



The right to a healthy environment for current and future generations

16 May 2024

81st Meeting of the Committee of Permanent Correspondents
European and Mediterranean Major Hazards Agreement - EUR-OPA



Emma Pagliarusco, Advocacy Coordinator, Youth and Environment Europe

Outline:

- Introduction
- The principle of intergenerational equity
- The right to a healthy environment for current and future generations - Council of Europe perspective
- Conclusions

Triple planetary crisis: climate change, biodiversity loss, pollution

David Boyd, former UN Special Rapporteur on the right to a healthy environment:

“[a]ll human beings depend on the environment in which we live. A safe, clean, healthy and sustainable environment is integral to the full enjoyment of a wide range of human rights, including the rights to life, health, food, water and sanitation. Without a healthy environment, we are unable to fulfil our aspirations. We may not have access to even the minimum standards of human dignity.”

Intergenerational equity

UNFCCC, art.3: *The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.*

Maastricht principles on the rights of future generations, art.8

a) Humanity is of the Earth, wholly dependent upon it, and interdependent with it. Every generation lives on the Earth and has an interlinked relationship with Nature and its biodiverse ecosystems. During their time on Earth, each generation must act as trustees of the Earth for future generations. This trusteeship must be carried out in harmony with all living beings and Nature.

b) Each generation has the duty to protect and sustain the Earth's natural and cultural heritage for future generations.

c) The principle of trusteeship and intergenerational duties includes the decisions each generation makes about the near-Earth environment and the Moon.

Intergenerational equity - *KlimaSeniorinnen*

419. [...] Therefore, **policies to combat climate change inevitably involve issues of social accommodation and intergenerational burden-sharing**, both in regard to **different generations of those currently living** and in regard to **future generations**.

420. In this connection, the Court notes that, **in the specific context of climate change, intergenerational burden-sharing assumes particular importance both in regard to the different generations of those currently living and in regard to future generations**. While the legal obligations arising for States under the Convention extend to those individuals currently alive who, at a given time, fall within the jurisdiction of a given Contracting Party, **it is clear that future generations are likely to bear an increasingly severe burden of the consequences of present failures and omissions to combat climate change** (see paragraph 119 above) **and that, at the same time, they have no possibility of participating in the relevant current decision-making processes**. By their **commitment to the UNFCCC**, the **States Parties have undertaken the obligation to protect the climate system for the benefit of present and future generations of humankind** (see paragraph 133 above; Article 3 of the UNFCCC). This obligation must be viewed in the light of the already existing harmful impacts of climate change, as well as the urgency of the situation and the risk of irreversible harm posed by climate change. In the present context, **having regard to the prospect of aggravating consequences arising for future generations, the intergenerational perspective** underscores the risk inherent in the relevant political decision-making processes, namely that short-term interests and concerns may come to prevail over, and at the expense of, pressing needs for sustainable policy-making, rendering that risk particularly serious and adding justification for the possibility of judicial review.

Intergenerational equity - *KlimaSeniorinnen*

545. Accordingly, the State's **obligation under Article 8** is to do its part to ensure such protection. In this context, the **State's primary duty is to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change**. This obligation flows from the causal relationship between climate change and the enjoyment of Convention rights, as noted in paragraphs 435 and 519 above, and the fact that the object and purpose of the Convention, as an instrument for the protection of human rights, requires that its provisions must be interpreted and applied such as to guarantee rights that are practical and effective, not theoretical and illusory (see, for instance, *H.F. and Others v. France*, cited above, § 208 in fine; see also paragraph 440 above).

549. Moreover, in order for this to be genuinely feasible, **and to avoid a disproportionate burden on future generations, immediate action needs to be taken and adequate intermediate reduction goals must be set for the period leading to net neutrality**. Such measures should, in the first place, be incorporated into a binding regulatory framework at the national level, followed by adequate implementation. The relevant targets and timelines must form an integral part of the domestic regulatory framework, as a basis for general and sectoral mitigation measures. Accordingly, and reiterating the position taken above, namely that the margin of appreciation to be afforded to States is reduced as regards the setting of the requisite aims and objectives, whereas in respect of the choice of means to pursue those aims and objectives it remains wide, the Court finds it appropriate to outline the States' positive obligations (see paragraph 440 above) in this domain as follows.

Future Generations and the triple planetary crisis

1. Long-Term impacts: the crisis is a long-term global challenge with far-reaching consequences that will be felt for generations to come. Rising temperatures, extreme weather events, sea-level rise, and disruptions to ecosystems will affect the health, livelihoods, and quality of life of future generations.
2. Greenhouse gas emissions released into the atmosphere today have a cumulative effect, contributing to the warming of the planet over time. Future generations will inherit the legacy of past and present emissions, even though they had no say in the decisions that led to climate change.
3. Continued environmental and biodiversity degradation and resource depletion jeopardise the ability of future generations to meet their basic needs, such as access to clean air, water, and food. Climate change exacerbates existing inequalities and poses significant challenges to sustainable development.

It is an obligation to act in the best interests of future generations. Failing to address climate change not only perpetuates intergenerational injustice but also undermines the principles of equity, fairness, and solidarity.

The right to a healthy environment

The preventive nature of the right to a clean, healthy and sustainable environment is a key aspect of its added value. By preventing pollution and environmental degradation, a wide array of human rights violations will be prevented, such as negative impacts on the rights to life, health, food, water, culture, housing, property, and a healthy environment. These benefits are particularly important for those who are most at risk from environmental harm, including women, **children, young people**, indigenous peoples and local communities, persons living in poverty, persons with disabilities, older persons, migrants, displaced people, and other potentially vulnerable communities.

The right to a healthy environment and youngest generations - some examples

1. **Because intergenerational equity** relies on protecting the right to a healthy environment: it's critical to make sure that children and young people of today have *all* the instruments tomorrow to claim and protect their rights. The right to a healthy environment is not limited to the present generation; it encompasses the rights of future generations as well, and we have the responsibility to leave a healthy ecological legacy for future generations. Children and young people being the closest to future generations understand this more than others.
2. **Because** when the right to a healthy environment is enshrined in law, it provides a strong **legal foundation** for young environmental activists to demand environmental protection and guarantees legal certainty. It would therefore support young activists in their advocacy and efforts to make the world a better place.
3. **Because** the recognition of the right to a healthy environment facilitates **access to justice** as awareness of environmental injustices grows. Environmental cases are on the rise, including at the initiative of children and youth, and the Council of Europe must give *all* its citizens the tools to approach those questions.
4. **Because** an explicit recognition of the right to a healthy environment clarifies what constitutes a healthy environment and what rights citizens, including children and young people, have in relation to it. This **clarity** allows children and youth activists to articulate their demands more precisely and effectively.
5. **Because**, knowing that they have a recognized legal right to a healthy environment at European level as well, children and youth will feel more empowered and legitimised to engage in climate action. This empowerment can motivate greater participation and persistence in environmental activism.



**Fighting to ensure Europe
no longer lags behind**

in protecting our
common future

YEE!
YOUTH AND
ENVIRONMENT
EUROPE



**A Protocol to the European
Convention on Human Rights:**

A Legal Foundation for
Environmental Justice



ANY QUESTIONS?

Please reach out to emma@yeenet.eu

THANK YOU!