.

2) Doc. 15357, of 30 August 2021, "Research policies and environment protection".[36] In the enclosed resolution and recommendation, the Assembly called on states to review their research and development policies, in order to give priority to the green economy, energy transition and the circular economy, so as to achieve the goal of carbon neutrality by 2050.

3) Doc. 15367, of 13 September 2021, "Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe".[37] This is the most important document for our purposes. Coupled with a resolution and a recommendation, the Assembly once more recommended that the Committee of Ministers of the Council of Europe draw up an additional protocol to the European Convention on Human Rights, as well as one to the European Social Charter, on the right to a safe, clean, healthy and sustainable environment. Moreover, the recommendation itself included the text of the proposal for the additional

34. Recommendation 1130 (1990) on formulation of a European charter and a European convention on environmental protection and sustainable development
35. Rapporteur: Ms Edite Estrela, Portugal
36. Rapporteur: Mr Olivier Becht, France
37. Rapporteur: Mr Simon Moutquin, Belgium.

protocol. This draft document was composed of a preamble and 12 articles, covering the different elements of a human right to the environment.

67. Under this proposal, the right to the environment was characterised in legal terms – "the right to a safe, clean, healthy and sustainable environment" – and the holders of such a right would be present and future generations. This fundamental right would consist of the right "to live in a non-degraded, viable and decent environment that is conducive to [the] health, development and well-being [of present and future generations]".

3. CLIMATE CHANGE AND HUMAN RIGHTS

3.1 Introduction

68. In recent times, awareness about the threats and challenges triggered by changes in climate patterns has grown dramatically. Climate change poses a serious risk to the fundamental rights to life, health, food and an adequate standard of living in communities across the world. In response, policies, laws, regulations and plans have been adopted at local, state and international level.[38]

69. The international community has agreed on basic frameworks and rules to address the challenge of climate change (UN Framework Convention on Climate Change, 1992; Kyoto Protocol, 1997; Paris Agreement, 2015). In many countries around the globe, the competent authorities have adopted laws, regulations and plans to mitigate climate change or to adapt to its consequences.

70. This is also the case on the European continent. In the special case of the 27 EU member states, ambitious commitments have been made to climate change mitigation (carbon neutrality by 2050), along with a systematic group of binding regulations, directives and strategies (the EU's Climate Law, Green Deal, etc.). EU climate law aims at implementing greenhouse gas (GHG) emissions reduction targets under the Paris Agreement.

71. Despite this multi-level political and normative response to the challenges of climate change, there is a growing feeling that more urgent action is needed. Consequently, citizen groups, associations and individuals are mobilising in many institutional settings and jurisdictions, in the face of what they perceive as governmental passivity or a lack of adequate action.

72. In this vein, a new dimension has been developing in the broader arena of environmental rights. A number of experts, lawyers and political scientists are increasingly advocating for the recognition of specific "climate change rights" in favour of citizens, associations and interest groups. This development of environmental rights involves three separate dimensions: (a) first, the right to participate actively in the adoption and implementation of laws, regulations, plans and projects that have to do with climate change (i.e. participation in policy making); (b) the right to challenge in courts the decisions, plans and regulations adopted by the public authorities (or their inaction); and (c) the negative impact of climate change on other fundamental rights, especially the right to life.

3.2 Emergence of a human rights dimension linked to the climate change crisis

73. Over the last few years, the linkage between climate change and human rights has been increasingly recognised at the international level. Individuals, groups of citizens and NGOs have introduced lawsuits in courts, asking for the enactment of legal and planning measures, or the adoption of more ambitious measures. Climate change litigation is becoming a feature of both domestic and international courts,[39,40] to the extent that it is almost impossible to keep track.[41]

74. The concept of climate change litigation may encompass different types of scenarios, for instance individuals suing a multinational company on climate change grounds,[42] but only one type is interesting for

38. There are countless books and treatises on the subject. A notable example is Hollo, E., Kulovesi, K. and Mehling, M. (eds) (2013), *Climate change and the law*, Springer, Berlin.
39. See, already in 2005, the petition lodged by the Inuit People in the Inter-American Court of Human Rights.
40. See Sindico, F. and Mbengue, M. M. (2021), *Comparative climate change litigation: beyond the usual suspects*, Ius Comparatum – Global Studies in Comparative Law, Springer, Basel, pp. 472-88.
41. See United Nations Environment Programme (2017), *The status of climate change litigation – A global review*, UNEP, Nairobi; Sabin Center of Climate Change Law, *Climate change litigation databases*, available at http://climatecasechart.com, accessed 12 June 2022.
42. The best example of this possibility is probably the case *Saúl Luciano Lliuva v. RWE AG,* triggered in 2015 by a Peruvian citizen against a German energy corporation. The claim was dismissed by a German first-instance civil court.

the purpose of this report. We refer to the public law litigation between individuals and national public powers. In this litigation, individuals, citizen groups or NGOs (generally of an environmental nature) litigate in domestic courts against national public authorities on the subject of climate change.

75. The procedural scenarios here can be essentially of three types: (1) citizens and NGOs (civic or environmental) litigate against decisions, projects or individual measures adopted by the authorities, alleging that they are incompatible with the fight against climate change;[43] (2) citizens and NGOs (civic or environmental) litigate against laws, regulations or plans adopted at the central or federal level, alleging that they are insufficient or not ambitious enough to effectively combat climate change; (3) citizens and NGOs litigate in courts to demand that the government or other central or federal institution adopt initiatives in the climate change sector, in a situation of passivity, lack of action or regulatory inactivity. The first cases of climate change litigation in Europe were brought before national courts by individuals and organisations seeking more effective actions by their states to combat climate change.

76. Of these three types, only the second and third will be considered here, because this is where human rights or fundamental rights are usually invoked. Within this "new" litigation, rights-based claims have emerged as a relevant strategy. In these lawsuits, the plaintiffs typically invoke their human rights to life, to health, to living in a healthy environment, and so on. These claims have given courts a pivotal role in protecting human rights against the consequences of climate change. However, plaintiffs face a series of important procedural and substantive obstacles: in many jurisdictions they face problems of *locus standi*, and in other cases they must prove the existence of a link between the government's inaction and specific climate-change related harms, not to mention the limited scope of judicial review in some domestic judicial systems, when it comes to placing checks on public authorities.

77. In recent years, national courts have adjudicated several rights-based climate cases. Some of the most relevant and well-known examples of that litigation are referred to below.[44]

The Netherlands: *the "Urgenda" case*

78. The lawsuit filed by the Dutch environmental foundation and NGO "Urgenda" constitutes the most famous case of successful "climate" litigation. Urgenda obtained a favourable decision from a domestic court, and the state was compelled to adopt more ambitious measures to reduce GHG emissions than those already in place. At that time, it was the only case in which a lawsuit against the government of a country, questioning its general "climate" policy, fully succeeded in court.

79. In the Netherlands, national policy had established a GHG reduction target of 17% by 2020, under the distribution of reduction efforts decided by the EU. However, this target was considered too low by the plaintiff. In the lawsuit brought by Urgenda more than 1 000 citizens against the Government of the Netherlands, the District Court of The Hague upheld the claim and ordered the state to adopt more ambitious measures with a view to reduce GHG emissions in the Netherlands and, specifically, "to reduce the annual collective volume of greenhouse gases ("GHG") generated in the Netherlands, or to reduce them, in such a way that by the end of 2020 the said volume is reduced by 25% compared to 1990 emission levels."[45]

80. In its ruling, the Dutch court held that the legal principle of the state's duty of care (duty of care as enshrined in the Dutch Civil Code) had been violated, and that the principles that inspire liability for illicit acts and Article 21 of the Dutch Constitution were also violated.

81. The ruling of the District Court of The Hague produced a sort of legal "earthquake" and attracted much scholarly attention.[46] The Dutch Government filed an appeal in the Hague Court of Appeal, but the appeal was dismissed by that higher court in October 2018, concluding that by failing to reduce GHG emissions by at least 25% by 2020, the Dutch Government was acting unlawfully in contravention of its duty of care under Articles 2 and 8 of the European Convention on Human Rights. Finally, this ruling was also appealed by the Dutch Government in the Supreme Court, but this court also dismissed the appeal in December 2019 under

43. A well-known example is the litigation involving the enlargement of Vienna Airport, where an NGO opposed governmental approval to build a third runway, claiming that the increase in CO2 emissions was incompatible with the emissions reduction targets adopted by the federal government. The claim was upheld by a lower court in 2016 but repealed by the Austrian Constitutional Court in 2017.
44. See de Sadeleer, N. (2021), "Climate change litigation in the EU", Australian National University, Centre for European Studies Briefing Paper Series, Vol 12 (5).
45. Ruling of the district court of The Hague of 24 June 2015 (ECLI:NL:RBDHA:2015:7196).
46. On this ruling, see Loth, M. (2016), "Climate change liability after all", *Tilburg Law Review, Journal on International and Comparative Law* 21, pp. 5-30; Berkamp, L. (2015), "A Dutch court's 'revolutionary' climate policy judgment: the perversion of judicial power, the state's duties of care, and science", *Journal for European Environmental Law & Planning Law* 12.

Articles 2 and 8 of the Convention. Consequently, the Urgenda decision has become final, and the Dutch Government has undertaken to take steps towards its execution.

Belgium: *VZW Klimaatzaak v. Kingdom of Belgium, et al. (2021)*

82. This case was filed in the Court of First Instance of Brussels in 2015 by the e-NGO "Klimaatzaak" and some 58 000 people against the federal and federated entities of Belgium (the central government and the regions). The plaintiffs, relying on Article 1382 of the Belgian Civil Code (the duty to pay for reparation in case of damage caused by harm) alleged wrongful behaviour of the public authorities in pursuing their climate change policy.

83. The judgment of the Court of First Instance of Brussels (made public on 19 June 2021) eventually found that the respondent authorities were indeed pursuing a deficient policy and failing to attain the expected climate objectives. Moreover, this defective course of action by the Belgian authorities had been already denounced repeatedly by the European Commission. The court held that the respondent authorities were breaching constitutional and human rights commitments by not doing more to mitigate against climate change and by not acting with the prudence and diligence expected of a "good father" (*bonus pater*), as required by the Belgian Civil Code. As a consequence of this "fault", the public authorities were infringing the right to life, the right to respect for private and family life, and the respect for the home of the plaintiffs, enshrined in Articles 2 and 8 of the Convention. On this point, the Belgian court was following the Urgenda decision. However, it held that there was not a violation of Articles 6 and 24 of the Convention on the Rights of the Child.

84. Although the court concluded the existence of "wrongful conduct", it refused to order the government to act further (an injunction that was requested by the plaintiffs). According to Belgian law, that would go beyond the jurisdictional powers of a mere civil court (under the separation of powers principle). In view of the results obtained, this litigation may be considered to be a "moral" victory, but lacking meaningful or practical consequences, at least in legal terms. In political terms, the ruling is strongly condemns the relevant governmental entities.

France: two important climate-related cases were decided in 2021

(a) *Notre affaire à tous et autres v. l'Etat français*, ruling of the Administrative Court of Paris of 3 February 2021 (cases no. 1904967, 1904968, 1904972, 1904976/4-1)

85. This lawsuit was triggered before the administrative jurisdiction by four different environmental associations, including the one that provides the citation for this case. This action followed the petition "Affaire du siècle" (the case of the century), launched by the same associations, which eventually gathered more than 2 million signatures in France in 2019. The promoters of the initiative considered that France was failing to act adequately on climate change issues. The plaintiffs asked the judge to declare the state's failure to act, and to order the French Government to take all the measures to reduce GHG emissions that were needed to keep global warming below 1.5°C. They also demanded the recognition of a general obligation to fight climate change and the recognition of the right to live in a sustainable climate system. The claim was mainly based on Articles 1246, 1247 and 1248 of the French Civil Code (concerning ecological damage).

86. In its ruling, the Administrative Court of Paris made references to reports of the Intergovernmental Panel on Climate Change (IPCC), the UNFCCC, the Paris Agreement, and EU directives and regulations. For the first time in French history, the court recognised the ecological damage resulting from non-respect of agreed climate commitments by the state and held that France was liable for failing to fully meet its goals in reducing GHG emissions (*carence fautive*). The court concluded that the state had failed to meet its own commitments to reduce GHG emissions between 2015 and 2018 and was found liable for "ecological damage". Moreover, the moral prejudice of the four applicants was also recognised and France was condemned to pay a symbolic euro for "moral damages" to the four NGOs.

87. The court however rejected imposing on the state the duty to adopt more ambitious objectives, since it was considered that the French objective was already more ambitious than the targets imposed by the EU on that country. As a consequence of the ruling, in April 2021 the competent ministry published an action climate plan to reinforce the implementation of the national strategy on low carbon. Further legal initiatives on a new law on climate and resilience were introduced in the French Parliament.

(b) *Commune de Grande Synthe et Damien Carême (maire) contre l'Etat*, ruling of the Council of State of 19 November 2020 and 1 July 2021 (case no. 427301).

88. The French municipality of Grande-Synthe (near Dunkerque) and its mayor (Mr Carême) brought an appeal against the Republic before the Council of State, following the refusal of the French Government to accept their request that France take additional measures to comply with the objectives of the Paris Agreement. The Court found admissible the action of this coastal municipality that had *locus standi* because it is particularly exposed to the effects of climate change.

89. In its second and final ruling, the Council of State required the French state to take "all useful measures" by 31 March 2022 to comply with the reduction trajectory set by the French Energy Code (reduction of GHG emissions by 40% between 1990 and 2030). The decision was taken on the basis of French law (Energy Code) and EU law, read in conformity with the Paris Agreement.

90. However, the administrative court did not specify the criteria for defining the "useful measures" that had to be taken to comply with the legal trajectory. As seen above, being bound by the principle of separation of powers, the administrative court cannot determine the content of the measures that the state is required to take.

Germany: Neubauer et al (2021)

91. In 2020, four different groups of people, acting separately, filed lawsuits in the German Constitutional Court. They challenged the federal Climate Protection Act, which set a national target of reducing GHG emissions by 55% by 2030, taking as a reference 1990 levels. Not only was that target insufficient, according to the applicants, but the law did not set any further reduction target for subsequent time periods. Moreover, the plaintiffs argued that Germany should reduce its GHG emissions by 70% by 2030.

92. The plaintiffs claimed also that the act, by requiring insufficient GHG reductions, violated their human rights as protected by the German Constitution. Specifically, they considered that the following human rights were violated: the fundamental right to a future consistent with human dignity enshrined in Article 1(1) of the German Constitution, the fundamental right to life and physical integrity enshrined in Article 2.2 – and both in connection with Article 20a, which aims at protecting the natural foundations of life (for the protection of future generations).

93. In an order published on 24 March 2021, the Constitutional Court decided jointly on these complaints. The court held that the provisions of the Climate Protection Act governing national climate targets and the annual emissions allowed until 2030 were incompatible with fundamental rights because they did not specify further reductions beyond 2031. For that reason, the Court found that the government's emissions reduction programme violated the constitutional rights to life and dignity of the German people; it also found that the state had failed in its responsibility towards future generations, by acting too slowly to reduce emissions.

94. Among other reasonings, the Court declared the challenged act unconstitutional due to a lack of a clear reduction pathway in line with the rights of young people and future generations. Moreover, the Court conceded that climate change does not only interfere with the right to health but also with social, economic and cultural freedoms and that, due to the scope of the expected repercussions of climate change, the applicants will be severely restricted in the exercise of their rights to freedom.

95. Contrary to what happened in the Belgian case, in this proceeding the German Government was ordered by the court to revise its policies on the reduction of emissions. The government agreed to work on setting further targets for climate neutrality, with the aim of achieving this by 2045.

96. This litigation is another example of a successful lawsuit where the top judicial body of a country has declared a piece of legislation unconstitutional because the climate change objectives specified therein were considered so low that they would interfere with the enjoyment of fundamental rights protected by the domestic constitution – not only the rights of the actual plaintiffs, but also those of future generations.

3.3 Relevant case law at European Union level

97. Climate change litigation is now testing EU climate laws in connection with the Charter of Fundamental Rights of the European Union. Different groups and individuals have filed lawsuits in the EU courts to challenge EU rules that they consider either incompatible or inadequate in the fight against climate change. Thus, in *Sabo and Others v. Parliament and Council*, individuals and environmental NGOs, located in several EU countries and in the United States of America, sued the EU's law-making institutions, asking for the partial annulment of Directive 2018/2001 on the promotion of the use of energy from renewable sources, insofar as

it allowed for energy from forest biomass to count as a source of renewable energy. The claim was found inadmissible by the General Court of the EU for lack of *locus standi* of the plaintiffs, under Article 263 of the Treaty on the Functioning of the European Union (TFEU) and the case law of the European Court of Justice that has interpreted it.[47]

98. Subsequently, in *Carvalho and Others v. Parliament and Council*, 37 individuals sought the partial annulment of certain EU directives, decisions and regulations, forming a legislative package on climate change. In essence, they claimed that this package was unlawful because it would not achieve GHG emission reductions by the EU sufficient to counter climate change; concretely, they argued that the target set by the contested legislative acts, namely a 40% reduction in emissions by 2030 (against 1990 levels), was manifestly inadequate, and for this reason it should be annulled and increased to between 50% and 60%, to be achieved by the same date.

99. As in the "*Sabo*" case, the General Court dismissed the lawsuit as inadmissible and held that the appellants did not satisfy any of the *locus standi* criteria laid down in the fourth paragraph of Article 263 of the TFEU.[48] These two legal proceedings have showed that climate litigation, in the sense that we are describing it here, faces very serious procedural obstacles not just to succeed, but even to be considered by the EU courts.

3.4 Human rights and climate change litigation in the Council of Europe

100. Soon or later, climate litigation was expected to reach the European Court of Human Rights. This is because in most of that litigation there is a claim of human rights violation and the Convention is the most important international convention for the protection of human rights, at least on the European continent. The usual complaint in the context of the Convention is that the inadequate climate policies of one state, a Party to the Convention, violates the plaintiff's rights to life and to health, under Articles 2 and 8 of the Convention. The biggest difference between this kind of litigation and those triggered in the EU courts is that in the latter, the lawsuits are filed directly in those courts, while in the case of the Convention, the plaintiff must first of all exhaust all possible remedies available in their country.

101. To succeed at the Convention level, the applicant must elaborate on the effects that climate change will have on their right to life and on the right to have their private and family life and home respected. Furthermore, the applicant is meant to underline the positive obligation of the state resulting from these rights, in light of the different principles of international environmental law. The applicant usually claims that the state should take effective climate measures (or more effective ones) to protect their rights to life and health. Additionally, the applicant may claim that the national courts rejected their claim on arbitrary grounds, in violation of the right to a fair trial under Article 6.[49]

102. This litigation scenario has made possible some human rights claims in connection with climate change in the forum of the European Court of Human Rights. Two cases (both pending) are briefly presented below. These cases are the first of their kind to be heard by the Court. They are briefly presented below:

a. Duarte Agostinho and Others v. Portugal and 33 other States (Application No. 39371/20)

103. On 2 September 2020, six young Portuguese citizens filed a lawsuit against all EU member states plus UK, Norway, Switzerland, Turkey and Russia (they are all member states of the Council of Europe and Parties to the Convention). They argue that the respondent states, by not adopting more ambitious and stringent legislation and plans, are violating their rights to life and privacy and their right not to be discriminated against.

104. Concretely, the applicants have alleged that the states were not complying with their positive obligations under Articles 2 (right to life) and 8 (right to respect for private and family life) of the Convention, read in light of their commitments under the 2015 Paris Agreement. They further claim that there has been a violation of Article 14 (non-discrimination) taken in conjunction with Articles 2 and/or 8, arguing that, as young people, they will experience the most severe impacts of climate change (among them an

47. Order of the General Court of 6 May 2020, *Sabo and Others v. Parliament and Council* (case T-141/19, EU:T:2020:179).
48. Order of the General Court of the European Union of 8 May 2019, *Carvalho and Others v. Parliament and Council* (Case T-330/18, EU:T:2019:324).
49. As the Council of Europe's Commissioner for Human Rights stated in presenting his third-party intervention in the *Duarte* case, "the increasing number of climate change-related applications provide the Court with a unique opportunity to continue to forge the legal path towards a more complete implementation of the Convention and to offer real-life protection to individuals affected by environmental degradation and climate change."

increasing number of forest fires) in a manner that will seriously affect their living conditions and health. That is, global warming particularly affects their generation.

105. Consequently, the Court has been called upon to decide whether the respondent states have violated Articles 2, 8, and 14 of the Convention by failing to take sufficient action on climate change. The case is still pending, but was declared admissible by the Court, and the Council of Europe's Commissioner for Human Rights submitted his third-party intervention on 5 May 2021.[50] A final judgment is expected in 2022.

b. The Union of Swiss Senior Women for Climate Protection v. Switzerland

106. In this case, a group of Swiss women over 75 years of age who have formed an association (*Verein* KlimaSeniorinnen *Schweiz*) argue that their rights to life and health are being violated by the lack of action of the Swiss Government in the field of climate change. The women first filed their request in 2016 before various federal governmental agencies. In doing so, they made two basic claims.

107. On the one hand, claiming that the Swiss federal authorities were falling short in the area of climate protection, they demanded more ambitious plans and legislation. They asked the authorities to take all actions required through 2030 to ensure that Switzerland makes its contribution to the objective of the Paris Agreement to limit global warming to well below 2°C. The applicants even described the concrete measures they called for. For instance, they urged setting a national reduction target of at least 25% of GHG emissions by 2020.

108. The second claim had to do with their human rights. The women observed that climate change is expected to lead to significant changes in summer temperatures and rainfall, as well as to more frequent, intense and prolonged periods of heat. They further claimed that they are a population group particularly affected by (and particularly vulnerable to) the consequences of global warming. Under these circumstances, they argued, the right to life as described in Article 10(1) of the Swiss Constitution and Articles 2 and 8 of the Convention gives rise to state obligations to protect women aged 75 and over. They also contended that there was a violation of Article 6(1) and Article 13 of the Convention.

109. Their application was rejected by the federal authorities and the women subsequently filed their complaint in the Swiss domestic courts in 2017. At first instance, the Swiss Federal Administrative Court rejected their claim, on the grounds that women over the age of 75 are not the only people affected by the impacts of climate change. Consequently, it ruled that they had failed to demonstrate in which way their rights were affected with sufficient intensity and what singularised damage was produced on them that differed from that suffered by the general population. Thereafter, the plaintiffs appealed in the Federal Supreme Court, but were rejected (Judgment 1C_37/2019 of 5 May 2020).

110. After these successive drawbacks, the women filed their complaint in the European Court of Human Rights. The Court found the complaint admissible, but the case is still pending, although third parties have already submitted statements as interventions.

3.5 Climate change rights and the Parliamentary Assembly of the Council of Europe

111. The Parliamentary Assembly has also devoted much attention to the different aspects triggered by the problem of climate change in the area of human rights. We will only refer to its more recent approaches in that regard.

112. Thus, in its report Doc. 15362 of 10 September 2021, the Committee on Legal Affairs and Human Rights addressed the issue of criminal and civil liability.[51]

113. Another interesting report to be mentioned here is the report Doc. 15351, where the Assembly analysed the role of participatory democracy in the context of tackling climate change.[52] In this report, coupled

50. In her intervention the Commissioner stated: "[t]he Court's existing case-law, notably under Articles 2, 3 and 8 of the Convention suggests that the Convention already encompasses many elements of a right to a healthy environment. Together with the prohibition of discrimination enshrined in Article 14 of the Convention, it provides a solid legal framework to protect those who are suffering because of climate change." (p. 10)

51. Report Doc. 15362, of 10 September 2021, "Addressing issues of criminal and civil liability in the context of climate change" (Rapporteur: Mr Ziya Altunyaldiz, Turkey).

52. Doc. 15351 of 24 August 2021, "More participatory democracy to tackle climate change", Committee on Political Affairs and Democracy (Rapporteur: Mr George Papandreou, Greece).

with a resolution and a recommendation, the Assembly focused on the connection between climate action and the participatory and deliberative processes and climate action.

114. The final approach to the question of climate change, carried out by the Assembly in 2021, is the report Doc. 15353, wherein the Assembly discussed a critical aspect of climate change: the relations between the climate crisis and the rule of law.[53] In this document, the Assembly recommended that the Committee of Ministers incorporate sustainable development and climate crisis-tackling objectives into all of the Council of Europe's activities and operations, including when preparing strategies and action plans.

4. LOCAL DIMENSIONS OF THE HUMAN RIGHT TO THE ENVIRONMENT, INCLUDING CLIMATE-RELATED MATTERS

4.1 Role of local authorities in conserving the environment and combating climate change

115. Local and other subnational authorities play a crucial role in the protection of the environment and the fight against climate change. Over half of the global population lives in cities, and the environmental problems most people face such as air pollution, traffic congestion, domestic waste and excessive noise have a characteristically urban dimension. Leaving aside the protection of nature and the conservation of wild areas, most environmental issues have a clear connection with urban settlements.

116. Given that our current industrialised societies are largely based in urban centres, and the referential living space is consequently the urban one as opposed to a dwindling rural-natural space, academic reflections and political concerns about the existence and content of the "right" to an "adequate" environment have to be developed within the framework of the urban space. For most people, therefore, the right to an "adequate" environment is essentially a right to an adequate "urban" environment; that is, the right to a life of environmental quality in the city.

117. A number of examples can be used to illustrate this: atmospheric pollution tends to be especially acute in cities rather than in rural areas, due to factors that originate or are located "in" the city: the circulation of vehicles and traffic congestion, industrial facilities, fossil fuel-fired heating systems, and so on. It is cities that generate the largest amounts of waste, and disposal and treatment represent a major challenge for local administrations. Cities also need huge amounts of clean and potable drinking water, while at the same time urban wastewater is one of the primary sources of pollution of water bodies. Many such examples could be cited.

118. The well-known slogan "think global, act local" takes on its full meaning in this specific domain of environmental protection. The "big" regulatory policies and decisions must be taken internationally (e.g. conventions on the shipment of hazardous waste, depletion of the ozone layer, global climate change, long-range transfrontier atmospheric pollution), but action should be implemented at national, regional and, especially, at local level.

119. As the public administration closest to the citizen, local authorities are not only best equipped to address (particular kinds of) environmental problems, they are also the locus for grassroots democracy, through the direct participation of citizens in adopting decisions aiming at solving problems affecting their environment.

120. There are numerous areas where local action is possible or necessary to protect the environment or to fight against climate change: from environmental public services to mobility; from the creation of a circular economy to energy efficiency; from sustainable urban development to education and awareness raising; and the adoption of plans and programmes and public participation in decision making.

121. Due to their fundamental role in addressing environmental issues, local authorities also play a key role in ensuring the basic human rights that are strongly connected with it, such as the right to life or the right to health. For example, according to the European Environmental Agency, more than 300 000 premature deaths in 2021 were attributed to respiratory illnesses and diseases connected with environmental pollution in the EU-27, due to exposure to fine particulate matter, nitrogen oxide or ozone.[54] Most of this pollution originates in urban areas and stays there.

53. Doc. 15353 of 26 August 2021, "The climate crisis and the rule of law", Committee on Social Affairs, Health and Sustainable Development (Rapporteur: Ms Edite Estrela, Portugal).
54. European Environment Agency (2021), "Air quality in Europe 2021", available at www.eea.europa.eu/publications/air-quality-in-europe-2021, accessed 14 June 2022.

122. Under applicable laws and regulations (e.g. EU directives on air quality), local authorities have the competence to undertake, and are also responsible for, necessary actions to combat this sort of pollution. Furthermore, in some states the law may even impose on municipalities the responsibility for achieving environmental objectives, such as certain air quality standards. In that case, local authorities have not only a domain of competences, but a positive obligation to act, a duty of care towards their residents.

123. To fight air pollution, local authorities usually have, under national law, powers to protect the environment and health, including the power to approve local binding regulations covering the main sources of pollution. In the specific case of pollution caused by motor vehicles, local authorities are often empowered to establish special conditions for the circulation of certain motor vehicles; they may create zones in which traffic is restricted or even prohibited for certain vehicles; they can set up specific arrangements such as car-free days, alternate traffic arrangements in the event of a peak in pollution, low emissions zones, higher congestion charges, and so on.

124. By combating atmospheric pollution local authorities are not only ensuring the right to the environment, but also the right to health and, indirectly, the right to life. This is a very clear area where the environment, human health and life are strongly interconnected.

125. Against this radical context, it is relevant to analyse the institutional profile of local authorities and their role, competences and responsibilities in the environmental field. For this reason, it is pertinent to analyse the connections between the European Charter of Local Self-Government and the protection of the environment.

4.2 Towards a green reading of the European Charter of Local Self-Government

126. The Charter does not make a specific reference to environmental rights or mention in any of its sections the protection of the environment. However, it is at least theoretically possible to perform a “green” interpretation or reading of the Charter, that is to see the concretisation of the Charter’s requirements in the field of environmental protection from the perspective of the intervention of local authorities in that domain. The best approach is to read the Charter and identify the articles therein that are most relevant for local authorities with regard to having a potential connection with environmental and climate change issues.

127. To begin with, Article 3.1 of the Charter defines local self-government as “the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population”. This wording suggests several possibilities.

128. First, it is clear that, in this “substantial share of public affairs”, environmental questions should take centre stage. As noted above, local authorities are in many countries responsible for resolving the most immediate environmental problems affecting their citizens: air pollution, waste collection and treatment, excessive noise, the supply of clean drinking water, and so on.

129. Another key “public affair” that lies in the hands of the local authorities, and that they should resolve in an autonomous way, is local spatial planning and urban development. Urban development and construction activity have a two-fold connection with the right to the environment. On the one hand, urban development has a very significant induced environmental impact not only in the city, but also outside of it (damage to nature produced by illegal dumping sites for urban waste; pollution to rivers and coastal waters due to the discharge of non-depurated urban wastewater; light pollution originating in huge urban agglomerations, etc.). On the other hand, the cities where we live are largely the result of urban development plans and policies adopted at local level, that is the result of decisions adopted by the local councils and mayors that we elect. Living in a city with parks and green areas, with sport, cultural and leisure facilities, with sustainable, low-emissions and efficient public transportation networks, and so on – all these radical elements of our daily life are the result of the decisions and spatial plans adopted by local authorities. Consequently, our right to the environment “in the city” is framed by urban development policies and strategies that are mainly formulated at local level.

130. It is thus clear that the possible existence of a “right” to a suitable environment will ultimately depend on the extent to which urban planning and development processes are informed by ecological values and considerations of sustainability. Indeed, in recent years there has been a formidable process of “greening” urban planning and its regulatory regime in many legal systems. Thus, the notion of “sustainable” urban growth and spatial planning has become a paradigm at local level across many jurisdictions.

131. Article 3.2 of the Charter refers to "assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute". If there is one field where the principle of citizen participation finds a natural home, it is that of environmental protection. Most countries have statutes and regulations providing for the participation of citizens in the conduct, reflection, handling and management of environmental affairs. From participation in discussions of most local environmental problems (neighbourhood councils, citizen assemblies, open councils, district consultation processes, participatory budgeting, local referendums, polls and surveys, etc.) to formal hearings on the approval of local ordinances regulating urban traffic or spatial plans, citizens can be constantly and directly involved in the handling of environmental affairs. Consequently, they play a key role in ensuring the right to the environment.

132. Furthermore, as noted above, in Europe there is a specific convention dealing with this issue: the Aarhus Convention. Since the convention applies also to local authorities and since most European countries have ratified it, we can assume that in all those states the right of citizens to participate in environmental decision making at local level is guaranteed.

133. On the other hand, this "procedural" dimension of the right to the environment can play an important role in the context of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, signed in Utrecht in 2009 and entering into force in June 2012. As the explanatory report of the protocol states, "The establishment of an individual right to participate in the affairs of a local authority reflects a long-term societal development in European States. All countries, in different ways and to differing degrees, have come to recognise the fundamental importance of citizens being engaged and involved in public life."[55]

134. The additional protocol consecrates the right of every individual to participate in the affairs of a local authority, a right denoting "the right to seek to determine or to influence the exercise of a local authority's powers and responsibilities" (Article 1.1 and 1.2). The protocol also states that the formalities, conditions or restrictions to the exercise of the right to participate in the affairs of a local authority shall be prescribed by law. Ratifying states are not only supposed to "respect" (in a passive way) the right to participate but have to take an active stand and must adopt "such measures as are necessary to give effect to the right to participate in the affairs of a local authority" (Article 2.2).

135. This is to be accomplished through a range of mechanisms (e.g. consultative processes, local referendums and petitions; accessing official documents held by local authorities; formulating complaints and suggestions regarding the functioning of local authorities and local public services; and encouraging the use of information and communication technologies for the promotion and exercise of the right to participate). In light of the content of the additional protocol, there is no need to elaborate further on its clear connection with Article 3.2 of the Charter on the one hand, and between these two documents and the Aarhus Convention on the other and, taken together, with the role of local authorities in the environmental domain.

136. Consequently, the additional protocol may be understood as an excellent legal scheme to ensure citizen participation in environmental matters at local level.

137. Under Article 4.1 of the Charter, "The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law." Given the nature of environmental problems, and the key role of local authorities in ensuring the effectiveness of the right to the environment, it is clear that local authorities should have a wide array of competences in the area of environmental protection. Fortunately, this is the case in most European countries, particularly with regard to:

- supply of clean drinking and industrial water;
- removal, collection, transportation and storage of waste;
- depuration of urban wastewater;
- monitoring and improvement of air quality;
- countering excessive noise;
- management of environmental emergencies (e.g. floods, toxic clouds, industry spills);
- cleaning and maintenance of streets, public parks and recreational spaces;

55. According to the Explanatory Report, there are three main reasons explaining this development: "participation is crucial to help sustain the legitimacy of decisions and deliver accountability … public authorities need to listen and learn in order to design better policies and services … participation gives a sense of belonging and makes local communities places where people want to live and work, now and in the future". The Protocol to the Charter offers the States Parties to the Charter the possibility to extend the scope of their international legal obligations to include certain rights for individuals at local level.

- prevention of fire;
- construction and operation of all kinds of environmental facilities, e.g. waste dumps, waste treatment installations, urban wastewater depuration plants, separation and recycling facilities, municipal monitoring and sampling stations for atmospheric pollution, and local environmental laboratories;
- construction and maintenance of green areas, public parks and gardens, zoos, shelters for animals, etc.;
- regulation and control of vehicular transit.

138. Apart from these basic environmental services, local authorities are endowed with number of regulatory and juridical powers, such as:
- the power to grant (environmental) permits and licenses;
- the capacity to set and collect environmental taxes or duties (on polluting street activities or noisy commercial facilities);
- the power to control and regulate atmospheric pollution and noise, and to monitor compliance of vehicles and industries with emission limits established in air pollution laws and regulations, imposing fines and sanctions on wrongdoers;
- the power to approve comprehensive land development plans, pending environmental impact assessments, and the competence to supervise constructions and land development operations;
- the capacity to approve local regulations on different environmental aspects such as waste collection, cleanliness of public spaces, excessive noise or air pollution, and animal welfare.

139. Most of the above competences and domains of intervention of local authorities validate the slogan "think global, act local": for instance, national authorities may well set standards and rules for the depuration of wastewater, but it is local governments that are better placed to ensure that local wastewater is actually depurated; national authorities may establish laws and regulations on excessive noise, but City Hall is best equipped to ensure that the nightclub around the corner does comply with those standards, and so on.

140. According to Article 4.2 of the Charter, "Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority." This provision should be read and applied in conjunction with Article 4.3, which states, "Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen."

141. The combined force of these two provisions is very clear and has key repercussions in the field of environmental protection and environmental rights. To begin with, local authorities should be empowered to react to any environmental problem or issue arising within their jurisdiction, especially if the competence to address that problem has not been expressly allocated to the regions or to the state. For instance, a municipality should be able to decide to set up a local service for the collection and care of abandoned pets if it finds that this is necessary or reasonable (in view of the importance of the problem). This is a perfect example of the local dimension of environmental problems, and a task that states or regions do not usually think about. Even if they did, they would be too far from the problem. However, in many jurisdictions this is a growing problem, and citizens do demand the inception of such local services. Consequently, the law should not prevent local authorities from taking this initiative, in case a given service has not been set up yet, or if the law does not mention it in any form.

142. Furthermore, Article 4.3 embodies the principle of subsidiarity. Environmental affairs are ideal for the application of this principle. Although central ministries and departments have of course a leading role in designing national environmental laws, plans and policies, and promoting the enactment of national statutes and regulations, most environmental problems have, as noted above, a clear local dimension. Consequently, these problems should be tackled and solved at local level, according to ideas, plans and projects adopted by local representatives and that have received the input of local citizens. Turning again to the previous example, a service for the collection and care of abandoned pets is a service that should be allocated, in principle, to local government, for the simple reason that local authorities can clearly perform that responsibility much better than regional or state agencies.

143. According to Article 4.6 of the Charter, "Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly." This provision is clearly applicable whenever the state or regional bodies take decisions or adopt laws and regulations that will have a clear impact on the urban environment, such as waste regulations, spatial planning general laws, and so on.

144. According to Article 6.1, “Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.” This provision also has a clear application to the handling and management of environmental problems at local level. Local authorities should be free to decide on the best and most efficient manner to deliver their local environmental services: they should be free to set up local departments, services and agencies for the protection and improvement of the local environment; to set up environmental pollution directorates or agencies; and to decide among different organisational possibilities, for instance the setting up of a local corporation or public law body, to have recourse to outsourcing or not, and so on. These organisational decisions should be tailored according to the characteristics of the settlement in question.

145. Article 8 of the Charter deals with the administrative supervision of local authorities. It limits the cases and the circumstances where the decisions of local authorities may be controlled by “higher” public administrations, that is of the state or the region. Administrative supervision of local authorities when they adopt decisions, local plans, strategies and regulations for the handling and solution of local environmental problems should be reduced as far as possible and should be strictly confined to an ex-post control of legality.

146. According to Article 9.1, “Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.” Their financial resources “shall be commensurate with the responsibilities provided for by the constitution and the law” (Article 9.2). Finally, local finances shall be of a “sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks” (Article 4). This aspect of local autonomy is key to ensuring that local authorities have the capacity to effectively handle environmental problems. Without adequate finances, they will be unable to ensure the right to a clean and sound local environment, and they will be deprived of their capacity to take meaningful initiatives to combat climate change. Consequently, the state and/or the regions (where appropriate) should ensure that local authorities are appropriately funded to deliver quality environmental services, and that they have the authority (where needed) to raise environmental taxes, duties or charges (e.g. fees for the depuration of residual waters or for the delivery of local environmental services).

147. According to Article 10, local authorities shall be entitled, in exercising their powers, to co-operate with other local authorities in order to carry out tasks of common interest. This right can be also exercised in a transnational context.

148. This is another provision of the Charter that makes sense with regard to environmental protection at local level. Very often local authorities (especially smaller ones) form associations, which may operate under variously named arrangements (*syndicats de communes, mancomunidades*, etc.), in order to share their resources and achieve economies of scale in delivering local services with an environmental dimension. The most common examples relate to the collection, treatment and storage of waste, and the supply of water and depuration of residual wastewater.

149. As described below, local authorities have constituted many international networks and associations to co-operate in the handling and resolution of environmental challenges.

4.3 Activities of the Congress of Local and Regional Authorities in the field of environmental rights

150. The Congress has undertaken many different initiatives and activities in the domain of environmental rights, sustainable development and climate change, from the local perspective. For instance, as early as 1986, the Standing Conference of Local and Regional Powers of Europe (the antecedent of the current Congress of Local and Regional Authorities), adopted a key document, Resolution 171(1986) on regions, environment and participation.

151. In that resolution, the Standing Conference asked the regions and other territorial authorities to make provision for a number or organisational arrangements in the domain of environmental protection, such as “a department with overall responsibility for environmental matters” and “specialist emergency services with specific responsibility for pollution control”. At the same time, it urged the said authorities “to make possible or increase the participation of such representative environmental associations in decision-making on environmental management, planning and protection policies”.

152. Furthermore, the Standing Conference requested the Committee of Ministers to instruct the Secretary General of the Council of Europe to begin the preparation of a “charter embodying the right to the environment” and to instruct the Secretary General to submit to it “a draft convention extending to all the

Council of Europe member states the principles embodied in the directive of the Council of the European Communities concerning assessment of the impact of certain public and private projects on the environment".[56]

153. The activities of the Congress in this domain continue to be numerous and varied. We will cite two recent actions: the input of the Congress into the High-Level Conference – Environmental Protection and Human Rights organised by the Georgian Presidency of the Committee of Ministers in February 2020;[57] and the Congress round table "Let's talk local: cities and citizens in the fight against climate change", held during the World Forum for Democracy in April 2021.

154. The final declaration of the High-Level Conference stated, first, that "the Council of Europe has a key role to play in mainstreaming the environmental dimension into human rights and pursue a rights-based approach to environmental protection. Its unique legal instruments provide a solid basis for action on the Continent and beyond". The Committee of Ministers acknowledged that the interpretation of the Convention and of the European Social Charter "has already established a solid link between human rights and environmental protection underlining the obligation of States Parties to take positive action to protect the environment". In this vein, those instruments "are encouraged to further substantiate their case-law and give priority consideration to complaints involving issues of environmental protection".

155. Finally, the conference concluded that case law developments at the European level (see 2.4.1) should "inspire national governments and courts to protect the environment through the protection of human rights, including the right to life, health and shelter, as well as the right to private life and the right to receive and disseminate information".

156. The participants of the Congress round table (local and regional authorities and civil society representatives) presented successful local and regional initiatives for sustainability and the green transition, highlighting projects with strong citizen participation. The workshop provided an opportunity to exchange good practices and to brainstorm new opportunities to address the climate emergency and the concrete problems of citizens and businesses related to the climate crisis.

157. Furthermore, the Congress emphasised that it contributes actively to the implementation of the 2030 Agenda for Sustainable Development through a human rights-based approach and focuses on subnational authorities' efforts to combat climate change. The Congress contributes in particular to SDG 5 (Gender equality), 10 (Reduced inequalities) and 11 (Sustainable cities and communities).

4.4 Local co-operative networks in environmental issues and sustainable development

158. The UN Conference on Environment and Development (UNCED) held in Rio de Janeiro in June 1992 was very sensitive to the importance of local entities in ensuring sustainable development, and accordingly attached a prominent role to local entities in the field of sustainability (Agenda 21).[58] Since then, many international associations and networks have been set up by municipalities and cities committed to the defence of the environment. Thus, it is necessary to highlight in the first place the existence of global municipal discussion forums sponsored by the United Nations. In 1978, as a consequence of a high-level diplomatic meeting held in Vancouver ("Habitat I"), the United Nations Centre for Human Settlements (UNCHS) was established. This agency launched the Sustainable Cities Program in the 1990s. Its most important milestone was undoubtedly the international conference known as "Habitat II", held from June 4 to 13, 1996 in Istanbul.

159. The conference, attended by representatives of local authorities from around the world, debated issues related to the role and responsibilities of local entities in ensuring sustainable development. It culminated in the Istanbul Declaration on human settlements (Habitat II). Of special interest for this report is point 10 of this Declaration, according to which the adherents undertake to put into practice "sustainable patterns of urban development".

56. See the text of this resolution in: Déjeant-Pons, M. and Pallemaerts, M. (2005), "Human rights and the environment", Council of Europe Publishing, Strasbourg, pp. 228-30.
57. See www.coe.int/en/web/human-rights-rule-of-law/human-rights-and-the-environment, accessed 15 June 2022.

58. See https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf, accessed 15 June 2022. Points 28.1 through 28.7 analyse local authorities' initiatives in support of Agenda 21.

160. Prominent among the other international associations of local entities that have been set up is ICLEI – Local Governments for Sustainability, which brings together hundreds of local entities from different continents.[59] This international local movement has also given rise to declarations in which local entities commit themselves to achieving the objective of sustainable development, such as those of Toronto (1991) or Curitiba (1992).

161. At European level, all relevant international networks of cities have a committee or line of action on sustainability. Thus, the Eurocités network, which includes the larger European cities, includes a commission for environmental issues. The Council of European Cities and Regions, a European federation of national organisations that brings together municipalities and regions, also has a commission that deals with environmental protection. Finally, the European Sustainable Cities Platform is the most important co-operative inter-municipal effort carried out to date on the European continent in the field of local sustainability.

162. In the 1990s, an international municipalist movement was launched in Europe, dedicated to working towards respect for the environment from the perspective of the activities and actions of local authorities. In May 1994, the Danish city of Aalborg hosted the European Conference of Sustainable Cities & Towns, a meeting of local representatives from across Europe. The conference discussed the protocols through which local authorities could contribute to sustainable development.

163. The conference had two important outcomes. The first was the Aalborg Charter,[60] which in only a few years has become the most important reference in the field of local sustainability, the authentic "constitution" of eco-friendly local action at European level. The Aalborg Charter is not an international treaty, but a typical international "soft-law" text, a kind of programmatic document to which local entities from all over Europe can freely adhere.

164. The conference also provided the impetus for the European Sustainable Cities & Towns Campaign, which is financed by the European Community and is responsible for disseminating and promoting the adoption of commitments to sustainability among European cities on the basis of the Aalborg Charter.

165. Following this summit of European eco-municipalism, high-level meetings were held (European Conferences of Sustainable Cities & Towns) with the common denominator of embracing an increasing number of interested local entities. New programmatic documents were agreed upon in Lisbon (1996),[61] Hannover (2000),[62] and Aalborg (2004, the "Aalborg+10" conference).

166. A cornerstone of the municipalist movement was the 8th European Conference on Sustainable Cities & Towns in Bilbao, Spain, in April 2016. The first important outcome of this conference was the launch of the European Sustainable Cities Platform. Supported by the City of Aalborg, the Basque Autonomous Community and ICLEI Europe, this platform is considered to be the successor to the European Sustainable Cities & Towns Campaign (initiated by the Aalborg Charter in 1994).

167. The second relevant outcome was the Basque Declaration. This document outlines new pathways for European cities and towns to create productive, sustainable and resilient cities for a liveable and inclusive Europe**.** For instance, the declaration acknowledges the need for transformation in order to decarbonise energy systems, create sustainable urban mobility patterns, protect and enhance biodiversity and ecosystem services, reduce the use of greenfield land and natural space, protect water resources and air quality, adapt to climate change, improve public space, and strengthen local economies.

168. The 9th European Conference on Sustainable Cities & Towns was held online in Mannheim, Germany, in 2020. The most important outcome was the "Mannheim Message", meant to be the collective response of the Aalborg Process to the European Green Deal. The message calls for core systemic changes and key policy shifts to bring about transformation for a resilient, inclusive and sustainable Europe. Further, it calls on local authorities to become key partners in the implementation of the European Green Deal through the development of "Local Green Deals".

59. ICLEI was founded in 1990 by representatives of more than 200 local entities from around the world on the occasion of the World Congress held in New York. ICLEI is an international association of local administrations (and their representative regional or national associations) that have explicitly committed to sustainable development. Its World Secretariat is located in Bonn.
60. "Charter of European Cities & Towns Towards Sustainability", Aalborg, Denmark, 27 May 1994.
61. "Lisbon Action Plan: from Charter to Action", Lisbon, Portugal, 8 October 1996.
62. "Hannover Call of European Municipal Leaders at the Turn of the 21st Century", Hannover, Germany, 24 September 2000.

169. The Alborg Charter and the Aalborg Process are based on the consensus of individuals, municipalities, NGOs, national and international organisations, and scientific bodies. The success of these municipal initiatives has been undeniable, since currently the number of entities participating in this campaign (following ratification of the Aalborg Charter) has risen to more than 3 000, covering 40 European countries.[63] This is the largest European movement of its type, and it has been provided with further impetus by the European Sustainable Cities and Towns Campaign.

170. The Aalborg Charter includes a series of basic commitments for the protection of the environment by municipalities, and steps to ensure their achievement. One of the central points of the Aalborg Charter is the sustainable occupation of the land. Point I.8 of the Charter is dedicated to sustainable land use patterns, and states that "[w]e, cities & towns, recognise the importance of effective land-use and development planning policies by our local authorities which embrace the strategic environmental assessment of all plans", while committing to integrate the principles of sustainability "in all our policies" (point I.3). For its part, the Hannover Call of 2000 insisted on the idea that in order to achieve sustainable development it is necessary to implement "integrated town planning; compact city development; [and] rehabilitation of deprived urban and depressed industrial areas".

171. The main tool to ensure sustainability in urban policies is the so-called "Local Agenda 21 process". This can be defined as a protocol or comprehensive management system in which a set of environmental objectives are established by local bodies in order to achieve the sustainability of their municipality and a better quality of life for local residents. It has its roots in the Rio de Janeiro Conference of 1992, which is well known for "Agenda 21", a key reference document that analysed the challenges of the 21st century and proposed mechanisms or strategies to overcome them. Within the "Agenda 21" programme one may find the so-called "Local Agenda 21", which is a concretisation of that general programme limited to the perspective, resources and means of local authorities, and focused on the role local entities can play in overcoming current environment challenges. In fact, the "Agenda 21" programme gives local entities a decisive role in achieving the global objective of sustainable development.

172. At European level, identification with the objectives of sustainability by local entities and the design of strategies for their achievement has been galvanised through the Aalborg Charter and the Aalborg Commitments of 2004. The local authorities that adhere to the European Sustainable Cities Campaign pledge to carry out a series of commitments (the "Aalborg Commitments") with regard to sustainable development, and this is transformed into a paradigm for their sectoral policies, including of course urban planning. Point 5 of the said commitments refers to planning and design. Under this heading, the signatory municipalities promise to assume a "strategic role in urban planning and design in addressing environmental, social, economic, health and cultural issues for the benefit of all".

173. Specifically, the local authorities that adhere to these commitments must work to achieve a series of objectives, which have unequivocal urban planning resonances:

1. re-use and regenerate derelict or disadvantaged areas.
2. avoid urban sprawl by achieving appropriate urban densities and prioritising brownfield site over greenfield site development.
3. ensure the mixed use of buildings and developments with a good balance of jobs, housing and services, giving priority to residential use in city centres.
4. ensure appropriate conservation, renovation and use/re-use of our urban cultural heritage.
5. apply requirements for sustainable design and construction and promote high quality architecture and building technologies.

174. It is evident, therefore, that the Aalborg Commitments and the Aalborg Charter have an impact on the definition of one of the key policy sectors in the field of sustainable development, namely urban policy. Hence, the municipalities that have adhered to this international movement undertake to implement certain procedures and to prepare and adopt a series of guidelines that will later have a direct impact on urban planning policy and, therefore, on the instruments of planning that are elaborated at the local level.

175. According to Chapter 28 of Agenda 21, local Agenda 21 processes have the following features:
(a) they have a voluntary character; (b) they constitute open processes; (c) they have a sequential character; (d) they are an example of shared responsibility; (e) they must be applied under the angle of subsidiarity; (f) they integrate all municipal policies; (h) citizen participation is of utmost importance.

63. See https://sustainablecities.eu/the-aalborg-charter, accessed 16 June 2022.

176. Concerning the basic elements of a local Agenda 21 process, it is necessary first to underline that a local Agenda 21, as devised in the Aalborg Charter, does not constitute a precise, formal and closed protocol of universal and homogeneous application, as if it were the ISO 14000 standard, for example. On the contrary, a local Agenda 21 is a sort of ideal accompanied by a series of steps, both substantive (political commitment to sustainability) and procedural (involvement of citizens, preparation of documents, etc.). Hence, the process of a local Agenda 21 admits different formats in its internal operation. As a rule, though, it can be said that the essential steps for the development of an Agenda 21 in a municipality are, at least, the following:

- decision of the local council to carry out the local Agenda 21 process, preferably adopted by unanimous vote;
- design of the social participation plan, the document that details the channels, initiatives and tools for the participation of local residents in the entire process. Participation is an essential and unavoidable element of any local Agenda 21;
- carrying out an "environmental audit" of the municipality, which is the set of analyses, studies and diagnoses that synthesise the state of the environment in the local area;
- preparation of an "environmental declaration". This document reflects the results and actions of the environmental audit, and has the objective of making them known to the neighbours;
- preparation of an "environmental action plan". This is the most important document, as it sets the objectives and strategic lines along which the municipality's commitment to sustainability will materialise. This action plan is made up of "strategic lines", consisting in turn of "action programmes". Within each action programme there are "specific projects", which have a greater degree of specificity and operational precision. Each of these specific projects has a unit or service of the local administration that is responsible for its implementation and execution;
- setting of a monitoring plan that controls compliance with a series of previously established "environmental indicators". There is obviously no set number of indicators since the environmental context of a municipality can consist of many aspects, depending on the location, morphology, population and economic setting of the local authority. In any case, indicators must be simple and measurable. The monitoring plan must be under the direction of a specific local commission, set up for this purpose and responsible for guaranteeing compliance with the objectives of evaluation and control of the actions detailed in the environmental action plan;
- review and continuous improvement: a local Agenda 21 process is not conceived as an initiative that is limited in time and produces "final" documents, but is rather understood as a continuous process, based on constant improvement, correction and updating of environmental objectives.

4.5 Local good practices in environmental matters and climate change

177. The international associations and networks of local authorities working in the environmental and climate change arena discussed above have developed "good practices" in those domains. Projects or initiatives implemented by local authorities may eventually serve as a benchmark for others. Since there are many networks and associations in Europe, we will make only reference to two, one with a continental dimension, and the other with a national one.

178. At European level, an excellent example of these collections of good practices is the database compiled by the European Sustainable Cities Platform. This draws on submissions to the Transformative Actions Award, an annual competition that rewards local initiatives implementing sustainable principles.[64] Each year, a number of candidates submit their achievements, and the best example is selected by a jury.

179. In 2021, the award included a prize of €10 000 euros; a showcase on the Sustainable Cities Platform; promotion of the initiative through the ICLEI website and e-newsletter and across social media channels; and coverage in publications related to sustainable development. The proposals and good practices submitted each year are held in a database managed by the platform.[65] The database demonstrates that many European municipalities have undertaken transformative actions, ranging across environmental and sustainability issues including urban mobility, sustainable procurement, climate change, public participation, encouragement of civic participation, decarbonisation, and use of greenfield sites and natural spaces.

180. At national level, a highly functional network of local authorities is the Spanish "Network of cities for climate" (*La Red Española de Ciudades por el Clima*). The focus of this network, which is part of the Spanish Federation of Municipalities and Provinces (FEMP), is climate change. It was formed in 2005, and today

64. See https://sustainablecities.eu/transformative-action-award, accessed 17 June 2022.
65. See the winners since 2017 at https://sustainablecities.eu/transformative-actions-database, accessed 17 June 2022.

includes more than 300 large and medium-sized local governments, comprising over 60% of the total Spanish population, committed to integrating climate change mitigation and adaptation into their policies.

181. The network fulfils several tasks: first, it seeks to co-ordinate and promote local policies to combat climate change in Spanish cities and towns. Second, it promotes the climate change actions of the participating local governments by acting as a forum for the exchange of experiences and providing solutions and measures that can be implemented by city councils to curb climate change. Finally, it fosters the implementation of joint projects and develops information and awareness, especially among the youth.[66]

5. CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

182. The following conclusions may be drawn:

- At present, there is no general or cross-cutting international convention for the protection of the environment, or an international convention recognising specifically the existence of a human or fundamental right to the environment.

- Similarly, there is no global international treaty on human rights recognising the existence of a "human" or "fundamental" right to the environment.

- On the European continent, the European Convention on Human Rights does not explicitly recognise the human right to the environment, although the European Court of Human Rights has interpreted in a "green" or ecological way some articles of the Convention. The EU has no law proclaiming the existence of a human or fundamental right to the environment. However, the UNECE Aarhus Convention enshrines some instrumental or procedural entitlements, forming a group of environmental democracy rights.

- Some European countries have introduced explicitly in their constitutions the existence of a human or fundamental right to the environment, to a healthy environment, or to a balanced environment. Other countries have not done so, but the case law of their constitutional courts has eventually recognised such rights by "greening" other connected rights such as the right to health. Finally, in a more limited number of countries, the right to the environment is not considered a human or fundamental right in the true sense of the word, but rather a guiding policy direction or approach.

- At present, there is no global environmental or human rights treaty recognising human rights in the context of climate change.

- The same conclusion may be drawn for the European continent, where neither the Council of Europe nor the EU have established or proclaimed climate change-related human or fundamental rights.

- In many countries, eNGOs, individuals and citizens have demanded that their governments implement more ambitious climate policies. Where this demand has been rejected, some individuals and groups have gone to the courts.

- In domestic courts, climate change litigation has so far only been completely successful in a handful of cases. In the rest of the applications, the claims were either declared inadmissible, or rejected on the merits of the case.

- Such claims have also reached the two main European courts, the Court of Justice of the European Union (ECJ) and the European Court. However, in the first case all the complaints were declared inadmissible for lack of *locus standi*, and in the latter case the complaints lodged have not yet been resolved.

- The Parliamentary Assembly has made several recommendations relating to the need to recognise a human right to the environment in a binding international instrument, especially in light of the challenges posed by climate change. These recommendations are more valid than ever.

- Local authorities play a fundamental role in ensuring the existence of a good and balanced environment, especially in its urban dimension. In most countries, local authorities enjoy a fair share of competences in environmental matters.

66. See www.redciudadesclima.es, accessed 17 June 2022.

- In Europe, local authorities have formed several associations, networks and transnational organisations to catalyse their activities in the domain of environmental protection and climate change. By doing so, they ensure not only environmental rights, but also the right to life and to health, which are connected with the fight against climate change. They have also produced countless good practices in those domains.

- In the context of the Council or Europe, it is reasonable to conclude that currently there is no political agreement among member states to introduce the human right to the environment into the European Convention of Human Rights, or for enacting a protocol on environmental rights to the Convention. This is demonstrated by the many unsuccessful calls made in that direction by the Assembly and by the Congress of Local and Regional Authorities.

- It would be, however, possible to envisage working in the domain of the European Charter on Local Self-Government, or of its additional protocol, to enshrine those rights connected with environmental protection and climate change. A possible objective could be to amend the additional protocol to introduce specific environmental rights. Alternatively, work could begin on a new additional protocol to the Charter on environmental and climate change rights.

5.2 Recommendations

183. On the basis of the above considerations and conclusions, it is appropriate to propose the following recommendations:

- Within the limits of their powers and competences, local authorities should work actively towards the protection of the environment, to ensure the right to a clean environment and, indirectly, the human rights to health and to life. Local authorities should also comply with environmental rights standards in their everyday activities.

- One of the most important competences of local authorities is local spatial planning and urban development. Local or central governments can enact laws to protect the environment, to guarantee their citizens participation in decision making process on urban planning. It is worth mentioning that urban development and construction sector is one of the biggest sources of pollution and most significantly impact on the environment. Local and central authorities can raise the standards or set limits regarding urban development. To have eco -friendly construction they should promote “green building”, that is the construction process that requires building with eco-friendly materials, using renewable energy, solar power and, most importantly, building with the highest standards of occupation safety health and environmental protection (IOSH).

- Steps should be taken within the Congress towards the preparation of a draft additional protocol to the European Charter on Local Self-Government, dealing specifically with environmental rights at local level, to be eventually adopted by the Committee of Ministers.

- This additional protocol should, firstly, recognise subjective rights to local residents in environmental matters, that is the human right to the environment at the local level. To this end, the draft protocol could be inspired by the rules and principles already enshrined in the first two pillars of the Aarhus Convention: the right to access environmental information held by the local authorities, and the right to participate in the adoption of environmental decisions by the council and other local bodies. In this respect, it would be possible to replicate the provisions of the existing additional protocol to the Charter on the right to participate in local affairs, giving them a specific concretisation in the field of environmental protection. This part of the draft protocol would therefore focus on the relationships between local residents and their local authority.

- The second part of the draft protocol should focus on ensuring that local authorities enjoy the necessary competences, autonomy and resources to deal with environmental issues, so that they can realise the existence of a full “human right” to the environment at local level. Consequently, this part of the protocol would focus on the statutory powers and managerial capacities of local authorities, vis-à-vis the state and/or the region.

- With the aim of preparing the draft text of that additional protocol, it is recommended that the Congress set up a select group of experts, who would be charged with the task of delivering a draft version of the protocol by the end of the present year.

184. It is also recommended:

- To include a specific point in the questionnaires and reports deriving from the periodic monitoring activities of the application of the Charter, carried out by the Monitoring Committee, that deals specifically with the strengths and weaknesses of the national system of local government in the field of environmental rights and climate change. In order to not overload the preparation of these ongoing monitoring reports, this suggestion could be implemented as soon as the Covid-19 pandemic has been controlled and there is no further need to include in such reports, as is done presently, a specific point on the impact of that health crisis on local governments.

- To set up within the Congress a specific webpage linking to the best practices adopted at local level in the domain of environmental protection and climate change.

- To organise a Congress conference on environmental rights and climate change at local level.

- To establish an annual prize for the best practices adopted at local level in the domains of environmental protection and climate change, following the model of the Transformative Action Award of the European Sustainable Cities Platform or that of the European Public Sector Awards (EPSA), granted by the European Institute of Public Administration (EIPA).

- National authorities are also invited to carry out awareness-raising campaigns, addressed to their local authorities, in order to ensure that local policies do take into account the environmental and climate change dimension, and to strengthen subnational governments' capacity to tackle climate issues.

- Local authorities are encouraged to carry out local Agenda 21 processes, with the aim of identifying and adopting the best available policies and strategies on sustainable development, following the model of the Aalborg Charter or of any other commonly accepted protocol.