

Declassified¹

AS/Soc/NCP (2024) PV02add

17 April 2024

Asocncppv02add_2024

Committee on Social Affairs, Health and Sustainable Development

Network of Contact Parliamentarians for a healthy environment

Minutes

of the public hearing on “Right to a healthy environment – Key concepts in European and international law and modes of governance”

held in Paris on Tuesday, 26 March 2024

The network held a public hearing with **Ms Elisabeth Lambert**, Research Director at CNRS - Centre national de la recherche scientifique, Nantes (France), **Ms Annalisa Savaresi**, Professor at University of Stirling (United Kingdom) and Associate Professor, University of Eastern Finland and **Ms Corina Heri**, Postdoctoral researcher, Faculty of Law, Zurich University (Switzerland)

The Chairperson informed the participants that the exchange would take place in two stages. The experts will clarify some key legal concepts in European and international law and then hold a moment of exchange on the transformation of modes of governance to adapt laws, policies and actions in the field of the environment. To begin with, the aim is to provide the Network with an educational moment around several concepts that are at the heart of its report "Mainstreaming a the right to a healthy environment through the Reykjavik Process". The aim is to facilitate and simplify the understanding by the members of the Network of legal concepts in environmental and human rights matters. The President expressed his conviction that these contributions would help the members of the Network to better handle this complex subject, to better understand the issues and to work better in the Network, whether in their respective parliaments or in international forums.

Ms Savaresi presented what was meant by "Recognition of the right to a safe, clean, healthy and sustainable environment".

The triple crises of climate change, pollution, and nature loss affect the enjoyment of virtually all human rights. This recognition stems from the acknowledgment that environmental conditions are not merely peripheral to human rights but are central to it. Human rights bodies and instruments all over the world have progressively recognised the crucial role of environmental conditions to the existence and well-being of humankind and the interplay between States' obligations concerning human rights and the environment.

Within this context, human rights law has emerged as a potent tool for addressing environmental challenges and redressing environmental harm. Although human rights instruments such as the European Convention on Human Rights are not designed to protect the environment in practice the unique remedies they provide are increasingly used as a means to demand better environmental protection and bridge the compliance and accountability gaps in environmental governance. This practice is global and has already expanded the contours of States' human rights obligations and corporate responsibilities.

A significant milestone in this context is the recognition of the right to a healthy environment as a self-standing human right. This recognition has important advantages as it not only raises the profile and importance of environmental protection, but also provides a basis for the enactment of stronger environmental laws, provides a safety net to protect against gaps in statutory laws and creates opportunities for better access to justice.

¹ The minutes were approved and declassified by the Network of Contact Parliamentarians for a healthy environment at its meeting on 17 April 2024.

The right to a healthy environment has found expression in various international instruments, and in all regional human rights systems (except the Council of Europe). The right to a healthy environment has been recognized in the law of more than 150 States. A growing body of national case law and practice has defined the content and scope of this right, as well as its relationship with other human rights. This practice has been amply documented in the literature and has been thoroughly mapped by the two United Nations Special Rapporteur on Human Rights and the Environment.

The contributions of United Nations Special Rapporteurs on Human Rights and the Environment are crucial in this connection. They have been active in elucidating the obligations associated with this right and identifying best practices. Their work spans a diverse array of issues, including climate change, air pollution, and water. Through the articulation of framework principles and the advocacy for good practices, these rapporteurs have played a crucial role in advancing the discourse on ensuring a safe, clean, and sustainable environment.

Within the Council of Europe, deliberations continue regarding the formal legally binding recognition of the right to a healthy environment. The advantages of this recognition are manifold and include: closing the gap with other human rights instruments and aligning Council of Europe's instruments with developments elsewhere; clarifying the obligations of Council of Europe's Member States concerning human rights and the environment; ensuring a clear and univocal mandate for the Council of Europe to deal with, as well as contribute to the global debate concerning the normative content of, the right to healthy environment.

Ms Lambert focuses on three key concepts: "The Human Rights Approach, Human Rights Greening and Climate Affairs."

A human rights approach to the environment recognizes the need to introduce subjective rights in addition to objective law in the field of environmental law. These subjective rights allow individuals or groups of individuals to defend their rights in court and demand actions from others to protect the environment. This approach is based on the recognition that the protection of a healthy environment is fundamental because of the overriding interests to be protected (unpolluted air, satisfactory conditions of habitability, etc.) in the face of climate change. The benefits of this approach include elevating access to a healthy environment to the status of a fundamental need, holding states and non-state actors accountable, and empowering citizens through rights such as information, participation, and access to justice. By enabling citizens to become actors in environmental protection, this approach promotes social acceptance of ecological transition and contributes to a new social contract based on respect for life on Earth.

The European Court of Human Rights has not recognized an autonomous right to a healthy environment but has instead adopted a technique of "greening" existing fundamental rights. This means that rights such as the right to life, to private and family life, and to freedom of expression are interpreted taking into account environmental degradation. This indirect and fragmented approach is considered insufficiently protective as it generally requires individual proof of harm and does not explicitly recognize the need to protect the environment per se. Additionally, the Court has repeatedly invoked the lack of explicit recognition of a right to a healthy environment to justify its limits of jurisdiction and grant wide discretion to states. The European Social Charter, although it does not explicitly enshrine a right to a healthy environment, was interpreted in one case as implicitly encompassing this right in relation to the right to health. However, the checks and balances associated with the Charter, if they include collective action, are less restrictive than those of the Convention. In addition, only 16 States have so far accepted the collective complaints mechanism out of the 42 States that have ratified the Social Charter

In what way will this indirect approach place the Court in front of a difficult mission for new climate cases? An approach focused on prevention rather than reparation is essential to address climate change. This involves demanding positive measures from actors to preserve the environment rather than simply repairing the damage caused. The German Constitutional Court adopted this approach in 2021, sanctioning the German climate plan for its lack of planning beyond 2030, invoking fundamental rights such as the right to a dignified future and the right to a minimum environmental standard of living. Recognizing a right of humanity to preserve habitability on Earth does not necessarily mean that all individuals can act on behalf of humanity, but it can also be defended by environmental advocacy groups.

Ms Heri concludes with the "Ongoing debate and the different legal options before the Council of Europe".

In 2022, the United Nations General Assembly recognized the right to a healthy environment. This recognition is political and non-binding, falling under "soft law." While regional human rights systems, except for the Council of Europe, have legally binding recognition of the right to a healthy environment ("hard law"). This is evident in the inter-American system, which enabled the Inter-American Court of Human Rights on March 22, 2024, to condemn a State (Peru) for failing to protect its citizens from pollution caused by multinational corporations. At

the level of the Council of Europe, the Assembly has been proposing for more than 50 years to add the right to a healthy environment to the European Convention on Human Rights. In 2021, the Assembly made its latest proposal in this regard. In 2022, the Council of Europe supported the political recognition of the right by the United Nations General Assembly. The same year, the Committee of Ministers recommended that member States consider recognizing this right in their domestic law. In 2023, the coexistence of national and European standards was encouraged by the Reykjavik Declaration. In parallel, the Council of Europe is exploring options for legally binding recognition ("hard law").

The central question is whether the Council of Europe should recognize a distinct right to a healthy environment. "Distinct" differs from "greening," which means recognizing that environmental issues have an impact on other rights. The Convention has been "greened" through the right to respect for private life, and similarly for the European Social Charter through the right to health. These treaties are "living instruments" and can respond to new challenges, though environmental issues must be linked to existing rights. Hence, it has been argued that the Council of Europe needs a distinct right to a healthy environment. A counter-argument is the lack of a common understanding of the right to a healthy environment. It is in fact quite common for states not to agree on the exact meaning of a right, before starting to draft a treaty on the subject. For example, for years there were States that did not think that the right to life prohibited the death penalty, and others that thought the opposite. The Council of Europe advocated the abolition of the death penalty. The lack of a common understanding is therefore a real argument for defining rights at regional level.

How can this right be recognized? It is possible to add the right to existing frameworks such as the Convention or the Charter. The Parliamentary Assembly drafted a protocol to the Convention in 2021, showing it is feasible. His proposal did not say that adding this right to the Convention was the only option. But by preparing a draft protocol, it has shown that it is possible. There is also the possibility of developing a new, stand-alone instrument covering substantive rights and procedural issues – or whatever States want it to cover.

The question remains of how this right will be implemented and monitored. The first option is to integrate the right into existing frameworks with established monitoring mechanisms, such as the Court (for individual complaints against the 46 member States) and/or the European Committee of Social Rights (for collective complaints against 16 member States). Another possibility is the Reykjavik Intergovernmental Committee, composed of experts appointed by member States to provide expertise, promote examples of good practice and formulate practical recommendations, such as the specific committees on artificial intelligence or bioethics, or the Steering Committee for Human Rights (CDDH) which advises the Committee of Ministers on human rights issues.

Other avenues can be explored. The creation of specialised environmental teams can take place at any level of governance – within the Council of Europe, but also within states. Decision-makers need access to specialized knowledge because environmental issues are technically and scientifically complex. Create a Special Representative of the Secretary-General, as exists in the United Nations but also in the Council of Europe. Another option would be to create a new committee of independent experts on these issues, such as GRETA (Convention on Trafficking in Human Beings), GREVIO (Convention on preventing and combating violence against women and domestic violence) or the Venice Commission. These options each entail different functions and approaches. The Committee identifies an innovative perspective, a potential "grail", namely the possibility of creating a complaints and monitoring mechanism that would allow individuals or collectives to file complaints not only against state actors but also against non-state actors, including the private sector.

Three key points should guide the Reykjavik process: 1) the recognition of the right to a healthy environment already exists at the United Nations level, and all regional human rights systems, except for the Council of Europe, have recognized this right, but calls for binding recognition are still ongoing within the Council of Europe; 2) the absence of a common understanding of this right among member States is not an obstacle but an opportunity to create a common standard; 3) various legal and institutional options are available to achieve this, with different advantages and disadvantages, while the Commission has identified a system combining monitoring and complaints as the "holy grail".

Mr Moutquin thanked the speakers. He noted that the whole progress from the 2021 Recommendation to the present day was thus academically documented and was part of a broader movement of reflection crossed by the idea of the Assembly of a complementarity of normative approaches.

Mr Gevorgyan emphasized that the interventions were very interesting and regretted that so few members of the Network were present to benefit from it. The picture that emerged was one of contrasts: little interest on the part of the Assembly for a subject in an issue that was nevertheless a major problem. He added that a blind spot in these interventions concerned the role of national parliaments and that this was a lever in the hands of the members of the Network. The Assembly should be associated with this effort and learn to "speak",

to “involve” on these subjects. An inventory and comparison of all national texts on the subject could be the starting point.

Mr Moutquin considered that this raised precisely the question of the objectives of the Network and how to bring it to life in a more dynamic way. We needed to think about it, structure ourselves and develop effective communication, including for the dissemination of academic content. It also identified a serious blocking factor at the political level; just look at the lag between the Georgian Chair in 2020, the unanimous adoption of the Assembly Recommendation in 2021 and the Reykjavik Declaration in 2024.

Ms Kluit explained that in the Netherlands there was a clear and solid legal base in environmental matters and numerous court proceedings were in progress but in the end this produced very little results. She wondered about ways to remedy this. She also wondered how to get people more engaged on this subject.

Mr Fridez emphasized that it emerged from these exchanges that in the end it was always the politician who set the course and that international organisations such as the United Nations and the Council of Europe only gave direction. It was also necessary to realise that the nationalist currents were open in Strasbourg because they knew that the Council of Europe mainly generated soft, non-binding law. Finally, he questioned two points: could the development of case-law on flagrant cases create a basis for advancing the environmental cause? Wasn't the simplest solution to adopt an additional protocol to the Convention even if this presupposed that the member States ratify it?

Mr Savaresi explained that an inventory had been made of national constitutions and laws based on a questionnaire sent to the States and that this had made it possible to have a complete overview of the different legal systems and cultures. In this type of exchange, whether at the national or international level, we should not lose sight of the fact that those states that were reluctant to move forward formed a minority. If we took a little height, we would see that we were facing an oscillating dynamic between idealism and feasibility. She made a comparison with the exchange of correspondence between Freud and Einstein about the first world war. The first expressed doubts about the possibility of resolving human conflicts permanently due to the depths of the unconscious and the destructive impulses that resided there. Einstein, on the other hand, offered a more optimistic view, suggesting that scientific understanding of the world could eventually lead to lasting peace, perhaps through technological advances that would make war obsolete. Today we were clearly moved by the first approach.

Ms Lambert explained that legal or constitutional recognition did not define effectiveness and was not a determinant of success. Much depended on communication, as illustrated by a documentary made by Cash investigation on the use of pesticides, which had helped to move the lines. She noticed a discrepancy in the communication from the Council of Europe which, on the one hand, emphasised that the Court was a victim of its success and, on the other, focused attention on the Court. We only saw through the prism of the individual. However, the prospect of mass convictions frightened States. We had to get away from this logic. Nor should everything be left to court proceedings. It was one tool among others. There was a need for an awakening at the level of all modes of governance to which economic and scientific experts had to be associated. She explained that case law could constitute a basis for the adoption of general measures intended to execute the decisions obtained and avoid the repetition of the violation found. Finally, she recalled that we should not wait for a general consensus to move forward; all it took was a few pioneering States and above all not to lose the optimism which had always characterised the work of the Assembly.

Ms Heri highlighted the role of the Assembly which had not waited to demonstrate its “political appetite” to see the right to a healthy environment recognised as a human right. It was necessary to keep in mind that the environmental problems already existed, and this recognition would not add any at it. On the contrary, having a convention would help manage the problem of the burden of proof, for example. Without forgetting that there was a very broad mobilisation of civil society and especially young people which was taken into account in the work of the CDDH-ENV and which was not going to stop.

Mr Amraoui underlined that the objectives of the Paris Agreement were almost impossible to achieve. The time had therefore come to push certain concepts to decision-makers such as the principle of non-regression and the refusal of any concession on scientific facts. Environmental problems were supranational in nature; but how could we get States to compensate for the effects of cross-border pollution? There was only a collaborative and global approach that would allow it.

Mr Konatar came from a small country, Montenegro, which did not use chemicals and did not lobby on environmental issues. He stated his conviction that the first step was the political will to move forward and that the direction to be followed by the Assembly was the one which appeared in the Resolution of the United Nations General Assembly.

Mr Gevorgyan bounced on the reference made to the correspondence between Freud and Einstein to put forward the hypothesis that the next world conflict would be linked to the environment, probably access to drinking water. He also expressed a presentiment regarding the Court whose decisions could give rise to counter-reactions as had happened in matters of immigration and which could be tempted to give in to pressure from certain States such as the United Kingdom who had threatened to leave the Convention.

In response to a question from **Mr Moutquin** about the ideal control system, **Ms Savaresi** asserted that the most difficult problem to resolve at this level was that of extraterritoriality. As for the question of political will, she believed it was ultimately a fairly simple problem to get around: if a State did not want to commit, all it had to do was not ratify a treaty.

Ms Lambert delivered an idea to further mobilise parliamentarians: make a film showing how climate change was already visible in our countries. It was necessary to make the reality visible and each parliamentarian could do their part based on the climate situation in their country. Another “electroshock” idea to shorten the distance would be to organise hair or urine tests on the parliamentarians themselves so that they could realise to what level each of them was already intoxicated. Finally, with regard to the Court's case law, it was necessary to keep in mind that national judges had already gone much further than the Court itself and that the Convention system had created very strong expectations that it would be necessary to mobilise whatever the outcome of climate cases. However, the Court had never had a strong and efficient research service, as evidenced by the environmental case-law manual which did not contain a single academic reference. The Task Force had to learn a lesson and invest in this blind spot by bridging the gap with scientific knowledge.

Ms Heri recognised that the phenomenon of *backlash* regarding the Court was a reality. Not all of the Court's judgments were well received by member States. Recognising a right to a healthy environment would reduce the pressure, as the impact of the report of the United Nations special rapporteur had shown. The creation of documentary resources and databases was also a tool to explore. A film co-produced by Arte on Climate Justice would be released the week of 8 April 2024 and aimed to make the battles being pursued more tangible.

The Chairperson concluded by emphasising that it was necessary to make noise in all directions (politics, academics, civil society) but for this, we had to think together about the means to achieve this. The Network had to think about its role, what it wanted to become and how it could get involved in the field. The future of the Council of Europe was all the more at stake when we noted that the foundation of fundamental rights as a basic value was sometimes trampled on, that the notion of the rule of law was abused as the crisis of reception of asylum seekers during the procedure in Belgium and that multilateralism was called into question.

List of presence / Liste de présence

(The names of members who took part in the meetings are in bold / *Les noms des membres ayant pris part aux réunions sont en caractères gras*)

Member States / États Membres

| | | | |
|---|--------|------------------------|--------|
| Albania / Albanie | | | |
| Andorra / Andorre | | | |
| Armenia / Arménie | Mr/M. | Armen Gevorgyan | EC/DA |
| Austria / Autriche | Mr/M. | Stefan Schennach | SOC |
| | | | |
| Belgium / Belgique | Mr/M. | Rik Daems | ALDE |
| Bosnia and Herzegovina / Bosnie-Herzégovine | Mr/M. | Saša Magazinović | SOC |
| | | | |
| Bulgaria / Bulgarie | | | |
| Croatia / Croatie | Ms/Mme | Zdravka Bušić | EPP/CD |
| Cyprus / Chypre | | | |
| Czech Republic / République tchèque | | | |
| Denmark / Danemark | | | |
| Estonia / Estonie | | | |
| Finland / Finlande | Ms/Mme | Minna Reijonen | EC/DA |
| France | Ms/Mme | Liliana Tanguy | ALDE |
| | | | |
| Georgia / Géorgie | | | |
| Germany / Allemagne | Ms/Mme | Franziska Kersten | SOC |
| Greece / Grèce | Mr/M. | George Papandreou | SOC |
| Hungary / Hongrie | | | |
| Iceland / Islande | Mr/M. | Bjarni Jónsson | UEL |
| Ireland / Irlande | Mr/M. | Thomas Pringle | UEL |
| | Ms/Mme | Róisín Garvey | SOC |
| Italy / Italie | Mr/M. | Stefano Maullu | EC/DA |
| | Ms/Mme | Aurora Floridia | SOC |
| Latvia / Lettonie | | | |
| Liechtenstein | Mr/M. | Peter Frick | ALDE |
| Lithuania / Lituanie | Mr/M. | Arminas Lydeka | ALDE |
| Luxembourg | Mr/M. | Paul Galles | EPP/CD |
| Malta / Malte | | | |
| Republic of Moldova / République de Moldova | | | |
| Monaco | | | |
| Montenegro / Monténégro | Mr/M. | Miloš Konatar | SOC |
| Netherlands / Pays-Bas | Ms/Mme | Saskia Kluit | SOC |
| | Ms/Mme | Carla Moonen | ALDE |

| | | | |
|---|----------|-------------------------|--------|
| North Macedonia / <i>Macédoine du Nord</i> | | | |
| Norway / <i>Norvège</i> | Ms/Mme | Linda Hofstad Helleland | EPP/CD |
| Poland / <i>Pologne</i> | Ms/Mme | Danuta Jazłowiecka | EPP/CD |
| | | | |
| Portugal | Mr/M. | Pedro Cegonho | SOC |
| Romania / <i>Roumanie</i> | Ms/Mme | Maria Gabriela Horga | EPP/CD |
| | Ms/Mme | Alina Stefania Gorghiu | EPP/CD |
| San Marino / <i>Saint-Marin</i> | | | |
| Serbia / <i>Serbie</i> | | | |
| Slovak Republic / <i>République slovaque</i> | | | |
| Slovenia / <i>Slovénie</i> | Mr/M. | Dean Premik | ALDE |
| Spain / <i>Espagne</i> | | | |
| Sweden / <i>Suède</i> | | | |
| Switzerland / <i>Suisse</i> | | | |
| | | | |
| Türkiye | Mr/M. | Sevan Sivacioğlu | NR |
| Ukraine | Ms/Mme | Yuliia Ovchynnykova | ALDE |
| United Kingdom / <i>Royaume-Uni</i> | Baroness | Doreen E. Massey | SOC |

Partners for Democracy / Partenaires pour la Démocratie

| | | | |
|---------------------------------|-------|----------------------|--|
| Jordan / <i>Jordanie</i> | | | |
| Kyrgyzstan / <i>Kirghizstan</i> | | | |
| Morocco / <i>Maroc</i> | Mr/M. | Allal Amraoui | |
| Palestine | | | |

PACE committees concerned / Commissions de l'APCE concernées

| | | | |
|--|--------|----------------------------|-----|
| Political Affairs / <i>Questions politiques</i> | Mr/M. | Simon Moutquin | SOC |
| Legal Affairs / <i>Questions juridiques</i> | | | NR |
| Migration / <i>Migrations</i> | Mr/M. | Pierre-Alain Fridez | SOC |
| Equality / <i>Égalité</i> | Ms/Mme | Edite Estrela | SOC |
| Culture | Ms/Mme | | |

**Bureau of the Committee on Social Affairs /
Bureau de la Commission des Questions Sociales
Ex-Officio Members / Membres d'office**

| | | | |
|--|--------|------------------------|--------|
| Chairperson / <i>président</i> | Mr/M. | Simon Moutquin | SOC |
| First Vice-Chairperson / <i>premier vice-président</i> | Ms/Mme | Danuta Jazłowiecka | EPP/CD |
| Second Vice-Chairperson / <i>deuxième vice-présidente</i> | Mr/M. | Armen Gevorgyan | EC/DA |
| Third Vice-Chairperson / <i>troisième vice-présidente</i> | Mr/M. | Pedro Cegonho | SOC |

Other Parliamentarians present / Autres parlementaires présent-e-s

Mr/M. Ion Prioteasa, Romania / Roumanie

Embassies / Permanent Representations and Delegations
Ambassades / Représentations permanentes et Délégations

Ms/Mme Vera Damjanovic, Montenegro / Monténégro

Ms/Mme Carmen Ionescu, Romania / Roumanie

EXPERTS / EXPERT·E·S

Ms/Mme Elisabeth Lambert, Research Director at CNRS / Directrice de recherche au CNRS – Centre National de la recherche scientifique, Nantes (France)

Ms/Mme Annalisa Savaresi, Professor at University of Stirling (United Kingdom) and Associate Professor, University of Eastern Finland / Professeure à l'Université de Stirling (Royaume-Uni) et Professeure Associée à l'Université de Finlande Orientale

Ms/Mme Corina Heri, Postdoctoral researcher, Faculty of Law, Zurich University (Switzerland) / Chercheuse postdoctorale, Faculté de droit, Université de Zurich (Suisse)

Secretariat of the Parliamentary Assembly / Secrétariat de l'Assemblée Parlementaire

Committee on Social Affairs, Health and Sustainable Development /
Commission des questions sociales, de la santé et du développement durable

Ms/Mme Catherine Du-Bernard..... Head of the Secretariat / Cheffe du Secrétariat
Ms/Mme Aiste Ramanauskaite..... Secretary to the Committee / Secrétaire de la commission
Ms/Mme Claire Dubois-Hamdi..... Secretary to the Committee / Secrétaire de la commission
Ms/Mme Xenia Birioukova..... Assitant/ Assistante
Ms/Mme Özgü Tan..... Assitant/ Assistante