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STEERING COMMITTEE FOR HUMAN RIGHTS
COMITÉ DIRECTEUR POUR LES DROITS DE L'HOMME

(CDDH)

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DRAFTING GROUP ON HUMAN RIGHTS AND ENVIRONMENT
GROUPE DE RÉDACTION SUR LES DROITS DE L'HOMME ET L'ENVIRONNEMENT

(CDDH-ENV)

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COMPILATION OF REPLIES RECEIVED FROM MEMBER STATES ON THE QUESTIONNAIRE WITH A VIEW OF THE PREPARATION OF A STUDY ON THE NEED FOR AND FEASIBILITY OF A NEW INSTRUMENT ON HUMAN RIGHTS AND THE ENVIRONMENT [1]

COMPILATION DES RÉPONSES REÇUES DES ÉTATS MEMBRES AU QUESTIONNAIRE EN VUE DE LA PRÉPARATION D'UNE ÉTUDE SUR L'UTILITÉ ET LA FAISABILITÉ D'UN NOUVEL INSTRUMENT SUR LES DROITS DE L'HOMME ET L'ENVIRONNEMENT[2]

[1] Andorra, Armenia, Austria, Azerbaijan, Belgium, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Italy, Latvia, Malta, Netherlands, Norway, Poland, Portugal, Slovak Republic, Slovenia, Sweden, Switzerland, Türkiye, United Kingdom.

[2] Andorre, Arménie, Autriche, Azerbaïdjan, Belgique, Croatie, République tchèque, Danemark, Estonie, Finlande, France, Géorgie, Allemagne, Grèce, Italie, Lettonie, Malte, Pays-Bas, Norvège, Pologne, Portugal, République slovaque, Slovénie, Suède, Suisse, Türkiye, Royaume-Uni

QUESTION 1

Is some explicit form of human right to a healthy environment protected under the constitution, legislation or jurisprudence, and if so in what terms?

Est-ce que la constitution, la législation ou la jurisprudence protège-t-elle une forme explicite de droit humain à un environnement sain et, dans l'affirmative, en quels termes ?

ANDORRA / ANDORRE

A) La Constitution :

La Constitution de la Principauté d'Andorre fut approuvée le 2 février 1993 et ratifiée par référendum le 14 mars 1993. Le libellé du texte constitutionnel, qui n'a pas fait l'objet de modifications depuis son entrée en vigueur, mentionne deux références explicites à l'environnement.

En premier lieu, le Préambule, au sein de son paragraphe 5, mentionne la détermination du peuple andorran à apporter « *sa contribution et son soutien à toutes les causes communes de l'humanité, notamment pour préserver l'intégrité de la Terre et garantir un environnement adéquat aux générations futures, …* ».

Au-delà de cette déclaration d'intentions, l'article 31 de la Constitution prévoit qu'il appartient à l'Etat andorran de « *veiller à l'utilisation rationnelle du sol et de toutes les ressources naturelles afin de garantir à chacun une qualité de vie digne, ainsi que de rétablir et de préserver pour les générations futures un équilibre écologique rationnel de l'atmosphère, de l'eau et de la terre, et de protéger la flore et la faune locale.* ». Cet article est inclus dans le Chapitre V relatif aux Droits et principes économiques, sociaux et culturels reconnus à tous les citoyens.

B) La législation interne :

D'un point de vue purement législatif, la Principauté d'Andorre s'est dotée d'un ensemble de lois qui tendent à promouvoir la conservation et la protection de l'environnement tout en reconnaissant qu'il s'agit d'un enjeu capital pour les générations actuelles mais surtout futures.

Afin d'illustrer ce propos, nous pouvons citer, entre autres la :

- Loi 21/2018, pour l'impulsion de la transition énergétique et le changement climatique.
- Loi 7/2019, sur la conservation de l'environnement naturel, de la biodiversité et du paysage.
- L'Accord reconnaissant la crise climatique et déclarant l'état d'urgence climatique et écologique du 23 janvier 2020.
- Loi 26/2021, sur le texte refondu relatif à la pêche et de la gestion du milieu aquatique.
- Loi 21/2022, sur les stations de montagne. (Afin de rendre compatible l'exploitation des stations de montagne, activité importante en Principauté d'Andorre, avec les enjeux environnementaux).
- Loi 25/2022, sur l'économie circulaire.

A travers l'adoption et la mise en œuvre des diverses lois précitées, et de ses successifs développements règlementaires (la liste n'est pas exhaustive), la Principauté d'Andorre tient à démontrer son engagement afin d'instaurer un régime juridique de protection, de conservation, d'amélioration, de restauration et de l'utilisation durable de l'environnement naturel, de la biodiversité et du paysage de la Principauté d'Andorre, tant pour les générations actuelles que futures. Le développement de ce cadre législatif est donc le corollaire de la fonction confiée à l'État

d'assurer l'utilisation rationnelle du territoire et de toutes ses ressources naturelles, tel qu'établie à l'article 31 de la Constitution.

Il convient aussi de faire mention du fait que le Code Pénal andorran, dans sa rédaction actuelle, consacre un Titre entier aux Délits contre l'environnement. Ce Titre se compose de quatre chapitres (articles 289 à 307) qui visent à sanctionner les comportements contraires aux prescriptions législatives relatives à l'environnement (Ces articles sanctionnent aussi la temptative) :

Délits contre l'environnement et les ressources naturelles.

Délits relatifs à la faune et la flore.

Incendies forestiers.

Dispositions communes.

C) Autres actions :

Finalement, nous souhaitons faire mention du fait que la Principauté d'Andorre a récemment participé en qualité de co-auteur à la rédaction d'une résolution qui a été adoptée par l'Assemblée Générale des Nations Unies le 26 juillet 2022 relative à la reconnaissance d'un « *Droit à un environnement propre, sain et durable* ».

En ce sens, le texte de la résolution mentionne que « *la grande majorité des États ont reconnu sous une forme ou une autre le droit à un environnement propre, sain et durable dans des accords internationaux ou dans leur constitution, leur législation, leurs lois ou leurs politiques,*

1. Considère que le droit à un environnement propre, sain et durable fait partie des droits humains ;

2. Constate que le droit à un environnement propre, sain et durable est lié à d'autres droits et au droit international existant ; …. »

Bien que cette résolution ne soit pas juridiquement contraignante elle a pour vocation d'entrainer un effet de ruissellement afin d'inciter les Etats à intégrer dans leur Constitution et leur législation interne la reconnaissance du droit de tout être humain à un environnement propre, sain et durable.

A mode de conclusion, nous pouvons affirmer qu'il existe bien dans le droit interne andorran une reconnaissance et, en conséquence, une protection d'un droit à un environnement sain.

ARMENIA / ARMÉNIE

The Article 12 of the Constitution of the Republic of Armenia about Preservation of the Environment and Sustainable Development states that The State shall promote the preservation, improvement and restoration of the environment, the reasonable utilization of natural resources, guided by the principle of sustainable development and taking into account the responsibility before future generations.

The second paragraph of the same article encrypts that everyone shall be obliged to take care of the preservation of the environment.

On 21st of June 2014 the National Assembly adopted the Law on Environmental Impact Assessment and Expertise which regulates the public relations in the field of environmental impact assessments in the Republic of Armenia, including cross-border, state expertise on environmental impact. The action of the Law extends to the subjects defined by the legislation of the Republic of Armenia, who develop and adopt founding documents, or carry out activities with a possible impact on the environment and human health.

AUSTRIA / AUTRICHE

The Austrian fundamental rights catalogue does not explicitly provide for a specific individual right in the context of environment or climate. Rather, provisions of the Federal Constitutional Act on sustainability, animal protection, comprehensive environmental protection, on water and food security as well as research (*Bundesverfassungsgesetz über die Nachhaltigkeit, den Tierschutz, den umfassenden Umweltschutz, die Sicherstellung der Wasser- und Lebensmittelversorgung und die Forschung*, Federal Law Gazette I No. 111/2013, as amended by Federal Law Gazette I No. 82/2019) include national objectives (*Staatszielbestimmungen*) of great significance for the protection of the environment. They address the federal government, federal provinces (*Länder*) and municipalities to join in the effort to achieve comprehensive environmental protection. They read as follows (translation into English):

> ***"Section 1.*** *The Republic of Austria (federal government, federal provinces and municipalities) is committed to the principle of sustainability in using natural resources to ensure that future generations will also benefit from optimal quality of life.*
>
> ***Section 2.*** *The Republic of Austria (federal government, federal provinces and municipalities) is committed to animal protection.*
>
> ***Section 3.*** *(1) The Republic of Austria (federal government, federal provinces and municipalities) is committed to comprehensive environmental protection.*
>
> *(2) Comprehensive environmental protection means the prevention of harmful effects on the natural environment as the basic resource of the human being. Comprehensive environmental protection consists particularly in measures to ensure the cleanliness of air, water and soil as well as to prevent noise disturbance.*
>
> ***Section 4.*** *The Republic of Austria (federal government, federal provinces and municipalities) is committed to the supply of water as an integral part of all services of general interest and to its responsibility to ensure their provision and quality, particularly to maintain public ownership and control of the drinking water supply in the interest of the population's well-being and health in public sector.*
>
> ***Section 5.*** *The Republic of Austria (federal government, federal provinces and municipalities) is committed to ensuring that the population is supplied with quality foodstuffs of animal and plant origin also from domestic production as well as to the sustainable production of raw materials in Austria with a view to safeguarding the security of supplies."*

These provisions do not extend the Austrian fundamental rights catalogue. According to the explanatory notes regarding Section 3 (cf. IA 112/A XVI. GP 3 et sequ. and IA 2316/A XXIV. GP), a fundamental right on environmental protection would "not fit into the systematics of the existing fundamental rights". Enshrining environmental protection in law as a core principle or a national objective or an individual fundamental right was also discussed in the course of the Austrian Constitutional Convention *(Österreich-Konvent)*[3] but no consensus was reached. Literature refers to national objectives by stating that they have gained certain importance in their role as a guiding principle for interpretation purposes (public interest; justification of, among other things, limitations to the freedom of occupation in the context of a proportionality check).

[3] The *Österreich-Konvent* was a political Constitutional Convention which discussed proposals for a fundamental constitutional reform from June 2003 to January 2005.

In 2017, the Constitutional Court stated in the context of the approval proceedings for the construction of a third runway at the Vienna Airport that (among other things) the Paris Agreement was not directly applicable and thus could not be used as reference for assessing the effects of the estimated emissions. The Constitution would stipulate that in weighing the interests involved, which also include mitigating risks to life, health and property, ensuring the safety of both persons and property, and protecting persons or property from negative impacts, comprehensive environmental protection within the meaning of the national objective mentioned above must be taken into consideration both when interpreting and prioritising the relevant interests. The relevant national objective, however, did not grant absolute priority for interests related to environmental protection (judgment of 29 June 2017, E 875/2017, E 886/2017 = VfSlg. 20.185/2017).

According to the general principle that domestic law must be interpreted in conformity with international law or European Union law, all national authorities and courts of all instances have to interpret Austrian legal provisions in such a way that, in case of doubt, they do not contradict provisions of international law or European Union law.

AZERBAIJAN / AZERBAÏDJAN

The right to live in a healthy environment is protected under the Constitution of the Republic of Azerbaijan, which states as follows:

“Article 39. The right to live in a healthy environment

I. Everyone has the right to live in a healthy environment.

II. Everyone has the right to collect information about the true state of the environment and to receive compensation for damage to his health and property due to ecological violations.

III. No one can endanger or damage the environment and natural resources beyond the limits established by law.

IV. The state ensures the maintenance of ecological balance, the protection of species of wild plants and wild animals, determined by law.”

Also, according to Article 78 of the Constitution, “protection of environment is the duty of every person”.

Article 8 of the Law of the Republic of Azerbaijan on Protection and Use of Nature states as follows:

“Article 8. The right of citizens to a natural environment suitable for life

Every citizen of the Republic of Azerbaijan has the right to live in a natural environment that is favourable for his health and life.

This right is ensured by:

- complying with ecological requirements during the placement of productive forces, enterprises, installations and other objects affecting the natural environment, and planning of the development of territorial production complexes, industry, agriculture, energy, transport and other areas of the national economy;

- financial responsibility for damage to nature, human life and health, property and interests of individuals and legal persons in the manner established by the Law.

Citizens' right to a favourable natural environment should be reconciled with the fulfilment of their duties in the areas of protection of nature, efficient use of natural resources, restoration and increase of natural resources, compliance with nature protection legislation."

Article 9 of the Law of the Republic of Azerbaijan on Protection and Use of Nature states as follows:

"Article 9. The right to protect the health of citizens from the negative effects of the natural environment

Every citizen of the Republic of Azerbaijan has the right to protect his health from the negative impact of the natural environment as a result of economic activity or other activities, accidents, unfortunate events or natural disasters.

This right is ensured by:

- planning and standardizing the quality of the natural environment, taking measures aimed at preventing ecologically harmful activities, preventing accidents, unfortunate events and natural disasters and eliminating their consequences;

- payment of damage caused to the health of citizens as a result of environmental pollution and other harmful effects, including accidents and unfortunate events, in a judicial or administrative manner;

- implementation of state control and public control over the state of the environment and compliance with legislation on nature protection, holding liable those guilty of violating the requirements for ensuring the ecological safety of the population."

BELGIUM / BELGIQUE

Introduit en 1994, l'article 23 de la Constitution prévoit :
« Chacun a le droit de mener une vie conforme à la dignité humaine.
A cette fin, la loi, le décret ou la règle visée à l'article 134 garantissent, en tenant compte des obligations correspondantes, les droits économiques, sociaux et culturels, et déterminent les conditions de leur exercice.

Ces droits comprennent notamment :

1° le droit au travail et au libre choix d'une activité professionnelle dans le cadre d'une politique générale de l'emploi, visant entre autres à assurer un niveau d'emploi aussi stable et élevé que possible, le droit à des conditions de travail et à une rémunération équitables, ainsi que le droit d'information, de consultation et de négociation collective;
2° le droit à la sécurité sociale, à la protection de la santé et à l'aide sociale, médicale et juridique;
3° le droit à un logement décent;
***4° le droit à la protection d'un environnement sain**;*
5° le droit à l'épanouissement culturel et social ;
6° le droit aux prestations familiales ».

Il appartient donc au législateur fédéral, communautaire ou régional, chacun dans les limites de ses compétences, de garantir le droit à la protection d'un environnement sain et de déterminer les conditions de son exercice.

CROATIA / CROATIE

Yes, a right to healthy environment is protected under Croatian Constitution, relevant Laws and jurisprudence.

1. Constitution of the Republic of Croatia *("Official Gazette" nos. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 5/14)*

Article 3

Freedom, equal rights, national and gender equality, peace-making, social justice, respect for human rights, inviolability of ownership, ***conservation of nature and the environment,*** *the rule of law and a democratic multiparty system are the* ***highest values of the constitutional order*** *of the Republic of Croatia and the basis for interpreting the Constitution.*

Article 52

The sea, seashore, islands, waters, air space, mineral resources, and other natural resources, as well as land, forests, flora and fauna, other components of the natural environment, real estate and items of particular cultural, historical, economic or ecological significance which are specified by law to be of interest to the Republic of Croatia shall enjoy its special protection.

…

Article 62

The state shall protect maternity, children and young people, and shall create social, cultural, educational, material and other conditions promoting the exercise of the right to a decent life.

Article 69

Everyone shall have the right to a healthy life.
The state shall ensure conditions for a healthy environment.
Everyone shall, within the scope of his/her powers and activities, accord particular attention to the protection of human health, nature and the human environment.

International legal instruments in force in the Republic of Croatia:

2. Law on the Ratification of the United Nations Framework Convention on Climate Change *("Official Gazette - International Treaties" no. 2/1996)*

3. Law on the Ratification of the Kyoto Protocol to the UN Framework Convention on Climate Change ("Official Gazette – International Treaties" 5/2007)

4. Law on the Ratification of The Paris Agreement ("Official Gazette – International Treaties no. 3/2017)

5. European Union law

- Directive (EU) 2018/410 on the Emissions Trading System (ETS Directive)
- Regulation (EU) 2018/842 on Effort Sharing (Climate Action Regulation)
- Regulation (EU) 2018/841 on Land Use, Land Use Change and Forestry (LULUCF Regulation)

The above EU legislation has been transposed into relevant domestic legislation (e.g. the Environmental Protection Act, the Law on Climate Change and the Protection of the Ozone Layer).

6. Environmental Protection Act (*Official Gazette nos. 80/13, 153/13, 78/15, 12/18, 118/18; hereinafter: the EPA*) is the central national piece of legislation governing the protection of environment, including, *inter alia,* the protection of the ozone layer from GHG and other emissions, the right of public access to information concerning the environment and its protection, and sustainable development.

In its relevant part, the EPA defines main goals of protection of the environment, which include, *inter alia,* the protection of human lives and health and the protection of the ozone layer and mitigation of climate change (Article 7).

One of the main principles expressed in the EPA is the principle of access to information and public participation in the adoption of strategies, plans and programs of environmental protection and the adoption of legislation concerning environmental protection (Article 17).

Additionally, the EPA contains the principle of access to the judiciary for each person (individual, legal entity, groups thereof, associations and organizations) dissatisfied with the information concerning the environment received upon request. Furthermore, a person who has a legal interest or may prove permanent infringement of his/her rights due to an intervention into the environment, has the right to challenge both the procedural and the substantive legality of decisions, acts or omissions of the competent authority before the relevant courts (Article 19).

With regard to the protection of air, the EPA envisages specific measures for the protection of air, improvement of air quality in order to avoid or minimize harmful effects on human health, life quality and the environment as such, as well as measures aimed at preventing and reducing air pollution which damages the ozone layer and affects climate change (Article 23).

Furthermore, the EPA contains provisions concerning sustainable development, including the contents of the main documents in this area: Sustainable Development Strategy, Environment Protection Plan and Report on the State of the Environment.

7. Law on Climate Change and the Protection of the Ozone Layer *("Official Gazette" no. 127/19; hereinafter: the Climate Change Act*), entered into force on 1 January 2020. It contains provisions concerning mitigation and adaptation measures, including the definition of competent domestic authorities in this area, the strategic documents and supervision proceedings, including responsibilities and fines for breaching the prescribed obligations.

The Climate Change Act does not contain the precautionary principle as such, although it does rely on the main principles of international environment law and transposes the relevant EU legislation into Croatian national law. The Climate Change Act states that mitigation and adaptation measures must not endanger the quality of life of the current population or of the future generations.
It is furthermore stated that the effectiveness of the measures defined by the Climate Change Law is ensured by the Parliament, the Government and local/regional authorities.

Reduction of greenhouse gas emissions on the territory of the Republic of Croatia is ensured by implementing the Low Carbon Development Strategy, Low Carbon Development Strategy Action Plan, Integrated Energy and Climate Plan, development documents of individual sectors, and gradual limitation of emission units within the EU ETS. Obligations outside the sectors included in the EU ETS are controlled annually in accordance with the EU Regulation no. 525/2013 (NIR until 2022) and as of 2023 (NIR 2023) these obligations will be controlled under EU Regulation 1999/2018.

Case law of the Constitutional Court of the Republic of Croatia

Constitutional Court decides on issues of the impact of the environment changes on private lives of the individuals.

Case law of the Constitutional Court (see cases U-III-496/22013 of 10 October 2017; U-III-5942/2013 of 18 June 2019; U-III-115/2014 of 11 May 2016; U-III-1116/2014 of 11 May 2016; U-III-799/2010 of 5 November 2014) clearly shows that the Constitutional Court reviews on merits ordinary and administrative courts' decisions in respect of the interference with private lives of individuals by implementing the Court's case-law.

Case law of the ECtHR:
case Tolić and others v Croatia, application no.13482/15, decision of 4 June 2019
case Turković and others v Croatia, application no: 32291/16, decision of 10 July 2018.

CZECH REPUBLIC / RÉPUBLIQUE TCHÈQUE

This right is guaranteed by the Charter of Fundamental Rights and Freedoms of the Czech Republic which forms a part of domestic constitutional law. Under Article 35(1) of the Charter, everyone has the right to a favourable environment. Under Article 35(2), everyone has the right to timely and complete information about the state of the environment and natural resources.

DENMARK / DANEMARK

The Danish Ministry of Justice can – after consultation with the Danish Ministry of Environment and the Danish Ministry of Climate – inform that there does not exist a "explicit form of human right to a healthy environment protected under the constitution, legislation or jurisprudence". Unfortunately, the Danish Ministry of Justice therefore cannot contribute to the questionnaire.

ESTONIA / ESTONIE

Constitution of the Republic of Estonia (1992) does not foresee an explicit right to a healthy environment. There are two Articles in the Constitution that consider natural environment and respective rights: Article 5 of the Constitution states that Estonian natural resources are national assets that must be used in a sustainable way. Article 53 stipulates everyone's obligation to protect natural and human environment and compensate any harm to it.

General Part of the Environmental Code Act (entered into force in 2014) includes in Article 23 the right to environment that meets health and well-being needs. According to this everyone is entitled to expect that the environment concerning them directly meets the health and well-being needs (subsection 1). The environment concerns a person directly where the person often stays in the affected environment, often uses the affected natural resource or otherwise has a special connection with the affected environment (subsection 2). Upon application of the latter, the environment or natural resource that is likely to be affected is also considered the affected environment or natural resource (subsection 3). According to subsection 4, upon assessing the compliance of the environment with the health and well-being needs, the rights of other persons, public interests and the characteristics of the region are taken into account. The non-compliance of the environment with the health and well-being needs is presumed where the limit value of the quality of the environment has been exceeded. Subsection 5 of Article 23 stipulates the responsibility of public authorities: to uphold the right specified in subsection 1, one can demand that the administrative authority spare the environment and take reasonable measures to ensure the compliance of the environment with the health and well-being needs.

FINLAND / FINLANDE

Fundamental rights with regard to the environment are enshrined in section 20 of the Constitution of Finland (731/1999). Under section 20, subsection 1 of the Constitution, nature and its biodiversity, the environment and the national heritage are the responsibility of everyone.

Subsection 2 states that the public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment.

Although section 20 appears in chapter 2 of the Constitution, the chapter in which fundamental rights are addressed, its subsection 1 in particular differs from other fundamental rights provisions, as it is formulated to express the responsibility of everyone rather than to express the right of an individual or an obligation of the public authorities.

Responsibility for nature and its biodiversity, the environment and the national heritage (section 20, subsection 1)
According to the legislative history of the Constitution (Government proposal HE 309/1993), the responsibility referred to in section 20, subsection 1 of the Constitution applies to both public authorities and to individual natural and legal persons. The provision seeks to emphasise that the protection of nature and the environment involves also values that cannot be traced back to rights of individuals. In this respect, the obligations of everyone towards nature can be understood as either arising from the intrinsic value of nature or as an expression of an indivisible right belonging to all people. Future generations may also be taken as subjects of such a human right. The legislative history indicates that the provision is intended primarily as a proclamatory one and that it could not alone provide the basis for individual criminal responsibility, for example, instead being realised with the support and intermediation of other legislation.

The responsibility referred to in the provision, the legislative history points out, covers both living things (flora and fauna), non-living things (waters, atmosphere, soil and bedrock) and the human-made cultural environment (buildings, structures and landscapes).

The provision covers both preventing the destruction or degradation of the environment as well as active pro-environmental measures. Hence the provision expresses humankind's all-round responsibility for such overall economic and social policies that ensure the preservation of the diversity of living and non-living things. Individuals may contribute to environmental protection both actively, by doing things, and passively, by refraining from harming the environment. Elements of the biodiversity of nature referred to in the provision include the genetic diversity of flora and fauna as well as the effective protection of all non-renewable natural resources.

Obligation of public authorities to guarantee (section 20, subsection 2)
Under section 20, subsection 2 of the Constitution, the public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence decisions that concern their own living environment.
The legislative history of the Constitution (Government proposal 309/1993) states that the requirement of a healthy environment shall be understood broadly. The living environment of people shall be viable so that the state of the environment poses no direct or indirect risk of illness to people. On the other hand, also further-ranging requirements are to be imposed on the state of the environment. Healthiness, for example, involves a dimension of enjoyability of the environment to a certain extent.

According to its legislative history, the provision primarily influences the actions of the legislator and other issuers of norms (Government proposal HE 309/1993, p. 66/II), and there are indeed numerous Acts in force to govern the many aspects of protecting nature and the environment. The provision also translates into a constitutional mandate to develop environmental legislation in a direction that allows expanding the possibility of people to influence decision-making concerning their own living environment. While the provision has been taken as a proclamatory one, (HE 309/1993, p. 66), over the years its legal relevance has increased. In other words, the fundamental right to the environment has been assigned greater weight when balancing the various fundamental rights against each other. In many cases, the issues involved have concerned restrictions relating to property or freedom to engage in commercial activity, the aim of which has been to promote an environmental objective. (With regard to fundamental right to the environment, see in particular Constitutional Law Committee reports PeVL 21/1996, PeVL 38/1998, PeVL

6/2010 and PeVL 32/2010, and with regard to evolution, Constitutional Law Committee report PeVL 55/2018 and the reports referenced therein).

In its reports, the Constitutional Law Committee has held that by virtue of section 20 of the Constitution, the State is not only empowered to protect nature and its diversity but is also responsible for it (Constitutional Law Committee reports PeVL 58/2014, p. 7 and PeVL 5/2017, p. 6). Additionally, the Committee has held that the responsibility referred to in the provision covers both preventing the destruction or degradation of the environment and active pro-environmental measures, and that individuals may contribute both by actively doing things and passively refraining from harming the environment (Constitutional Law Committee report PeVL 26/2020, p. 2).

The Constitutional Law Committee has emphasised that the responsibility for the environment under section 20 of the Constitution finds tangible expression especially in the environmental legislation that is in force (Constitutional Law Committee report PeVL 69/2018). According to the report, the Committee has weighed in on the enactment of legislation including the Environmental Protection Act (report PeVL 10/2014 vp), the Nature Conservation Act (reports PeVL 21/1996, PeVL 15/2003, PeVL 25/2014), the Water Act (reports PeVL 61/ 2010, PeVL 8/2017 and the reports mentioned therein) and the Mining Act (report PeVL 32/2010, see also e.g. PeVL 8/2017). The Committee finds it also to be relevant that the national regulation of environmental responsibility under public law is largely based on European Union legislation, which has been implemented in Finland primarily by means of the Environmental Protection Act. The substance of this regulation is essentially determined by EU legislation, while there is fairly little regulation put in place on the basis of purely national considerations and regulatory needs.

Key environmental legislation has been either reformed in recent years (Environmental Protection Act 527/2014, Climate Act 423/2022) or is currently undergoing reform (Nature Conservation Act, Land Use and Building Act). These reforms have also involved assessment of the relationship of the legislation with fundamental and human rights, the fundamental right to the environment included. In addition, preparation of the Nature Conservation Act and Climate Act involved exceptionally extensive and multiform public consultations with a view to obtaining input from the general public and stakeholders.

In the interests of ensuring that the right under section 20 of the Constitution is realised, Finland has also enacted a considerable volume of legislation to govern topics such as environmental health and health protection. Such legislation includes the Health Protection Act (763/1994), the Tobacco Act (549/2016) and the Chemicals Act (599/2013). This legislation for its part safeguards the realisation of the rights guaranteed by section 20 of the Constitution.

The human right to a healthy environment also appears in sections 1 and 2 of the Water Services Act (119/2001), which provide:

> *Section 1 Objective*
> *The objective of this Act is to ensure water services which provide access to a sufficient amount of good-quality water for household use with respect to health and otherwise at reasonable cost and appropriate sewerage in terms of the protection of health and the environment.*
> *Section 2 Scope of application*
> *This Act [...] also applies to the sewerage for rainwater or meltwater (runoff water) accumulated on soil surface in built areas or the roof or other surface of a building as far as this is the task of the water utility. The provisions on runoff water in this Act also apply to drainage water from foundations.*

FRANCE

1. En vue de la préparation d'une étude sur l'utilité et la faisabilité d'un nouvel instrument sur les droits de l'homme et l'environnement, le Secrétariat du Groupe de rédaction sur les droits de l'homme et l'environnement du Comité directeur pour les droits de l'Homme a circulé aux États-membres le questionnaire suivant :

> *Question 1*
> *La Constitution, la législation ou la jurisprudence protège-t-elle une forme explicite de droit humain à un environnement sain et, dans l'affirmative, en quels termes.*
>
> *Question 2*
> *Ce droit est-il justiciable et, dans l'affirmative, à quelles conditions ?*
>
> *Question 3*
> *Quelle est la position, le cas échéant, des tribunaux nationaux au sujet de ce droit dans leur jurisprudence ?*

2. Ces questions appellent les réponses suivantes s'agissant de la France.

Les droits garantis par la Charte de l'environnement

3. L'article 1er de la Charte de l'environnement prévoit que :

> *Chacun a le droit de vivre dans un environnement équilibré et respectueux de la santé.*

4. L'article 2 de la Charte de l'environnement prévoit en outre que :

> *Toute personne a le devoir de prendre part à la préservation et à l'amélioration de l'environnement.*

5. L'ensemble des droits et obligations issus de la Charte de l'environnement s'imposent aux pouvoirs et aux autorités administratives dans leur domaine de compétence respectif[4].

6. En combinant les articles 1 et 2 de la Charte, le Conseil constitutionnel a notamment dégagé une « obligation de vigilance » selon laquelle chacun est tenu à l'égard des atteintes à l'environnement qui pourraient résulter de son activité[5]. De la même manière, le Conseil d'État a jugé, sur le seul fondement de l'article 2 de la Charte de l'environnement, que *« l'ensemble des personnes et notamment les pouvoirs publics et les autorités administratives sont tenus à une obligation de vigilance à l'égard des atteintes à l'environnement qui pourraient résulter de leur activité* »[6].

7. En outre, par une décision du 31 janvier 2020[7], le Conseil constitutionnel a déduit du préambule de la Charte de l'environnement que « *la protection de l'environnement, patrimoine commun des êtres humains* » constitue un objectif de valeur constitutionnelle, qui est de nature à justifier des limitations apportées par la loi à d'autres exigences constitutionnelles et, notamment, à la liberté d'entreprendre.

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[4] Conseil constitutionnel, décision n° 2008-564 DC du 19 juin 2008, cons. 18.
[5] Conseil constitutionnel, 8 avril 2011, n° 2011-116 QPC.
[6] CE, 14 sept. 2011, n° 348394, *Pierre*, Lebon page 441.
[7] Conseil constitutionnel, décision n° 2019-823 QPC du 31 janvier 2020.

8. Avant cette décision du 31 janvier 2020, le Conseil constitutionnel n'avait envisagé la protection de l'environnement que comme un objectif d'intérêt général en se référant aux intentions du législateur[8].

9. Pour autant, en vertu de la distinction traditionnelle opérée par le droit constitutionnel, un objectif à valeur constitutionnelle, à la différence d'une règle constitutionnelle ayant un caractère impératif, ne comporte qu'une obligation de moyen et nécessite, pour sa mise en œuvre, l'intervention du législateur. En outre, les objectifs de valeur constitutionnelle ne constituent pas des droits ou libertés invocables dans le cadre d'une question prioritaire de constitutionnalité. Il s'agit uniquement de normes sur le fondement desquelles le législateur peut apporter des restrictions à des droits ou libertés constitutionnels.

L'invocabilité des articles de la Charte de l'environnement devant les juridictions internes

10. Les articles de la Charte de l'environnement sont invocables devant le Conseil constitutionnel ainsi que devant les juridictions administratives.

L'invocabilité de la Charte de l'environnement devant le Conseil constitutionnel

11. Les articles de la Charte de l'environnement sont invocables devant le Conseil constitutionnel pour autant, en QPC, qu'ils consacrent une règle constitutionnelle impérative, et non seulement un objectif à valeur constitutionnelle. Tel est le cas de l'article 1er de la Charte qui consacre un droit de vivre dans un environnement équilibré et respectueux de la santé[9], mais aussi de l'article 2 de la Charte qui institue un devoir de préservation et d'amélioration de l'environnement[10].

12. La possibilité d'invoquer la méconnaissance des dispositions de la Charte devant le Conseil constitutionnel reste cependant limitée : celui-ci reconnaît au législateur une marge d'appréciation importante pour définir les modalités selon lesquelles la protection de ces exigences est assurée et ne censure que leur dénaturation[11].

13. En outre, seul l'article 5 de la Charte, garantissant le respect du principe de précaution, est considéré comme d'application directe, c'est-à-dire même en l'absence d'intervention du législateur, au motif que les obligations qui en découlent pour les autorités publiques ont été définies de manière suffisamment précise.

14. En tout état de cause, il convient de souligner que le Conseil constitutionnel opère un contrôle de conciliation entre des exigences contradictoires. C'est l'objet même de l'article 6 de la Charte selon lequel *« les politiques publiques concilient la promotion et la mise en valeur de l'environnement, le développement économique et le progrès social* ».

L'invocabilité de la Charte de l'environnement devant les juridictions administratives

a) <u>Sur l'invocabilité dans le cadre d'un recours en excès de pouvoir du moyen tiré de la violation de l'article 1er de la Charte de l'environnement</u>

15. Le Conseil d'État reconnaît que les actes administratifs doivent respecter les dispositions de la Charte de l'environnement, lesquelles ont valeur constitutionnelle[12].

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[8] Voir par exemple décision n°2019-808 QPC du 11 octobre 2019, paragr. 7 et 8 ; décision n°2009-599 DC du 29 décembre 2009, cons. 81 et 82 concernant l'objectif de lutte contre le réchauffement climatique.

[9] Conseil constitutionnel, décision n° 2011-116 QPC du 8 avril 2011 ; CE 26 février 2014, n° 351514.

[10] Conseil constitutionnel, décision n° 2014-394 QPC du 7 mai 2014 ; CE, 14 septembre 2011, n°348394.

[11] Conseil constitutionnel, décision n° 2017-672 QPC du 10 novembre 2017, paragr. 14 et 15 ; décision n° 2011-116 QPC du 8 avril 2011, cons. 5.

[12] CE, Assemblée, 3 octobre 2008, n° 297931, Rec. ; confirmant la valeur constitutionnelle de la Charte de l'environnement, v. CE, Assemblée, 12 juillet 2013, n° 344522, Rec.

16. S'agissant plus spécifiquement de l'article 1er de la Charte, le Conseil d'État considère toutefois que lorsque des dispositions législatives ont été prises pour assurer la mise en œuvre des principes énoncés à l'article 1er de la Charte de l'environnement, la légalité des décisions administratives s'apprécie par rapport à ces dispositions législatives, sous réserve, s'agissant de dispositions législatives antérieures à l'entrée en vigueur de la Charte de l'environnement, qu'elles ne soient pas incompatibles avec les exigences qui découlent de cette charte[13].

17. Il appartient en principe aux autorités administratives de veiller au respect de cette disposition lorsqu'elles sont appelées à préciser les modalités de mise en œuvre d'une loi. C'est au juge administratif qu'il incombe ensuite de vérifier si les mesures prises pour l'application de la loi, dans la mesure où elles ne se bornent pas à en tirer les conséquences nécessaires, n'ont pas elles-mêmes méconnu cette disposition[14].

18. Le recours est soumis aux conditions classiques de recevabilité des recours pour excès de pouvoir, applicables aux personnes physiques et morales. S'agissant plus spécifiquement de l'exigence d'un intérêt du requérant lui donnant qualité à agir en justice, les dispositions de l'article 2 de la Charte de l'environnement selon lesquelles « *toute personne a le devoir de prendre part à la préservation et à l'amélioration de l'environnement* », n'ont pas pour effet de « *conférer à toute personne qui l'invoque intérêt pour former un recours pour excès de pouvoir à l'encontre de toute décision administrative qu'elle entend contester*[15] ».

19. Enfin, comme pour toute illégalité, le juge administratif peut en principe tirer, dans le cadre d'une action en responsabilité de la puissance publique, les conséquences de l'illégalité d'une décision administrative qui méconnaîtrait les dispositions de la Charte reconnaissant le droit à un environnement sain dans les conditions évoquées supra, lorsque l'illégalité est en relation de causalité directe et certaine avec un ou plusieurs préjudices qu'un requérant – personne physique ou morale – établirait subir du fait de cette illégalité, qui est présumée fautive[16].

b) Sur l'invocabilité dans le cadre d'un référé-liberté du droit de chacun de vivre dans un environnement équilibré et respectueux de la santé

20. Dans une décision en date du 20 septembre 2022[17], le Conseil d'État a ouvert aux personnes (morales et physiques) la possibilité de former un référé-liberté, sur le fondement de l'article L. 521-2 du code de justice administrative, en invoquant une atteinte grave et manifestement illégale au droit de vivre dans un environnement équilibré et respectueux de la santé.

21. Il a en particulier jugé que « *le droit de chacun de vivre dans un environnement équilibré et respectueux de la santé, tel que proclamé par l'article premier de la Charte de l'environnement, présente le caractère d'une liberté fondamentale au sens de l'article L. 521-2 du CJA*[18] ».

22. Il a également précisé les contours d'un tel recours dans les termes suivants :

> *Toute personne justifiant, au regard de sa situation personnelle, notamment si ses conditions ou son cadre de vie sont gravement et directement affectés, ou des intérêts qu'elle entend défendre, qu'il y est porté une atteinte grave et manifestement illégale du fait de l'action ou de la carence de l'autorité publique, peut saisir le juge des référés sur le fondement de cet article. Il lui appartient alors de faire état de circonstances particulières caractérisant la nécessité pour elle de bénéficier, dans le très bref délai prévu par ces dispositions, d'une*

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13 CE, 19 juin 2006, n°282456, aux tables.
14 CE, 26 février 2014, n°351514, aux tables.
15 CE, 3 août 2011, n° 330566, aux tables.
16 CE, Section, 26 janvier 1973, *Ville de Paris*, n° 84768, Rec.
17 CE, ord. réf., 20 septembre 2022, n°451129, Rec.
18 CE, ord. réf., 20 septembre 2022, n°451129, Rec., §5.

> *mesure de la nature de celles qui peuvent être ordonnées sur le fondement de cet article. Dans tous les cas, l'intervention du juge des référés dans les conditions d'urgence particulière prévues par l'article L. 521-2 précité est subordonnée au constat que la situation litigieuse permette de prendre utilement et à très bref délai les mesures de sauvegarde nécessaires*[19].

La jurisprudence constitutionnelle et administrative concernant le droit de vivre dans un environnement équilibré et respectueux de la santé

La jurisprudence constitutionnelle

Décision n° 2020-809 DC du 10 décembre 2020

23. Dans sa décision n° 2020-809 DC du 10 décembre 2020 (loi relative aux conditions de mise sur le marché de certains produits phytopharmaceutiques en cas de danger sanitaire pour les betteraves sucrières), le Conseil constitutionnel a précisé et renforcé le contrôle qu'il opère au regard du droit reconnu à l'article 1er de la Charte de l'environnement.

24. En premier lieu, cette décision indique que le législateur « *ne saurait priver de garanties légales* » le droit de vivre dans un environnement équilibré et respectueux de la santé consacré par l'article 1er de la Charte de l'environnement[20]. Ce droit bénéficie ainsi, à l'instar d'autres exigences constitutionnelles, d'une protection qui interdit au législateur de le vider de tout contenu : la législation doit comporter un noyau minimal de garanties assurant l'effectivité du droit de vivre dans un environnement équilibré et respectueux de la santé.

25. En second lieu, la décision énonce, pour la première fois, que les « *limitations portées par le législateur à l'exercice de ce droit ne sauraient être que liées à des exigences constitutionnelles ou justifiées par un motif d'intérêt général et proportionnées à l'objectif poursuivi*[21] ». Le Conseil constitutionnel a ainsi précisé les conditions dans lesquelles il est constitutionnellement possible d'admettre que des dispositions limitent l'exercice du droit de vivre dans un environnement équilibré et respectueux de la santé. D'une part, de telles limitations doivent être motivées par la poursuite d'un but d'intérêt général ou la mise en œuvre d'une exigence constitutionnelle. D'autre part, elles ne doivent pas être disproportionnées par rapport à l'objectif poursuivi par le législateur.

26. Il peut être souligné que le Conseil constitutionnel a pris en compte, dans son appréciation des limites apportées au droit défini à l'article 1er de la Charte, les *« incidences sur la biodiversité* » (en l'espèce, les incidences des produits contenant des néonicotinoïdes sur les insectes pollinisateurs et les oiseaux[22]).

27. Cette décision peut ainsi être regardée comme posant un premier jalon d'une obligation de garantir l'effectivité du droit de vivre dans un environnement équilibré et respectueux de la santé.

28. Le Conseil a en revanche refusé de faire découler de cet article une exigence constitutionnelle de non-régression ou de consacrer un « effet-cliquet ». C'est plutôt, selon l'expression du doyen Favoreu, un « effet artichaut » : le législateur peut enlever quelques feuilles de la protection existante, mais il ne peut toucher au cœur de celle-ci. Il en résulte que les limitations apportées à l'exercice de ce droit *« ne sauraient être que liées à des exigences constitutionnelles ou justifiées par un motif d'intérêt général et proportionnées à l'objectif poursuivi*[23] *»*.

Décision n° 2022-843 du 12 août 2022

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19 CE, ord. réf., 20 septembre 2022, n°451129, Rec., §5.
20 Conseil constitutionnel, décision n° 2020-809 DC du 10 décembre 2020, §13.
21 Conseil constitutionnel, décision n° 2020-809 DC du 10 décembre 2020, §14.
22 Conseil constitutionnel, décision n° 2020-809 DC du 10 décembre 2020, §19.
23 Conseil constitutionnel, décision n° 2020-809 DC du 10 décembre 2020, §14.

29. Par une récente décision n° 2022-843 rendue le 12 août 2022 sur saisine de parlementaires à propos de la loi portant mesures d'urgence pour la protection du pouvoir d'achat (MUPPA), le Conseil constitutionnel a consolidé sa jurisprudence sur l'article 1er de la Charte de l'environnement, au moyen de réserves d'interprétation formulées en des termes inédits.

30. La première réserve d'interprétation, commune aux articles 30 et 36 de la loi contestée qui permettaient le rehaussement du plafond d'émissions des installations de production d'électricité à partir de combustibles fossiles, prévoit que, pour être conformes à l'article 1er de la Charte de l'environnement, ces dispositions ne sauraient s'appliquer qu'en cas de menace grave sur la sécurité d'approvisionnement en gaz. À cet égard, le Conseil constitutionnel s'est pour la première fois fondé sur les alinéas introductifs du préambule de la Charte pour juger que « *la préservation de l'environnement doit être recherchée au même titre que les autres intérêts fondamentaux de la Nation* » et « *afin d'assurer un développement durable, les choix destinés à répondre aux besoins du présent ne doivent pas compromettre la capacité des générations futures à satisfaire leurs propres besoins*[24] ».

31. En pratique, cette réserve implique que l'autorité administrative devra rigoureusement motiver les actes pris en application de l'article 30 au regard de l'existence d'une menace grave sur l'approvisionnement énergétique et devra être en mesure de justifier la persistance dans le temps de cette menace pour pouvoir légalement maintenir les actes dérogatoires en cause.

32. Le Conseil constitutionnel contribue ainsi à élargir le champ de l'article 1er de la Charte de l'environnement. Le droit de chacun de disposer d'un environnement sain et équilibré doit donc être appréhendé dans l'optique de préserver un juste équilibre, d'une part, avec les autres intérêts fondamentaux de la Nation et, d'autre part, entre les besoins du présent et ceux des générations futures.

33. La seconde réserve d'interprétation portait sur l'obligation des exploitants des installations concernées de compenser les émissions de gaz à effet de serre résultant du rehaussement du plafond d'émissions, cette compensation devant permettre de financer des projets situés sur le territoire français favorisant notamment le renouvellement forestier, le boisement, l'agroforesterie, l'agrosylvopastoralisme ou l'adoption de toute pratique agricole réduisant les émissions de gaz à effet de serre ou de toute pratique favorisant le stockage naturel de carbone.

34. Le Conseil constitutionnel juge qu'il incombe au pouvoir réglementaire de fixer le niveau et les modalités de cette obligation afin de compenser « effectivement » la hausse des émissions de gaz à effet de serre et de ne pas compromettre le respect des objectifs de réduction de ces émissions et de réduction de consommation énergétique primaire des énergies fossiles fixés par l'article L. 100-4 du code de l'énergie[25].

35. En définitive, la décision du Conseil constitutionnel à la fois constitue une étape nouvelle dans l'élaboration d'une jurisprudence dirigée vers l'objectif de préservation de l'environnement, mais offre aussi un cadre rigoureux dans lequel le Gouvernement devra s'inscrire pour définir les modalités d'application de la loi.

La jurisprudence administrative

a) *S'agissant de l'application par le juge administratif des dispositions de l'article 1er de la Charte de l'environnement*

CE, 19 juin 2006, n° 282456

[24] Conseil constitutionnel, décision n° 2022-843 du 12 août 2022, §22.
[25] Conseil constitutionnel, décision n° 2022-843 du 12 août 2022, §24.

36. Dans cette affaire, les associations requérantes critiquaient le maintien, à l'article R. 1334-28 du code de la santé publique, du seuil de 5 fibres par litre pour mesurer le niveau d'empoussièrement dans l'air, au-delà duquel le propriétaire est tenu faire procéder à des travaux de confinement ou de retrait de l'amiante, et l'absence d'obligation d'évaluation périodique de l'état de conservation pour les matériaux et produits mentionnés sur la liste B annexée au décret attaqué.

37. Le Conseil d'État a relevé que l'extension de l'obligation de faire procéder à des travaux de confinement ou de retrait de l'amiante en-deçà du niveau d'empoussièrement de 5 fibres par litre conduirait à une multiplication de chantiers, eux-mêmes générateurs de risques de nature à affecter l'environnement et, par suite, la santé des personnes dans les immeubles en cause, qui seraient hors de proportion, en l'état des connaissances scientifiques et au regard des capacités de réalisation de tels travaux et d'élimination des déchets produits, avec les bénéfices attendus d'une telle mesure.

38. Il a par ailleurs relevé que le décret attaqué prévoyait que le rapport de repérage émette des recommandations de gestion adaptées aux besoins de protection des personnes et que le Gouvernement a saisi le Haut Conseil de la santé publique d'une demande d'expertise complémentaire.

39. Il en a conclu que les pouvoirs publics n'avaient pas, en l'état des connaissances disponibles à la date de la décision attaquée et au regard des moyens dont disposaient les intervenants pour éliminer l'amiante à la même date, adopté des dispositions méconnaissant le droit de vivre dans un environnement respectueux de la santé.

CE, ord. réf., 20 septembre 2022, n° 451129

40. Par une décision en date du 20 septembre 2022, le Conseil d'État a estimé que le droit de chacun de vivre dans un environnement équilibré et respectueux de la santé présentait le caractère d'une liberté fondamentale au sens du référé-liberté.

41. Il a cependant constaté que le recours en référé tendant à ce qu'il soit enjoint au département de suspendre les travaux de recalibrage d'une route départementale, présentait un défaut d'urgence et a souligné que les requérants se bornaient à « *faire valoir que la poursuite de ces travaux portera[it] atteinte de manière irréversible à [des] espèces protégées et entraînera[it] la destruction de leur habitat*[26] », sans contester les différentes décisions administratives, intervenues entre 2016 et 2020 concernant le projet avant l'engagement des travaux début 2021. Il a ajouté que les requérant n'avaient pas démontré l'existence d'une atteinte grave et manifestement illégale à leur liberté fondamentale en « *se bornant à faire valoir, de façon générale, le risque d'atteinte irréversible aux espèces qu'ils étudient*[27] ».

b) S'agissant de la protection du droit de vivre dans un environnement sain – au sens large - via le contrôle de légalité opéré par le juge administratif

(i) Une prise en compte ancienne des impératifs environnementaux, notamment en matière d'urbanisme

CE, 5 février 1997, Commune de Roquevaire, n° 152674

42. Saisi de la révision d'un plan d'occupation des sols créant quatre nouvelles zones d'activité et rendant possible l'extension d'une usine dont le fonctionnement entraînait de graves nuisances pour le voisinage, le Conseil d'Etat a jugé que le rapport de présentation ne contenait que des indications éparses et succinctes sur l'état initial de l'environnement et n'analysait ni les incidences de la mise en œuvre du plan révisé sur l'environnement ni les

[26] CE, ord. réf., 20 septembre 2022, n°451129, Rec., §8.
[27] CE, ord. réf., 20 septembre 2022, n°451129, Rec., §9.

mesures prises pour le préserver. Dans ces conditions, le plan révisé était illégal au regard des dispositions de l'article R. 123-17 du code de l'urbanisme[28].

CE, 15 décembre 2010, n° 323250

43. Le respect de l'environnement est un élément qui est mis en balance par l'administration d'abord et par le juge ensuite s'agissant d'apprécier la conformité à l'article 8 de la Convention européenne des droits de l'homme d'une décision par laquelle le maire refuse, sur le fondement de l'article L. 111-6 du code de l'urbanisme, un raccordement d'une construction à usage d'habitation irrégulièrement implantée aux réseaux d'électricité, d'eau, de gaz ou de téléphone.

44. Dans sa décision du 15 décembre 2010, le Conseil d'Etat a jugé que si une telle ingérence, au sens de l'article 8 de la Convention européenne des droits de l'homme, peut être justifiée par le but légitime que constituent le respect des règles d'urbanisme et de sécurité ainsi que la protection de l'environnement, il appartient, dans chaque cas, à l'administration de s'assurer et au juge de vérifier que l'ingérence qui découle d'un refus de raccordement est, compte tenu de l'ensemble des données de l'espèce, proportionnée au but légitime poursuivi.

CE, 8 octobre 2012, Commune de Lunel, n° 342423

45. Dans son contrôle de la légalité des autorisations individuelles d'urbanisme, le juge administratif considère que le principe de précaution résultant des dispositions des articles 1er et 5 de la Charte de l'environnement ainsi que de l'article L. 110-1 du code de l'environnement s'applique aux activités qui affectent l'environnement dans des conditions susceptibles de nuire à la santé des populations concernées. Il en déduit par exemple qu'un requérant peut utilement faire valoir, à l'appui de conclusions d'annulation d'une décision d'urbanisme relative à l'implantation d'antennes relais de téléphonie mobile, que le principe de précaution protégé par l'article 5 de la Charte de l'environnement aurait été méconnu au motif que les champs radioélectriques émis par les antennes porteraient atteinte à la santé humaine.

CE, 6 décembre 2017, n° 398537

46. Le Conseil d'Etat a jugé, sur le fondement de l'art. R. 111-15 (repris à l'art. R. 111-26) du code de l'urbanisme, qu'il n'appartient pas à l'autorité compétente pour délivrer un permis de construire d'assortir le permis de construire délivré pour une installation classée de prescriptions relatives à son exploitation et aux nuisances qu'elle est susceptible d'occasionner, mais qu'il lui incombe, en revanche, de tenir compte le cas échéant des prescriptions édictées au titre de la police des installations classées ou susceptibles de l'être.

CE, 26 juin 2019 France nature environnement c\ ministère de la transition écologique et solidaire, n° 414931

47. Par une décision du 26 juin 2019, le Conseil d'Etat a annulé le décret n° 2017-1039 du 10 mai 2017 en tant qu'il ne soumettait pas à évaluation environnementale la création ou l'extension d'unités touristiques nouvelles (UTN) soumises à autorisation de l'autorité administrative dans les communes non couvertes par un schéma de cohérence territoriale (SCoT) ou un plan local d'urbanisme (PLU), alors qu'elles étaient susceptibles d'avoir une incidence notable sur l'environnement.

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[28] Voir également CE, 8 mars 1996, *Commune de Donges*, n° 161383.

48. Par ailleurs, le juge administratif prend en compte de longue date l'atteinte portée à l'environnement dans le cadre de son contrôle dit « du bilan »[29] portant sur les déclarations d'utilité publique[30]. Par exemple, il a annulé un décret déclarant le barrage de la Trézence d'intérêt général et d'utilité publique eu égard à la faible utilité publique au regard des objectifs annoncés, alors que le coût de l'opération et les atteintes à l'environnement qu'elle était susceptible d'entraîner étaient élevées[31].

49. Le juge administratif vérifie néanmoins que la protection de l'environnement n'est pas invoquée de manière dévoyée par une collectivité pour justifier des décisions qu'elles pourrait prendre dans le cadre de la mise en œuvre de sa politique urbanistique[32] ou, sous l'empire de l'ancienne jurisprudence en matière d'intérêt à agir, qu'une collectivité n'agit pas de manière abusive en se prévalant uniquement de l'atteinte à l'environnement visuel de ses habitants pour contester le permis de construire délivré par une commune limitrophe[33].

(ii) Un renforcement du contrôle du juge au regard du droit européen et des engagements internationaux de la France

CE, 12 juillet 2017, Association les amis de la terre et autres, n° 394254

50. Par une décision du 12 juillet 2017, s'agissant de la qualité de l'air, le Conseil d'Etat a jugé que les personnes physiques ou morales directement concernées par le dépassement des valeurs limites fixées par l'annexe XI de la directive n° 2008/50/CE du Parlement européen et du Conseil du 21 mai 2008 concernant la qualité de l'air ambiant et un air pur pour l'Europe doivent pouvoir, après leur date d'entrée en vigueur, obtenir des autorités nationales, le cas échéant en saisissant les juridictions compétentes, l'établissement d'un plan relatif à la qualité de l'air.

51. S'agissant de dépassements persistants des valeurs limites de concentrations en particules fines et en dioxyde d'azote dans plusieurs zones administratives de surveillance de la qualité de l'air, le Conseil d'Etat a considéré que les plans de protection de l'atmosphère adoptés pour les zones concernées sur le fondement de l'article L. 222-4 du code de l'environnement, qui tiennent lieu des plans relatifs à la qualité de l'air prévus par l'article 23 de la directive du 21 mai 2008, et les conditions de leur mise en œuvre, devaient être regardés comme insuffisants dès lors qu'ils n'avaient pas permis que la période de dépassement des valeurs limites soit la plus courte possible.

52. Par conséquent, le refus de prendre toute mesure utile et d'élaborer de nouveaux plans conformes aux exigences de la directive a été annulé. Il a également été enjoint au Premier ministre et au ministre chargé de l'environnement de prendre toutes les mesures nécessaires pour que soient élaborés et mis en œuvre des plans permettant de ramener, pour ces zones, les concentrations en dioxyde d'azote et particules fines PM10 sous les valeurs limites dans le délai le plus court possible.

53. Après avoir constaté l'inexécution partielle de sa décision du 12 juillet 2017, le Conseil d'Etat a, par une seconde décision d'assemblée du 10 juillet 2020[34] ; prononcé une astreinte de 10 millions d'euros par semestre de retard et mis la somme correspondante à la charge de l'Etat. Cette astreinte a été liquidée par deux décisions successives rendues les 4 août 2021 et 17 octobre 2022 pour un montant total de 30 millions d'euros.

CE, 19 novembre 2020, Commune de Grande-Synthe, n°427301

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[29] CE, Assemblée, 18 mai 1971, décision dite « Ville Nouvelle Est », n° 78825.
[30] Voir pour des travaux de construction d'une autoroute CE, 6 juillet 1992, *Association pour la protection et la mise en valeur des sites des bords de Loire et* autres, n° 123405, aux tables.
[31] CE, 22 octobre 2003, *Association SOS-Rivières et environnement et* autres, n° 231953, Rec.
[32] S'agissant de la mise en œuvre de son droit de préemption, v. CE, 29 juin 1992, n° 107174.
[33] CE, 22 mai 2012, *SNC MSE Le Haut des* épinettes, n° 326367.
[34] CE, 10 juillet 2020, *Association les amis de la terre et autres*, n° 428409.

54. Par une décision du 19 novembre 2020, le Conseil d'Etat a accepté de contrôler les refus implicites du Président de la République, du Premier ministre et du ministre de la transition écologique à la demande de la commune de Grande-Synthe et de son maire de prendre « toutes mesures utiles » permettant d'infléchir la courbe des émissions de gaz à effet de serre en vue de respecter les engagements pris par la France en la matière.

55. Après avoir admis l'intérêt à agir de la commune de Grande-Synthe, le Conseil d'Etat a demandé au Gouvernement de justifier sa trajectoire de réduction des gaz à effet de serre pour tenir son objectif de réduction de 40% entre 1990 et 2030, conformément aux dispositions de l'article L. 100-4-I-1° du code de l'énergie et ordonné un supplément d'instruction.

56. Par une seconde décision du 1er juillet 2021[35], le Conseil d'Etat a annulé le refus implicite des autorités de prendre les mesures supplémentaires nécessaires pour infléchir la courbe des émissions de gaz à effet de serre produites sur le territoire national comme étant incompatible avec la trajectoire de réduction de ces émissions et a enjoint au Gouvernement de prendre dans un délai de neuf mois, soit avant le 31 mars 2022, toutes mesures utiles pour atteindre l'objectif issu de l'Accord de Paris.

TA Paris, 3 février 2021 et 14 octobre 2021, Association Oxfam France et autres, n° 1901967 et autres

57. Par un premier jugement du 3 février 2021, le tribunal administratif de Paris a considéré, à la demande de quatre associations, que l'État devait réparer le préjudice écologique causé par le non-respect des objectifs fixés par la France en matière de réduction des émissions de gaz à effet de serre et ordonné un supplément d'instruction avant de statuer sur l'évaluation et les modalités de réparation de ce préjudice.

58. À la suite de ce supplément d'instruction, le tribunal a constaté, par un second jugement en date du 14 octobre 2021, que le plafond d'émissions de gaz à effet de serre fixé par le premier budget carbone avait été dépassé de 62 millions de tonnes « d'équivalent dioxyde de carbone » (Mt de CO2eq) mais qu'une partie avait été rattrapée depuis, notamment du fait du confinement de la population. Il a alors ordonné au Gouvernement de prendre toutes les mesures utiles de nature à réparer le préjudice non encore compensé et, pour prévenir l'aggravation des dommages constatés, imposé que cette réparation intervienne au 31 décembre 2022 au plus tard.

GEORGIA / GÉORGIE

According to the Constitution of Georgia, the state shall take care of environmental protection and the rational use of natural resources. Article 29 of the Constitution of Georgia guarantees everyone's right to live in a healthy environment, to enjoy the natural environment and public space, as well to be timely informed about the state of the environment and to care for the environment. The right to participate in decision-making on environmental issues is guaranteed by law. Furthermore, according to the Constitution of Georgia (art. 29), environmental protection and the rational use of natural resources shall be ensured by law, taking into account the interests of current and future generations.

According to the Law of Georgia "On Environmental Protection", which is the general environmental protection framework act in Georgia, (art. 6), "a citizen has the right to live in a safe

[35] CE, 1er juillet 2021, *Commune de Grande-Synthe et autres*, n° 427301, Rec.

and healthy environment, to receive complete, objective and timely information on the state of his work and living environment".

GERMANY / ALLEMAGNE

Neither the German Basic Law (*Grundgesetz*) nor Germany's ordinary laws provide for an explicit (fundamental) right to a healthy environment.
It is true that Article 20a of the Basic Law states the following: **"Mindful also of its responsibility towards future generations, the state shall protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order."**

Article 20a of the Basic Law does **not grant individuals any individual, enforceable rights**. It rather defines a fundamental state objective: Article 20a of the Basic Law establishes environmental protection as a state responsibility and obliges all three state powers to engage in active and appropriate environmental policy. In line with the nature of such a state objective, the state is granted broad discretion.

Article 20a of the Basic Law is binding both for the Federation and the *Länder*. The state objective of environmental protection can now also be found in all *Länder* constitutions, though with varying accentuations.

GREECE / GRÈCE

Yes, article 24 (1) of the 1975 Constitution, as revised in 2001, states that "[t]he protection of the natural and cultural environment constitutes a duty of the State and a right of every person".

It should be noted that, in its original version, article 24 established a "duty of the State" to protect the natural and cultural environment. On the basis of that article, the Council of State (Supreme Administrative Court), while exercising the constitutionality review of laws and regulatory administrative acts, has developed an innovative case law, by recognizing a fundamental subjective right to the protection of the environment. Furthermore, Greece became in 1986 one of the first States to adopt a framework law on the protection of the environment (Law 1650/1986).

Building upon the abovementioned case law and legislation, the revised article 24 expressly enshrined, as already mentioned, not only "a duty of the State" but also "a right of every person" to "the protection of the natural and cultural environment".
The right to environment is characterized as an individual, social and political right, all these aspects (*status negativus*, *status positivus* and *status activus* respectively) being complementary. At the same time, article 24 establishes the State's obligation to protect and take preventive or enforcement action under the principle of sustainability and transposes into the domestic legal order the principle of prevention.
According to article 24 of the Constitution, the protection of the environment includes the protection of the natural environment, especially the forests (article 24 para. 1 and interpretative clause in conjunction with article 117 paras. 3-4), the built environment (article 24 paras. 2-5) and the cultural environment (article 24 paras. 1, 6).

More specifically, article 24 (1) of the Constitution, as revised, provides that "[t]he State is bound to adopt special preventive or repressive measures for the preservation of the environment in the context of the principle of sustainable development. Matters pertaining to the protection of forests and forest expanses in general shall be regulated by law. The compilation of a forest registry constitutes an obligation of the State. Alteration of the use of forests and forest expanses is

prohibited, except where agricultural development or other uses imposed for the public interest prevail for the benefit of the national economy".

Paras. 2-5 of article 24 (2) regulate issues related to the arrangement, development, urbanisation and expansion of towns and residential areas in general, including the participation of property owners. Para. 6 of article 24 is devoted to monuments and historic areas and elements.

Besides, the protection of the environment can also be based on the protection of the value of the human being (article 2 (1) of the Constitution), on the right to the free development of the personality (article 5 (1)), or on the right to health (article 5 (5) in conjunction with article 21 (3)).

ITALY / ITALIE

The protection of the environment was recently included in the Italian Constitution.

Article 9 of the Italian Constitution now declares that "*The Republic promotes the development of culture and scientific/technical research, protects environment, biodiversity and ecosystems, also in the interest of future generations; the laws of the State will regulate the forms of animals protection*".

This wording follows judge-made notions created in the past years to extend the protectionof the natural landscape in order to compensate the absence of a direct protection of the environment. However, an express reference to the environment had already been introduced in the Constitution in 2001 as regards relations between the State and the Regions, as a matter falling within the exclusive legislative competence of the State.

Moreover, Article 41, concerning the freedom of economic initiative, now enshrines: "*Private economic initiative is free. It cannot take place in conflict with social utility or when damagingsafety, freedom, human dignity, health and environment. The law provides appropriate programs and controls, so that public and private economic activities can be directed and coordinated for social and environmental purposes*".

This Article was integrated with a limitation to the right to a free private initiative that cannot be enjoyed in a way harmful to health and environment.

These Constitutional amendments represent an increase of the level of protection for citizens' health, especially the most vulnerable groups such as children and sick/elderly people. Moreover, the perspective of protecting the environment "in the interests of future generations" addresses the challenging vision of the European Green Deal, and it is clearly in line with the European Next Generation EU plan, recently adopted in Italy as National Recovery & Resilience Plan (PNRR).

This is going to impact on the future and existing Italian environmental legislation and future caselaw with a view on human rights, too.

MINISTRY OF JUSTICE

ABSTRACT OF THE RELEVANT LEGAL FRAMEWORK

- **Italian Constitution**:

Article 9
The Republic promotes the development of culture and scientific and technical research [cf. Articles 33 and 34].
It safeguards the landscape and historical and artistic heritage of the Nation.
It safeguards environment, biodiversity, and ecosystems in the interest of future generations as well. The State legal system regulates ways and forms to safeguard animals.

Article 32
The Republic safeguards health as a fundamental right of the person and in the interest of the community, and guarantees free treatments to the most deprived persons.
No one can be obliged to undergo a special health treatment except by law. The law, under no circumstances, can violate the limits imposed by the respect for the human being.

Before the introduction of paragraph 3 in the Article 9 of the Constitution by means of the Constitutional Law No. 1 of 11th February 2022, via judgement No. 210 of 22nd May 1987, the Constitutional Court made clear that the right to health recognised by Article 32 of the Constitution includes the right to a healthy environment.

Article 41
The private economic initiative is free.
It cannot be carried out in contrast with the social usefulness or in such a way to cause damage to health, environment, security, freedom, and human dignity.
The law determines the appropriate programmes and controls for public and private economic activity be directed and coordinated for social and environmental purposes.

- **Legislation**

Law of 8th July 1986 'Establishment of the Ministry of the Environment and provisions on environmental damage' Environment Code (Legislative Decree No. 152/2006 and subsequent amendments and additions)
Consolidated Act on health and safety at work (Legislative Decree No. 81/2008)
Criminal Code: Title VI bis – Art. 452 bis of the Criminal Code and following articles (environmental crimes introduced by Law No. 68 of 22nd May 2015).
Article 25 undecies of Legislative Decree No. 231/2001 with a new list of crimes, a prerequisite of the bodies' liability, whose commission always follows the enforcement of a pecuniary sanction (the article was added by Legislative Decree No. 121 of 7th July 2011).

1. THE ENVIRONMENTAL LEGISLATION IN ITALY

Italy provides for the safeguard of the environment by law as required by its Constitution**.** Italian environmental law is constantly evolving due to new EU Directives.
At international level, Italy is a party to the **UNFCCC** (United Nations Framework Convention on Climate Change ratified by Law No. 65 on 15th January 1994) and **Kyoto Protocol** (ratified by Law No. 120 on 1st June 2002). During the Kyoto Protocol's second commitment period (ratified by Law No. 79 on 3rd May 2016) Italy is bound to reduce greenhouse gas (GHG) emissions to 13% below 2005 levels for the period 2013 to 2020.
Italy is also a party to the **Paris Agreement** (ratified by Law No. 204 on 4th November 2016).
Regarding the **European Legislation**, Italy has implemented all relevant EU legislation on reduction of GHG emissions, including the Emissions Trading Directive (2003/87/EC), by Legislative Decree No. 2016/2006, and Renewable Energy Directive (2009/28/EC), among others. For instance, in order to make its GHG reduction commitments effective, Italy has adopted measures including •The "National Action Plan to reduce greenhouse gas emission levels" containing initiatives to •improve the energy efficiency of the national economic system; •increase the development of the renewable energy sources; •implement the Kyoto Protocol mechanisms for joint initiatives with other industrialised countries (Joint Implementation) and developing countries (Clean Development Mechanism); and •support research and testing to introduce hydrogen as a fuel in the energy sector and national transport system; •A fund for financial provision to support the measures aimed at implementing the Kyoto Protocol (Articles 1110 to 1115, Law No. 296/2006).
The law provides for regulatory authorities under the following terms.

- **Central Regulatory Authorities:** The State has exclusive competence in environmental regulation (as set out by the Italian Constitution). The relevant national authority is the **Ministry of Ecological Transition** (*Ministero della Transizione Ecologica*) (MET) (formerly called Ministry of the Environment and Safeguard of Land and Sea (*Ministero dell'Ambiente*

e della Tutela del Territorio e del Mare) (Law Decree No. 22/2021 converted into Law No. 55/2021).

- **Other national regulatory authorities include**: Ministry of Health (*Ministero della Salute*), Ministry of Economic Development (*Ministero dello Sviluppo Economico*), Ministry of Cultural and Landscape Heritage (*Ministero dei Beni Culturali e Ambientali*), and Interministerial Committee for Ecological Transition (*Comitato Interministeriale per la Transizione Ecologica*) (C.I.T.E.). Scientific agencies with a regulatory role include: National Institute for Environmental Safeguard and Research (*Instituto Superiore per la Protezione e la Ricerca Ambientale*) (I.S.P.R.A.) and National Institute of Health (*Istituto Superiore di Sanità*) (I.S.S.).
- **Regions:** whereas the aforementioned bodies have delegated legislative powers, **Regions** too can issue environmental regulations. Local authorities have the power to grant permits. These authorities include: Regions, Provinces, and metropolitan cities; - Territorial Authorities (*Autorità d'Ambito Territoriale Ottimale*) (A.T.O.) (which organise and regulates the integrated water supply); Regional Agencies for the Protection of the Environment (*Agenzia Regionale per la Protezione Ambientale*) (A.R.P.A.); Health Protection Agencies (*Agenzie di Tutela della Salute*) (A.T.S.).

2. THE CONSTITUTION

The Constitution has been recently amended to stress the importance of such urge. Article 9 of the Constitution stipulates that “The Republic promotes the development of culture and scientific and technical research. **It safeguards natural landscape and historical and artistic heritage of the Nation. It safeguards environment, biodiversity, and ecosystems on behalf of the next generations as well. The State Law regulates the ways and forms for Animal Protection”** (the new part is in bold).

In particular, the protection of the "***landscape***" constitutionally sanctioned by the Article 9 has been declined by the constitutional jurisprudence as a **landscape-environmental protection** with an 'expansive' reading of the implications of that Article of the Charter, overcoming a mere protection of the monument in nature, which surfaced in the work of the Constituent Assembly.

In this perspective (constitutional jurisprudence), **environment** is not a mere good or matter of competence but rather **a primary and systemic value**. Nor is there a lack (in **judgment No. 179 of 2019** of the Constitutional Court) of an "*evolutionary process aimed at recognising a new relation between the territorial community and its surrounding environment within which the awareness on soil has been consolidated [this was, in that judgment, ed.] as a non-renewable eco-systemic natural resource, essential for the environmental balance, capable of expressing a social function and incorporating a plurality of collective interests and utilities, including those of an intergenerational nature*". "*In this perspective, the care of the landscape concerns the entire territory, even when degraded or apparently worthless*", adds the judgment No. 71 of 2020 - which also stresses that "*Environmental landscape safeguard is no longer a national discipline, especially in view of the European Landscape Convention* (adopted in Strasbourg by the Committee of Ministers of the Council of Europe in July 2000 and ratified by the Law No. 14 in 2006) *according to which the concept of protection indissolubly connects the management of the territory to the contribution of the populations*" (hence "*the transition from a mere conservation to the need to enhance public and local communities interests with systematic interventions*", including, in that case, the acquisition and recovery of degraded lands).

In this interpretative evolution of protection, **from landscape** (therefore, of morphological, visual, and cultural nature) **to environmental** (of constitutive nature) the reform of Title V of the Constitution has also affected Article 117, second paragraph of the Constitution. It was introduced the provision on "***protection*" of the environment and ecosystem and cultural heritage,** among what is reserved to the **exclusive legislative power of the State** (with attribution, instead, of "enhancement" of environmental assets to the concurrent power of the Regions). In its commitment to interpret the new framework of the constitutional powers, the Court has also had the opportunity to reiterate (in its judgement No. 407 in 2002) that "*legislative developments and constitutional jurisprudence lead to the exclusion of the possibility of identifying a 'subject' in a technical sense*”.

And as such, it outlines a sort of "***'transversal' topic*** *regarding different competences that may well be regional, since the State is responsible for the determinations that meet the needs that deserve uniform discipline throughout the national territory*".
The **environment as a constitutionally safeguarded value** (and as a complex organic entity, according to the judgement No. 378 of 2007) flows out of an exclusively '**anthropocentric**' visual. In the wording of Article 117, second paragraph, letter s), **environment and ecosystem do not resolve a hendiadys**. "The first term is above all related to what concerns the habitat of human beings, whereas the second one relates to the conservation of nature as a value per se (**judgement No. 12 of 2009**).
In this enlarged perspective arises the specific prediction that the Charter aims to introduce the Protection of Animals in Article 9 of the Constitution. The chosen formulation was: "***The Law of the State governs the ways and forms of Animal Protection***". Such a formulation has been a point of mediation between a rather structured number of guidelines, as pointed out in the discussion held in the Senate Constitutional Affairs Commission, between two chapters of the proposal to include the protection of animals as "*Sentient beings*" (Article 13 of the EU Lisbon Treaty) against the option of not including any provision on Safeguard of Animals, considered as included in the concept of ecosystem and biodiversity.
On the contrary, in the subject matters covered by concurring State and regional legislation, legislative authorities are vested in the Regions, except for the determination of the fundamental principles, which are laid down in the State legislation (such as the enhancement of cultural and environmental assets).

Indeed, a centralised action to safeguard the environment is certainly more effective and focused on real needs.

3. THE LEGISLATION

The key legislation on environment is the **Environmental Consolidated Act** (*Norme in materia ambientale* or *Codice dell'Ambiente*) (Legislative Decree No. 152/2006) (ECA). The **ECA** has six parts:

- Environmental general principles; Environmental Impact Assessment (EIA), and Integrated Pollution Prevention and Control (IPPC) permit (*Autorizzazione Integrata Ambientale*) (A.I.A.)); Water resources management and soil protection; Waste and packaging management; the key legislation on environment is the Environmental Consolidated Act (provisions on environment or Environment Code) (Legislative Decree No. 152/2006) (ECA).

- There are also **different environmental laws** regulating specific areas, i.e. -Presidential Decree No. 59/2013; -Single Environmental Authorisation (*Autorizzazione Unica Ambientale*) (A.U.A.); - Legislative Decree No. 49/2014: waste electrical and electronic equipment (WEEE)). Legislative Decree No. 166/2010: ambient air quality. Legislative Decree No. 188/2008: waste batteries and accumulators (WBA) and others.
- Italy implements the four amending waste Directives of the circular economy package, but many of the provisions set out in the Legislative Decrees implementing the circular economy package have not come into force yet.

4. THE LOCAL REGULATIONS AND PERMITS

Regions can issue environmental regulations if they have delegated legislative powers, as well as **Local authorities** have the power to grant administrative permits. These authorities include: Regions, Provinces, and metropolitan cities; Territorial Authorities (*Autorità d'Ambito Territoriale Ottimale*) (A.T.O.) which organise and govern integrated water supplies); Regional Agencies for the Protection of the Environment (*Agenzia Regionale per la Protezione Ambientale*) (A.R.P.A.); Health Protection Agencies (*Agenzie di Tutela della Salute*) (A.T.S.).
Environmental permits cannot be assigned, transferred, or marketed to third parties. They are public deeds issued by public agencies to enterprises and/or individuals only if specific requirements are met.

However, in practice, when a business in possession of a permit is transferred that permit can be transferred as well (*voltura*). The successor assumes the predecessor's rights and obligations by getting the same permits (based on maintenance of the same requirements) put in their name. The relevant agency (see above, Permits and Regulator) should be notified prior to the transfer. The pre-acquisition technicalities require legal advice, since even a temporary lack of permit can lead to administrative or criminal sanctions.

The permitting regime is not entirely integrated. It consists of a variety of authorisations and permits, although they are being simplified into more general and inclusive permits such as

- **IPPC Permit**. This is an integrated permit which is compulsory for all plants carrying out IPPC regulated activities (Part II, ECA). The IPPC Directive (96/61/EC) lists the industrial activities covered by the IPPC regime. It replaces the permits for •Air emissions; •Wastewater discharge; •Treatment of waste; •Disposal of equipment containing polychlorinated biphenyls and polychlorinated terphenyls (PCBs/PCTs); •Use of sewage sludge from the sewage process in agriculture. Depending on the plant's type and activity, the IPPC permit is issued by •MET at state level; •General Directorate for Sustainable Growth and Quality of Development (*Direzione Generale per la Crescita Sostenibile e la Qualità dello Sviluppo*) (CreSS) at regional level. Most of the Regions have delegated their powers to local authorities (Provinces). This generally lasts ten years from the issuance date. However, it lasts •12 years if the plant is certified under UNI EN ISO 14001 (i.e., the international standard for designing and implementing an environmental management system); •16 years if it is certified under the EU Eco-Management and Audit Scheme (EMAS), under the EMAS III Regulation ((EC) 1221/2009). The relevant authority must be notified of any change in the operating conditions. In some cases, the changes must be authorised and the review procedure is equivalent to a renewal of the permit.
- **A.U.A.** It is an integrated permit generally required for all plants that do not need to get an IPPC permit. It replaces the permits for •Wastewater discharge; •Air emissions; •Noise pollution. Provinces or metropolitan cities issue, renew and, substantially, amend the A.U.A. Applications are filed at the general protocol office for productive activities (*Sportello Unico Attività Produttive*) (S.U.A.P.) of the municipality. It lasts 15 years from the issuance. Renewals must be requested six months before the expiry date at least.
- **Single permits** for waste management or water discharge can be necessary to carry out single or specific activities.

Environmental permits cannot be assigned, transferred, or marketed to third parties. They are public deeds issued by public agencies to enterprises and/or individuals only if specific requirements are met.

However, in practice, when a business in possession of a permit is transferred that permit can be transferred as well (*voltura*). The successor assumes their predecessor's rights and obligations by getting the same permits (based on maintenance of the same requirements) put in their name. The relevant agency (see above, Permits and Regulator) should be notified prior to the transfer. The pre-acquisition technicalities require legal advice, since even a temporary lack of permit can lead to administrative or criminal sanctions.

Since the framework for the environmental permitting regime is so various and fragmented, it would be advisable to integrate all the separate permits into one, since environment is one of the centralised competencies attributed to the State. Enterprises suffer from the bureaucracy involved by this fragmentation and time-consuming procedures.

5. THE ENVIRONMENTAL NON-GOVERNMENTAL ORGANISATIONS (NGOS)

NGO’s role is to support the general public or specific groups of citizens in actions relating to - Environmental disasters; -Risks to habitats and environmental resources; -Air pollution; - Other matters of environmental concern.

NGOs have powers such as

- **Judicial powers** to intervene in court proceedings for environmental damage; take action to annul illegitimate acts (Article 18, Law No. 349/1986); claim compensation for the MET's delay in implementing precautionary measures to prevent or contain environmental damage (Article 310, ECA); and participate, as an injured party, in criminal proceedings (Article 91, Criminal Code).
- **Administrative powers** to submit complaints and observations about environmental damage or imminent threat of environmental damage, and request government intervention (Article 309, ECA); participate in administrative authorities' proceedings for new environmental regulations (Article 9, Law No. 241/1990); participate in the administrative proceedings conducted by the MET to protect and manage specific marine areas (Article 11, Law No. 349/1986); lobby to establish new protected natural areas or extension of existing ones; and participate in public bodies' operations, including the MET appointment of representatives in government bodies. For example, they participate in appointing the National Council for the Environment, that consults and supports the development of environmental policies (Article 18, Law No. 349/1986).

NGOs are relatively active especially in contentious matters. **It is important to stress that they may claim an intervention by the State as well.**

6. THE PENALTIES

Penalties for failure to comply with permits depend on the **seriousness of the violation** and include **administrative and criminal sanctions**. For minor defaults, the authority can give the enterprise or individual a warning and the opportunity to rectify the situation.
Criminal penalties for pollution apply under the ECA and Criminal Code. (For example, Article 257 of the ECA, Articles 452 *bis*, 452 *ter* and 452 *quater* of the Criminal Code apply in case of environmental damage and disaster).
Omissions causing pollution (or environmental disaster) or failure to clean up incurs corporate liability (Legislative Decree No. 231 of 2001) as well.
Specific penalties are related to: Water pollution; Water abstraction; Air pollution; Waste; Contaminated land.
Generally, as an example, any type of water discharge is unlawful without prior authorisation. Water discharge into soil and groundwater is unlawful.

Indeed, the Clean-Up/Compensation measures for the polluter are the core penalties of environmental law (Cf. question 3).

7. THE LIABILITY AND REMEDIES: 'THE POLLUTER PAYS' PRINCIPLE

The "**polluter pays principle**" applies to all contamination. That principle means that the liable person must take the necessary remedial measures immediately. The polluter is usually the operator. Any significant risk of harm to human health and environment must be eliminated by the operator.
For instance, in water pollution cases, any single contaminating event is considered risky (in contrast to a soil contamination event). Annex 3 to Part VI of the ECA lists the objectives of remediation and how to choose between the different types of remedial measures. The regime differentiates between (in decreasing order of preference)
•Primary remediation: restoring the damaged natural resources to baseline state.
•Complementary remediation: if primary remediation does not restore the damaged natural resources to their baseline state, further improvements can be made to the damaged site. If it is not possible, complementary remediation can take place at another location.
•Compensatory remediation: if primary remediation (and complementary remediation if required) takes time to return the site to its baseline state, the temporary loss of natural resources can be offset until restoration of the damaged site is achieved. Further improvements can be made to the water at the damaged site or at an alternative site.
If the polluter is not identified, or, when identified, does not have the economic resources for cleaning up, the local public authority carries out the clean-up (Article 250, ECA). When the local authority carries out the clean-up, a registered lien is taken over the site and applies in any transfer

(*onere reale*). The authority's clean-up costs can be also claimed from the innocent owner of the site up to a limit of the fair market value of the site after clean-up.
Examples are given below:

- **Owner/Occupier Liability**

  The innocent owner and occupier can be asked to take preventive and precautionary measures if contamination (pre-existing or caused by third parties) is detected. If pollution at the site is active with the risk of spreading outside the site, the owner and/or occupier must take preventive and precautionary measures to stop it. Liability can also arise because of an omission when there is a legal obligation to take action.

- **Limitation of Liability**

  Limitation of liability is not possible in relation to public agencies. Private parties can agree to share the clean-up costs (but not the liability). However, this is not enforceable against public agencies. Liability can be limited via environmental insurance.

- **Voluntary Clean-Up Programme**

  There are various incentives to clean up contaminated sites deriving from different sources. The more interesting and recent ones are offered in regulations on urban regeneration. For example, Lombardy Region Law No. 18 of 26 November 2019 under which the clean-up costs can be deducted from the urbanisation costs.

- **Lender Liability**

  Lenders are only liable when they have caused and/or contributed to the pollution of the site. In theory, strong lenders can incur a general *de facto* management liability if they interfere in the decision-making process of the borrowers and can be held liable for the acts of the company that polluted the soil. Lenders can also become liable when they enforce collateral security. If they become the owner of the site, they will be liable to take the same precautionary and preventive measures as the innocent owner (see Question 23, Owner/Occupier liability).

- **Minimising Liability**

  Lenders commonly ask for legal and technical advice to run a full-scope risk assessment on the liabilities both during the -Lending phase, when drawing up facility agreements and to assess general risk. -Enforcement phase, before selecting and starting enforcement proceedings.

8. THE LEGAL ACTIONS

The general provisions on environmental damage in Part VI of the ECA apply to a legal action against polluters, owners, or occupiers. Under the terms below,

- MET has the exclusive right to take legal action for compensation for environmental damage (Article 311, ECA).
- Any affected party (including environmental NGOs under certain circumstances) can take **action in tort** against the polluter for damage to their health or goods (Article 2043, Civil Code).
- If a party has acquired any rights under specific agreements, action can be taken based on **contractual liability**; for example, when the polluter or owner of the site has specific obligations (indemnities or warranties) in relation to its environmental condition. Since the purchaser is not the polluter, it does not assume liability. However, it can be called to intervene as an innocent owner. There are specific cases (for example, mergers) that, per se, are an asset transfer when liability is inherited by the successor (as a universal successor). Contractual provisions to allocate liability are not enforceable vis-à-vis public agencies, but they are valid *inter partes privatorum*. In addition, contractual and reverse

indemnity provisions are very common. Therefore, it is better to seek legal advice before coming to the conclusion that an asset deal does not entail any risk of inheriting environmental liability. The company itself remains liable under corporate law principles. There is no mechanism of inheritance or transfer. Shareholders can suffer from the economic consequences of their purchase and, in certain circumstances, can be held directly liable if they become, *de facto,* the managers of the acquired company. Sellers can retain liability if they can be considered "polluters" since they have interfered with the management of the company. Contractually, they can retain liability to the purchaser because of indemnities or warranties. They do not exclude company's liability towards public agencies. Therefore, sellers must behave fairly and in good faith and inform buyers about the assets' characteristics and any factors that can affect the share value. There is no specific obligation to look for environmental issues or provide a vendor's environmental report. During environmental due diligence, sellers must provide all relevant information available. However, there are standard market practices that can apply depending on the deal type and parties' willing to take chances.

9. THE ENVIRONMENTAL DUE DILIGENCE AND GUARANTEES

Because of the "*polluter pays principle*" (as mentioned above), **environmental due diligence is a standard market practice** on sales of industrial, logistics or large commercial property, whether asset or share deal. The scope of environmental due diligence varies depending on - Industry and its level of environmental risk; - Parties' willing to take chances; -Permits; -Operational compliance; -Legacy; -Litigation issues; -Contamination.
Environmental due diligence is usually carried out by experienced consultants specialised on the relevant area. There are many first-tier environmental consultants (some belonging to international groups, others of a more local nature) who offer a varied range of services.
Environmental guarantees are common even in asset sale contracts to allocate the environmental risk. These clauses only apply to parties' cost sharing and do not determine liability. The simplest warranties include the **seller's statements** on compliance with environmental regulations and clauses indemnifying the seller in the event of third-party claims arising after the sale. These clauses can only confirm a legal obligation and are more effective when accompanied by real and/or personal financial guarantees. Provisions on escrow accounts for environmental costs and price retention policies are also common. Reverse indemnity provisions are possible to allocate risk differently. Caps and thresholds are common like duration and expiry of the representations, warranties, and indemnities.
Environmental guarantees are also common in **share deals**. They do not relate to the object of the sale (the shares) but to the company. Their function is to allocate the environmental risk conventionally and they can provide for indemnities to the company itself (target indemnities) or purchasers (to compensate for the different value of the shares). The contents of the clauses are very similar to those ones on asset deals.

It is important to outline that these clauses apply to parties' cost sharing only and do not determine new liabilities.

10. THE REPORTING AND AUDITING DUTIES

Regulators keep public registers on environmental information. Italy ratified the Aarhus Convention of 25 June 1998 by Law No. 108 on 16 March 2001. Any person can access environmental information without alleging a specific interest (Legislative Decree No. 195/2005 and Law No. 241/90). Generally, environmental information is available in public registries and on agencies' websites. For example: IPPC permits are available in national or regional registries (and on their websites as well). Registries of contaminated sites held by regions are available on their websites. News and developments related to the sites of national or regional interest (large sites subject to remediation) are open to public (but not always on websites).
In order to access environmental information, a request must be submitted to the public agency without specific interest, and the agency must make information available within 30 days. On very

limited and exceptional circumstances, the agency can issue a legitimate denial. Requests can be denied if they are clearly unreasonable, too general, concern in progress documents, and undermine the national interest; i.e., international relations, national defence, or public security.
However, exclusion from access rights is extraordinary. Public authorities must apply the above criteria strictly and refusals must be always motivated adequately (Article 5, Legislative Decree No. 195/2005.)

- **Environmental Auditing**

Environmental legislation provides for reporting obligations on operations requiring an IPPC permit. The IPPC permit itself must require the operator of the facility to periodically (and once a year at least) provide the competent authority with the data necessary to verify compliance with its emission conditions (paragraph 6, Article 29 *sexies*, ECA). The permit states the procedures and frequency of the planned checks.

- **Reporting Requirements**

The operator must inform the competent authority immediately when the permit conditions have been violated and, at the same time, take the necessary measures to restore compliance as quickly as possible (paragraph 2, Article 29 *decides*, ECA).

- **Voluntary Reporting**

Furthermore, companies can adhere to the EMAS III Regulation (1221/2009) voluntarily. Companies, public bodies, and other organisations can join EMAS. Its aim is to -Evaluate and improve participating organisations' environmental performance; -Provide the public and other stakeholders with environmental management information. Participating organisations must plan, implement, and audit an environmental management system. They commit themselves to continuous environmental performance improvements and issue a report which must be validated by an independent environmental auditor. In Italy, the Ecolabel Eco-audit Committee is the public authority responsible for accrediting and managing the environmental auditors, and registering in the European EMAS.

Duty to report is deemed very important to detect violations and prevent harm

11. THE POLLUTER'S OBLIGATIONS

When a potentially contaminating event occurs, the polluter must carry out a preliminary investigation. If it reveals that threshold contamination concentrations have not been exceeded, they must: -Restore the contaminated zone; - Notify, by means of self-certification, the municipality and province responsible for the area within 48 hours.
If it reveals that threshold contamination concentrations have been exceeded, they must: -Take the necessary preventive measures within 24 hours; -Inform public agencies immediately; -Notify public agencies about the adopted measures (Paragraphs 1 and 2, Article 242, ECA).
By breaching these reporting obligations, severe penalties incur (Article 257, ECA).
Innocent Owner's Obligations: If an innocent owner finds that the threshold contamination concentrations have been exceeded, or a real and current danger thresholds may be exceeded, they must: -Notify the Region, Province and municipality; - Notify the prefect of the competent Province; -Take preventative measures promptly in conformity with the procedure under Article 242 of the ECA (see above, Polluter's obligations) (Article 245, ECA).
IPPC Permit Holder's Obligations : if accidents or unforeseen events that significantly affect the environment occur, the operator of the facilities holding an IPPC permit must immediately: -Inform the competent authority and body responsible for the investigations as provided for in the authorisation; -Adopt all measures to limit the environmental impact and prevent further accidents or unforeseen events from taking place, and inform the competent authority about the adopted measures (Paragraph 1, Article 29 *undecies*, ECA).

These obligations are not satisfactory of full damages and shall be applied considering the possibility of individual claims for personal damages under tort liability rules and procedure.

12. THE POWER OF ENVIRONMENTAL REGULATORS

Environmental regulators have authority to control and access enterprises subject to environmental permitting requirements or those ones that perform activities having an environmental impact. The competent authority has the right to ensure compliance with the terms of the IPPC permit including: -Emission levels; -Reporting requirements, particularly in the event of a contaminating or potentially contaminating event; -Regularly executing pollution prevention measures (Paragraphs 3 and 4, Article 29 *decies*, ECA).
The competent authority can also order extraordinary inspections of IPPC-authorised companies.
Italy implemented the Non-financial Reporting Directive (2014/95/EU) through Legislative Decree No. 254/2016 as well. The non-financial statement is mandatory for companies that are public interest entities with an average of 500 or more employees during the financial year, and either -A balance sheet total equal to or exceeding EUR 20,000,000; -Total net revenues from sales and services equal to or exceeding EUR40,000,000.
There are a series of administrative penalties for failing to comply with the reporting obligations (Article 8, Legislative Decree No. 254/2016). They are assessed and imposed by the National Commission for Companies and the Stock Exchange (*Commissione Nazionale per le Società e la Borsa*) (Consob).
The Conflict Minerals Regulation ((EU) 2017/821) imposes supply chain due diligence obligations for importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas, which apply from 1st January 2021.

13. MANDATORY REQUIREMENTS: THE NON-FINANCIAL ANNUAL STATEMENT

Companies required to provide a **non-financial statement** must include environmental information on, at least, their -Use of energy resources, distinguishing between renewable and non-renewable energy; - Use of water resources; -GHG and pollutant emissions; -Impact on the environment; -Health and safety policies to address environmental and social risk factors.
In June 2019, the EU issued the guidelines on reporting climate-related information to help companies using their non-financial statement to communicate better the impact of -Their activities on the climate; -Climate change on business activities. The guidelines integrate the Task Force on Climate-related Financial Disclosures' recommendations.
The non-financial statement is public and can be included in the annual management report (or in the consolidated annual report) or issued as a separate document.

14. THE VOLUNTARY SCHEMES

Companies can issue a non-financial statement voluntarily in conformity with the Legislative Decree No. 254/2016 requirements, or international standards; for example, the Global Reporting Initiative Standards. An increasing number of companies are issuing sustainability reports.
Regarding climate changes, there are no specific obligations. However, there are several international tools and guidelines that companies can adopt to assess their climate risks and develop an action plan. For example, the EU guidelines on reporting climate-related information focus on how companies prepare themselves for climate-related risks and they underline the importance of management and board's preparation.
World Economic Forum launched the Climate Competent Boards Initiative in 2019 aimed at stimulating the development of companies and their board's specific skills through eight climate governance principles.
Listed companies must draft a corporate governance report including details about the corporate structure and, among other things, if they adhere to a corporate governance code of conduct (Article 123 *bis*, Legislative Decree No. 58/1998 (Consolidated Law on Finance (T.U.F.)). The latest version is in force since the first financial year following 31 December 2020 and aims at guiding companies to adopt sustainability strategies, including environmental and social sustainability, in their business activities.

However, public authorities should not undermine the risk of green-washing practices in such voluntary conducts. That means that a company may - it does not matter if deliberately or not - purports to be environmentally conscious for marketing purposes but, in fact, is not making any notable sustainability efforts.

15. THE ENVIRONMENTAL INSURANCE

Environmental insurance, albeit available, is not widespread. Insurance is usually provided by a consortium of the main national and international insurance companies or brokers. The types of insurance available are: -Environmental liability insurance that covers all damage caused to third parties in the performance of polluting activities or in the event of contamination; -Third party liability insurance that covers damage caused to third parties, commonly used by companies that transport hazardous materials or waste; -"Clean-up cost cap" insurance which limits the risk of environmental liability in transactions is not frequently used.
In theory, it is relatively easy to obtain environmental insurance. However, in practice, it can be time-consuming and expensive since the insurer must make a detailed and complex risk assessment and, usually, it requires the services of environmental consultants.

16. THE ENVIRONMENTAL TAXES

Almost 7.6% of taxation income derives from environmental taxes. **They are rarely defined as environmental taxes since most of the revenue is not reinvested in environmentally friendly practices.**
The income comes from a variety of taxes. Most of the environmental taxes are **indirect duties paid on energy**. These are taxes linked to fossil fuels used for transport (for example, petrol and diesel) and stationary purposes (for example, fuel oil, natural gas, coal, and electricity). Some environmental taxes are applied to transportation and vehicles. A minority of environmental taxes are imposed on polluting products directly.
The 2020 Budget Law introduced the tax on plastics, implemented since 1st January 2021. This tax is levied on items made of - single-use plastic to contain, protect, handle, or deliver goods or foods; -single-use plastic for manufacturers, importers, and distributors (*Manufatti in Plastica a Singolo Impiego*) (M.A.C.S.I. tax).
Citizens and enterprises are subject to the municipal tax on waste collection (currently TARI) calculated on the base on occupied surface area and number of residents. TARI may be re-assessed as a result of the extension of producers' liability in the circular economy package.

17. TAX LIABILITY

Tax liability is based on the ability to pay and 'the polluter pays' principle.
Therefore, - Energy taxes are paid by consumers; -Transportation taxes are paid by the owners and users of vehicles, boats, and aircrafts; -TARI is paid by residents or companies generating waste.
For instance, the **new tax on plastic** is paid by -manufacturers for goods manufactured in Italy; -purchasers of plastic goods for the purpose of their economic activity when goods come from the EU; - sellers of plastic items when goods come from the EU and are purchased by a private consumer; -importers of manufactured goods from non-EU countries.
Tax rates vary depending on the type of tax. For instance, the tax on plastic is levied at EUR 0.45 per kilogram of plastic.

LATVIA / LETTONIE

The right to a healthy environment is protected under the Latvian *Constitution*. Article 115 of the Constitution reads as follows:

"The State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment."

The above provision has often been applied by the Constitutional Court and the administrative courts of Latvia. There is extensive case law of the domestic courts explaining the nature of the right, the obligations of the State, and the rights of individuals and the society as a whole to protect their rights under Article 115 of the *Constitution.* Moreover, seeing that Article 115 of the *Constitution* enshrines the overarching principle of the right to a benevolent environment, the domestic courts interpret the State's obligations, and the individuals' rights under Article 115 of the *Constitution* in the context of the *Aarhus Convention*, the *Convention for the Protection of Fundamental Rights and Freedoms*, and, from the domestic law perspective, the *Environmental Protection Law.*

Article 9 of the *Environmental Protection Law* reads as follows:

"(1) Each person who has requested information in accordance with Article 7 of this Law and considers that the request for information has been ignored or rejected (partially or completely) without reason, an appropriate answer has not been received or rights to environmental information have been otherwise violated is entitled to contest and appeal a relevant act or omission in accordance with the procedures specified in the *Administrative Procedure Law.*

(2) If the rights of a person which are provided in Article 8 of this Law are infringed or the rights of public participation specified in this Law are not respected, the person is entitled to contest and appeal the relevant act or omission in accordance with the procedures specified in the *Administrative Procedure Law*.

(3) The public is entitled to contest and appeal the administrative act or actual action of a State institution or local government if it does not meet the requirements of the laws and regulations regarding the environment, creates threats of damage or environmental damage.

(4) If any private person violates the requirements of the laws and regulations regarding the environment, any other person may, providing justified information regarding the possible violation, turn to an authority within the competence of which is the control of compliance with the relevant regulatory enactment, and is entitled to request that the authority acts in accordance with the competence thereof.

(5) The exercising of the rights specified in this Article for a private person may not cause any consequences to such person that are unfavourable, including private law, in itself. "
In view of this, Latvia further provides some examples of the case law of the Constitutional Court and administrative courts, although the right to a benevolent environment has often been litigated before the domestic courts:

The Constitutional Court

Case no.2002-14-04

"[..] Just like in other States, in Latvia the right to live in a benevolent environment has been acknowledged as a fundamental right. Pursuant to Article 115, the State protects these rights by way of providing information about the environment and by caring for its preservation and development. The said provision of the *Constitution*, firstly, places an obligation on the State to create and implement an effective system for the protection of the environment; and, secondly, the provision creates rights to the individual to receive information, to participate in the decision-making process that may affect the environment. The *Law "On the Protection of the Environment"* specifies the rights of individuals to a benevolent environment and the State's obligations to ensure these rights.[..]"[36]

[36]Judgment of the Constitutional Court of 14 February 2003 in the case no 2002-14-04, available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2016/02/2002-14-04_Spriedums.pdf#search=2002-14-04.

Case no.2006-09-03

"[..] Article 115 of the *Constitution* [..], firstly, creates an obligation to the domestic authorities to create and ensure an effective system for the protection of the environment. Secondly, the provision raises the right to live in a benevolent environment to the level of fundamental rights. The right to live in a benevolent environment, just like other rights included in Chapter VIII of the *Constitution,* are applicable directly. In other words, relying on Article 115 of the *Constitution*, a private person has the right to submit a complaint/ application to the domestic court regarding an action of another subject that affects the individual rights of the former.

The aims and tasks that the modern society advances in the field of environmental (ecological) rights can only be reached if the Government, domestic authorities, local governments and non-governmental authorities, as well as the private sector work together. The notion "the State" reflected in Article 115 of the *Constitution* therefore must not be interpreted narrowly; it refers to local governments, that together with the Government authorities must protect every individual's rights to live in a benevolent environment by taking care of its preservation and development.[..] Article 115 of the *Constitution* and everyone's right to a benevolent environment must be interpreted in the light of the international treaties, including the *Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*.[..]"[37]

Case no.2007-12-03

"[..] At the same time, it should be noted that Article 115 of the *Constitution* equally requires the Government to comply with both obligations envisaged by it. Namely, the obligation of the Government to preserve the environment, as well as the obligation to consistently improve the environmental condition. The European Union has likewise established the principle to attain the highest possible level of environmental protection and the obligation to consistently improve the existing situation. [..]"[38]

Case no.2017-02-03

"[..] Article 115 of the *Constitution* just like Article 111 places an obligation to the State to protect the health of individuals. Namely, Article 111 of the *Constitution* encompasses all spheres that affect the right to health. Whereas, in the light of Article 115 of the *Constitution*, this obligation has to be viewed from the standpoint of the protection of the environment. Even though said provisions enshrine the obligations of the State regarding the protection of an individual's health in different ways, both provisions are applicable to a situation when the complaint concerns effects from noise pollution to an individual's health. [..]"[39]

The Supreme Court (administrative)

Case no.SKA-989/2018

"[..] Article 115 of the *Constitution* protects every person's rights to live in a benevolent environment, including by ensuring the preservation and development of the environment. When defining the notion "environment", Article 1, paragraph 17, of the *Environmental Protection Law* refers to an aggregate of natural, social and cultural factors. As found by the Supreme Court, the notion "environment" is not limited to natural resources – it is a broad concept that represents different elements and is consistently developed. According to the findings of highly qualified

[37] Judgment of the Constitutional Court of 8 February 2007 in the case no.2006-09-03, available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2016/02/2006-09-03_Spriedums.pdf#search=2006-09-03.

[38] Judgment of the Constitutional Court of 21 December 2007 in the case no.2007012-03, available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2016/02/2007-12-03_Spriedums.pdf#search=2007-12-03.

[39] Judgment of the Constitutional Court of 19 December 2017 in the case no.2017-02-03, available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2017/01/2017-02-03_Spriedums.pdf#search=Satversmes%20115.

scholars, the above provision of the *Constitution* refers to "environment" that, among other things, includes cultural heritage. [..]"[40]

Case no. SKA-1/2019

"**Subjective rights to submit an application in the field of environmental protection**

Article 9, paragraph 3, of the *Environmental Protection Law* is one of the exceptions mentioned in Article 31, paragraph 2, of the *Administrative Procedure Law* with respect to private persons who can submit an application before the administrative courts. Whereas, Article 1, paragraph 17, of the *Environmental Protection Law* lists the issues regarding which an individual can submit an application. To consider a given application admissible, the allegations with respect to a violation of environmental rights must be real, relevant and serious. [..]"[41]

Case no.SKA-1475/2018

"**The assessment of the subjective criterion when applying preliminary injunction in cases related to alleged harm to the environment (noise created by a race track)**

To preserve the quality of the environment, to ensure its revival, as well as in order to ensure sustainable use of natural resources, every person (natural or legal) and all associations of those persons (groups, organisation, association) can submit an application before the domestic courts regarding issues related to the protection of the environment. If an application has been submitted with respect to preservation of the environment, to protect the rights to live in a benevolent environment (adverse effects the operation of a race track brings to the well-being of individuals), when deciding on the application of a preliminary injunction, the courts must not only assess the subjective criterion, but they must also assess any adverse effects it can cause to the environment."[42]

Case no.SKA-1399/2020

"Danger to the environment or infringement upon the rights to environment as a determining criterion when deciding on the admissibility of an application that has been submitted to protect the environment"

Article 9, paragraph 3, of the *Environmental Protection Law* foresees an *actio popularis* complaint (application for the benefit of the public), but it is not applicable to cases when reference to the protection of the environment is insignificant, formal, and in which the factual circumstances as provided by the applicant do not disclose a significant risk to the environment. Namely, for an application to be considered admissible, the applicant must show that the endangerment of the environment is real, significant and serious."[43]

Case no.SKA-325/2010

"Article 9, paragraph 3, of the *Environmental Protection Law* provides that "[t]he public is entitled to contest and appeal an administrative act or an action of a State institution or local government if it does not meet the requirements of the laws and regulations on the environment, creates threats of damage or environmental damage." The notion "public" is defined in Article 6 of the said law, that is, "public" is *any* person, group of persons, organisations and groups. In the opinion of the Senate, said provision, especially taking into account the aim of the said law – to ensure the

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[40] Decision of the Supreme Court of 23 April 2018 in the case no.SKA-989/2018, available: http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjQstLE7trwAhXwpIsKHQHxBlcQFjABegQIAhAD&url=http%3A%2F%2Fwww.at.gov.lv%2Fdownloadlawfile%2F5482&usg=AOvVaw3sCb2qa3H1PtTGHZeqhw9m.

[41] Judgment of the Supreme Court of 17 December 2019 in the case no.SKA-1/2019, available: https://at.gov.lv/downloadlawfile/6098.

[42] Judgment of the Supreme Court of 23 August 2018 in the case no. SKA-1475/2018, available: http://www.at.gov.lv/downloadlawfile/5661.

[43] Decision of the Supreme Court of 29 September 2020 in the case no.SKA-1399/2020, available: http://www.at.gov.lv/downloadlawfile/6652.

preservation of the quality of the environment and its revival, as well as the sustainable use of national resources – establishes any individual's (natural or legal) and group's (associations, organisations, groups) rights to submit applications for the protection of the environment before the domestic courts. A political party is one of the types of groups of individuals. Therefore, a political party has the right to submit an application before the court regarding issues related to the protection of the environment.

The Senate likewise notes that Article 9, paragraph 3, of the *Environmental Protection Law* is one of the exceptions mentioned in Article 31, paragraphs 2, of the *Administrative Procedure Law* that enables individuals to submit applications not for the protection of their own rights, but for the protection of the rights and interests of others. By creating such a mechanism, the legislator has decided to emphasize the importance and sensitivity of the protection of the environment that requires enhanced legal protection.

Thus, if the public has challenged a decision or action of the Government or a local government that allegedly endangers the environment, it is not necessary to establish the individual harm to the applicant. The legislator, deciding to emphasize the importance of the quality of the environment, has acknowledged that any person can submit an application on behalf of the entire public. The subjective perception or infringement of a certain applicant's rights is irrelevant in cases related to the protection of the environment."[44]

Case no.SKA-255/2006

"[..] The notion "environment" is not limited to natural resources. The *Law "On the Protection of the Environment"* [the domestic law in force before the *Environmental Protection Law* was adopted – the Government's remark] defines environment as an aggregate of natural, anthropogenic and social factors. The doctrine likewise acknowledges that the environment includes social and cultural elements that affect an individual's or the public's life. It is impossible to draw a clear line between the physical, social and cultural lives of individuals because the result of such a division would be an improper narrowing down of the notion "environment". The protection of the environment and, by extension the notion "environment", must be interpreted in the light of the principle of sustainable development. [..] "Environment" is a very broad and developing concept.[..] "[45]

MALTA / MALTE

Yes.

Article 9(2) of the Constitution states as follows : '*The State shall protect and conserve the environment and its resources for the benefit of the present and future generations and shall take measures to address any form of environmental degradation in Malta, including that of air, water and land, and any sort of pollution problem and to promote, nurture and support the right of action in favour of the environment.*'

NETHERLANDS / PAYS-BAS

Article 21 of the Constitution enshrines the Government's duty of care for the habitability of the land, and the protection and improvement of the environment. The provision in question provides for a 'social constitutional right', meaning that the Government operates under an obligation of

[44]Decision of the Supreme Court of 31 March 2010 in the case no.SKA-325/2010, available: https://unece.org/DAM/env/pp/a.to.j/Jurisprudence_prj/LATVIA/Jurmalas/AL_3103_AT_SKA_0325-2010.pdf.
[45]Judgment of the Supreme Court of 22 June 2006 in the case no.SKA-225/2006, available: https://at.gov.lv/files/uploads/files/archive/department3/2006/ska-255-2006.pdf.

conduct to protect and fulfil this constitutional right. Legislation to be enacted is reviewed in light of constitutional rights, including Article 21 of the Constitution, by the Legislature (Government and Parliament), as well as the Advisory Division of the Council of State.

The obligation of conduct flowing from Article 21 of the Constitution is further elaborated and given effect through the *Omgevingswet* (Environment and Planning Act), which is due to enter into force on 1 July 2023. The object and purpose of the *Omgevingswet* is to safeguard the habitability of the land and to protect and improve the environment. In this respect, it imposes an obligation on everyone to take sufficient care of the physical environment.

The right to a good environment is, at present, enshrined in the *Wet algemene bepalingen omgevingsrecht* (Environmental Permitting (General Provisions) Act), the *Wet milieubeheer* (Environmental Management Act) and all orders in council adopted on the basis of that legislation, such as the *Besluit omgevingsrecht* (Environmental Permitting Decree) and the *Activiteitenbesluit* (Environmental Management (General Rules for Establishments) Decree), and ministerial orders such as the *Ministeriële regeling omgevingsrecht* (Environmental Permitting Order) and the *Activiteitenregeling* (Environmental Management (General Rules for Establishments) Order). In addition, there is a variety of sectoral legislation, such as the *Waterwet* (Water Act), the *Wet bodembescherming* (Soil Protection Act) and the *Wet geluidhinder* (Noise Abatement Act). These rules and regulations elaborate relevant actors'obligation of care for the environment, thereby preventing detrimental effects for the environment.

NORWAY / NORVÈGE

Article 112 of the Norwegian Constitution reads as follows:

"Every person has the right to an environment that is conducive to health and to a natural environment whereby productivity and diversity are maintained. Natural resources shall be managed on the basis of comprehensive long-term considerations, which will safeguard this right for future generations as well.

In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to information on the state of the natural environment and on the effects of any encroachment on nature that is planned or carried out.

The authorities of the state shall take measures for the implementation of these principles."

The legal content of Article 112 was clarified by the Supreme Court in a judgement 22 December 2020 (HR-2020-2472-P), where it addressed the key issue of whether the Article gives citizens individual rights that they may invoke before the courts, and the extent to which the courts may review resolutions from the Parliament (Storting) in this area. The case did not provide a basis for assessing the extent to which administrative decisions not involving the Storting may be reviewed on the basis of the Article.

The precise scope of Article 112 is still not entirely clear. In contrast to the Oslo District Court and the Court of Appeal, who both found that Article 112 was a "rights provision" that may be asserted in court if the State fails to take measures under Article 112 subsection 3, the Supreme Court found that Article 112 is not merely a declaration of principle, but a provision with a certain legal content, yet, one can only to a limited extent build directly on Article 112 in a case before the court. However, subsection 1 is, according to the Supreme Court, relevant when interpreting statutory provisions and for administrative discretion. Moreover, subsection 1 is a guideline for the Storting's legislative power and other measures from the authorities under Article 112 subsection 3. In addition, Article 112 may also, according to the Supreme Court, be asserted directly in court if the case concerns an environmental issue that the legislature has not considered. The exact legal implications of the last point are still subject to debate in Norway.

Subsection 2 of Article 112 contains a procedural requirement. Citizens have a right to information on both the state of the environment and the environmental effects of any encroachment on nature. The objective of the procedural right is to ensure that citizens may exercise the right under Article 112 subsection 1, see the wording in the first sentence of subsection 2. The Supreme Court held that the extent of the requirement was dependent on the effects of relevant encroachment on nature: “The larger effects an administrative decision has, the stricter the requirements for clarification of consequences. Correspondingly, the assessment of the procedure must be more thorough the larger the impact of the measures” (paragraph 183).
When considering in what way subsection 3 limits legislative discretion, the Supreme Court found that the Storting’s involvement in a case was relevant. Concerning the situation where the Storting had considered a particular case, the Supreme Court stated the following (paragraph 142):

“In order for the courts to set aside a legislative decision, the latter must have grossly neglected its duties under Article 112 subsection 3. The same must apply for other Storting decisions and decisions to which the Storting has consented. Consequently, the threshold is very high.”

As a result, subsection 3 does not represent a significant limit to the Storting’s discretion if the Storting has been involved in a case. It is unclear, however, what degree of involvement from the Storting is required in order for this principle to apply. In addition, the court does not discuss how thoroughly administrative decisions in which the Storting has not been involved, should be judicially reviewed.

The considerations and conclusions of the Supreme Court in the judgement 22 December 2020 on the issue of justiciability are cited in relation to Question 3 below.

POLAND / POLOGNE

In Polish law, environmental protection matters are regulated by both the Constitution of the Republic of Poland and a number of statutes, this being the sine qua non of ensuring the right of access to a "healthy" environment. To begin with, Article 5 of the Constitution of the Republic of Poland ensures the protection of the natural environment, while its Article 31 stipulates that any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of, inter alia, the natural environment. As laid down in Paragraph 4 of the Constitution's healthcare-related Article 68, public authorities are obliged to combat epidemic illnesses and prevent the negative health consequences of degradation of the environment. Also, Article 74 of the Constitution deals with ecological security and protection of the environment, pointing to the latter as a duty of public authorities and stating that it is everyone's right to be informed of the quality of the environment and its protection. Article 86 states that everyone is obliged to care for the quality of the environment.

Furthermore, a number of statutes regulate the matter of environmental protection by providing specific solutions in this field; the statutes include the Act of 27 April 2001 – Environmental Protection Law (Journal of Laws of 2021, item 1973), the Act of 16 April 2004 on nature protection (Journal of Laws of 2022, item 916), the Act of 13 April 2007 on preventing and remedying environmental damage (Journal of Laws of 2020, item 2187).

Moreover, the human right to a healthy environment is implied by the Act of 25 February 2011 on chemical substances and mixtures thereof, the Act of 18 April 1985 on inland fishing, the Act of 18 August 2011 on the safety of persons while in a body of water, the Act of 3 February 1995 on the protection of farmland and forest land, the Regulation by the Council of Ministers of 27 December 2017 on catchment areas related to water and soil protection. Moreover, the corresponding provisions but concerning air protection and acoustics include the Act of 17 July 2009 on the emissions management system for greenhouse gases and other substances and the Regulation by the Council of Ministers of 10 September 2019 on undertakings likely to have a significant

impact on the environment. The above list of laws is far from exhaustive (see https://portalochronysrodowiska.pl/akty-prawne-59/).

On the European level, the said right is derived from the Charter of Fundamental Rights of the European Union (Article 2 in conjunction with Article 37) and the European Convention of Human Rights (Article 8).

PORTUGAL

An answer to this question must be multi-faceted with regard to the diversity of legislation provided for in the Portuguese legal system:

In 1976 Portugal became one of the first nations in the world to recognize the human right to a healthy and ecologically balanced environment (Art. 66.º of the Constitution of the Portuguese Republic). The right to a clean, healthy, and sustainable environment has both procedural and substantive elements. The procedural elements include the rights of access to environmental information, public participation in environmental assessments and decision-making, and access to justice and adequate remedies in cases where the right to a clean and healthy environment is being threatened or violated. The substantive elements include a safe climate, clean air, safe drinking water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems.

Constitution of the Portuguese Republic

Article 66.º(1) of the Constitution of the Portuguese Republic provides that everyone has the right to a humane, healthy and ecologically sound living environment.

This Article 66.º inserted in the Chapter II (Social rights and duties) of Title III (Economic, social and cultural rights and duties) of Part I (Fundamental rights and duties), states that:

Environment and quality of life

1. *Everyone has the right to a humane, healthy and ecologically balanced living environment and the duty to defend it.*

2. *To ensure the right to the environment, within the framework of sustainable development, it is incumbent upon the State, through its own bodies and with the involvement and participation of citizens:*
   a) *Prevent and control pollution and its effects and harmful forms of erosion;*
   b) *Organizing and promoting the planning of the territory, with a view to the correct location of activities, a balanced socio-economic development and enhancement of the landscape;*
   c) *Create and develop natural and recreational reserves and parks, as well as classify and protect landscapes and sites, in order to guarantee the conservation of nature and the preservation of cultural values of historical or artistic interest;*
   d) *Promote the rational use of natural resources, safeguarding their capacity for renewal and ecological stability, with respect for the principle of solidarity between generations;*
   e) *Promoting, in collaboration with local authorities, the environmental quality of towns and urban life, namely in terms of architecture and the protection of historic areas;*
   f) *Promoting the integration of environmental objectives in the various sectoral policies;*
   g) *Promote environmental education and respect for environmental values;*
   h) *Ensuring that the fiscal policy reconciles development with environmental protection and quality of life.*

This progressive and pioneering Article 66.º of the Portuguese Constitution includes references to preventing pollution, respecting the principle of intergenerational solidarity, and guaranteeing the conservation of nature.
Portugal has, in fact, a strong legal framework and a vast range of policies, plans, and strategies on this regard.

Law n.º 19/2014, de 14 de Abril, lays down the foundations of environmental policy
The objectives of Environmental policy are laid down on Article 2, which refer that *Environmental policy aims at the realization of environmental rights through the promotion of sustainable development, supported by the adequate management of the environment, in particular of ecosystems and natural resources, contributing to the development of a low carbon society and a "green economy", rational and efficient in the use of natural resources, which ensures the well-being and the progressive improvement of the quality of life of citizens.*
This Framework Law on the Environment contains strong provisions on the right to a healthy and ecologically balanced environment (Articles 1, 2, 5-8):

Article 2
Objectives of the environmental policy

1 - Environmental policy aims at the realisation of environmental rights through the promotion of sustainable development, supported by the adequate management of the environment, in particular of ecosystems and natural resources, contributing to the development of a low carbon society and a "green economy", rational and efficient in the use of natural resources, which ensures the well-being and the progressive improvement of the quality of life of citizens.

2 - The State shall be responsible for implementing environmental policy, both through the direct action of its bodies and agents at the various levels of local, regional, national, European and international decision making, and through the mobilisation and coordination of all citizens and social forces, in a participatory process based on the full exercise of environmental citizenship.

Article 5 sets out the right to the environment, saying that - *Everyone has the right to the environment and to the quality of life, under constitutionally and internationally established terms (n.1), and provides for its protection:*
The right to the environment consists of the right of defense against any aggression to the constitutionally and internationally protected sphere of every citizen, as well as the power to demand from public and private entities compliance with the duties and obligations, in environmental matters, to which they are bound under the terms of the law and of the law (n.º2).

Article 5
Right to the environment

1 - Everyone has the right to the environment and to the quality of life, under constitutionally and internationally established terms.

2 - The right to the environment consists of the right of defense against any aggression to the constitutionally and internationally protected sphere of every citizen, as well as the power to demand from public and private entities compliance with the duties and obligations, in environmental matters, to which they are bound under the terms of the law and of the law.

Law No. 98/2021 of 31 December, Climate Framework Law
The Basic Law on Climate, includes innovative provisions that identify a safe climate as a human right, recognize a stable climate as the common heritage of humanity and define climate refugees.

Climate rights and duties
Article 5
Right to climate balance
1 - Everyone has the right to climatic balance, in constitutional and international terms.

2 - The right to climate balance consists of the right of defense against the impacts of climate change as well as the power to demand that public and private entities comply with the duties and obligations to which they are bound in matters of climate.

Article 6
Rights in climate matters
1 - Everyone shall enjoy the rights of intervention and participation in the administrative procedures relating to climate policy, under the terms of the law.

2 - The full and effective protection of legally protected rights and interests in climate matters is also guaranteed, including, namely: a) The right of action for the defense of legally protected subjective rights and interests and for the exercise of the right to public and popular action; b) The right to promote the prevention, cessation and reparation of risks to the climate balance; c) The right to request the immediate cessation of the activity causing threat or damage to the climate balance.

SLOVAK REPUBLIC / RÉPUBLIQUE SLOVAQUE

The right to a healthy environment is regulated directly by the **Constitution of the Slovak republic**, under Head II (Fundamental Rights and Freedoms), Section 6 (the right to protection of the environment and of cultural heritage), Articles 44 and 45.

Article 44 provides:

"(1) Everyone shall have the right to favourable environment.
(2) Everyone shall have a duty to protect and improve the environment and to foster cultural heritage.
(3) No one shall imperil or damage the environment, natural resources and cultural heritage beyond the limits laid down by a law.
(4) The State shall care for economical exploitation of natural resources, for ecological balance and on effective environmental policy, and shall secure protection of determined sorts of wild plants and wild animals.
(5) Details on the rights and duties according to paragraphs 1 to 4 shall be laid down by a law."

Article 45 provides:

"Everyone shall have the right to full and timely information about the environmental situation and about the reasons and consequences thereof."

Moreover, the Slovak republic is a party to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters **(Aarhus Convention)**. Therefore, its national rules must be in compliance with it and with the respective directives of the EU, which were regulated in accordance with the Convention.

The Aarhus Convention is applied through the national law. Regarding the first pillar of the Aarhus Convention, by the Act No. 205/2004 Coll. on the collection, storage and dissemination of information on the environment and on amending and supplementing certain acts, the Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information was transposed.

The second pillar of the Aarhus Convention is about public participation in the decision-making process, as regulated by Directive of the European Parliament and the Council no. 2003/35/EC. In

the Slovak legal system, the directive was transposed into Act no. 24/2006 Coll. on environmental impact assessment as amended (EIA Act) and also to Act no. 245/2003 Coll. on integrated environmental pollution prevention and control, as amended (IPPC Act).

Regarding the third pillar of the Aarhus Convention, which concerns access to justice in environmental matters and creates guarantees for anyone whose environmental rights have been violated to have the possibility of a fair assessment by independent bodies, in Slovak domestic law access to justice in environmental matters is mainly regulated by the following legal regulations:

The Constitution of the Slovak Republic
Act no. 71/1967 Coll. the Administrative Procedure Code
Act no. 162/2015 Coll. Code of the Administrative Judicial Procedure
Act no. 160/2015 Coll. Code of the Civil Procedure

Constitutional right of access to court (access to justice) is guaranteed in Article 46 of the Constitution. This right covers access to justice in environmental matters as well. According to Article 46 § 1 of the Constitution, everyone may claim his or her right by procedures laid down by a law at an independent and impartial court. The right to judicial review of administrative decisions is explicitly guaranteed in the next paragraph. According to Article 46 § 2 of the Constitution, anyone who claims to have been deprived of his rights by a decision of a public administration body may turn to the court to have the lawfulness of such decision reviewed. The Constitution explicitly stipulates that the review of decisions concerning basic rights and freedoms may not be excluded from the jurisdiction of courts (see below, question 2).

Other partial rights related to the environment are regulated by the following legal regulations:

Act No. 17/1992 Coll. on the environment as amended
Act No. 359/2007 Coll. on prevention and remedy of environmental damages (Environmental Liability Act) as amended
Act No. 569/2007 Coll. on geological works (Geological Act) as amended
Act No. 543/2002 Coll. on nature and landscape protection (Nature Conservation Act) as amended
Act No. 50/1976 Coll. on land-use planning and building rules (Building Act) as amended
Act No. 44/1988 Coll. on the protection and use of mineral resources (Mining Act) as amended
Act No. 541/2004 Coll. on peaceful use of nuclear energy (Atomic Act) as amended
Act No. 326/2005 Coll. on forests as amended
Act No. 137/2010 Coll. on air as amended
Act No. 364/2004 Coll. on water as amended
Act No. 79/2015 Coll. on waste as amended

SLOVENIA / SLOVÉNIE

In Slovenia the right to a healthy environment is enshrined in our Constitution in Article 72 according to which everyone has the right to a healthy living environment in accordance with the law.

With the amendments of the Constitution in 2016 the right to a drinking water also became a constitutional right in Article 70a which reads as follows[46]:

"*Everyone has the right to drinking water.*

Water resources shall be a public good managed by the state.

[46] Please note that all the translations of our legislation, Constitution and the case law in this contribution are unofficial.

As a priority and in a sustainable manner, water resources shall be used to supply the population with drinking water and water for household use and in this respect shall not be a market commodity.

The supply of the population with drinking water and water for household use shall be ensured by the state directly through self-governing local communities and on a not-for-profit basis."

In addition, other constitutional provisions are relevant for the protection of the environment, for example the environmental function of property (Article 67), public good and natural resources (Article 70), protection of land (Article 71), protection of the natural and cultural heritage (Article 73).

SWEDEN / SUÈDE

Chapter 1, Section 2, of the Instrument of Government, one of four fundamental laws which together make up the Swedish Constitution, states that the public institutions shall promote sustainable development leading to a good environment for present and future generations.

The basic legal framework that sets out the Swedish system for environmental protection is the Environmental Code. The purpose of the Environmental Code is to promote sustainable development which will assure a healthy and sound environment for present and future generations. The Environmental Code shall be applied in such a way as to ensure that, amongst other, human health and the environment are protected against damage and detriment, valuable natural and cultural environments are protected and preserved, and biological diversity is preserved.

There is however no explicit human right to a healthy environment neither in the Swedish Constitution, in other legislation nor in jurisprudence.

SWITZERLAND / SUISSE

La Constitution fédérale de la Confédération suisse du 18 avril 1999 (RS 101) et la législation fédérale suisse ne prévoient pas une forme explicite de droit humain à un environnement propre, sain et durable. Selon le rapport "Droit à un environnement sain : bonnes pratiques" du Rapporteur spécial sur la question des obligations relatives aux droits de l'homme se rapportant aux moyens de bénéficier d'un environnement sûr, propre, sain et durable (A/HRC/43/53), la Suisse figure parmi les Etats qui ont juridiquement reconnu le droit à un environnement sain par la ratification d'un traité international (en l'occurrence la Convention d'Aarhus). À noter toutefois que la Convention d'Aarhus garantit des éléments de procédure et non pas des éléments de fond du droit à un environnement sain.

Même si le droit constitutionnel et législatif suisse ne prévoit pas de droit à un environnement sûr, propre, sain et durable, l'environnement et la protection de l'environnement jouissent d'une grande importance dans la Constitution fédérale. Le préambule fait déjà référence à la "responsabilité envers la nature" et à la "protection de la nature", "la création" et la "responsabilité envers les générations futures". Sous le titre "Protection de l'environnement", la Constitution fédérale expose que la protection de l'environnement vise à "la protection de l'homme et de son environnement naturel" (art. 74, al. 1, Cst.). Tant l'homme que l'environnement naturel doivent être préservés des atteintes nuisibles et incommodantes. La protection de l'environnement en Suisse sert donc d'une part la santé humaine, mais d'autre part aussi la préservation de l'environnement lui-même

Au niveau cantonal, seul l'article 19 de la Constitution de la République et canton de Genève du 14 octobre 2012 (RS 131.234; Cst.-GE) prévoit explicitement un droit à un environnement sain. Selon cette disposition « [t]oute personne a le droit de vivre dans un environnement sain. »

La jurisprudence n'a pas non plus reconnu une forme explicite de droit humain à un environnement sain, mais il y a des signes d'écologisation des droits fondamentaux et des droits humains dans la jurisprudence (voir Centre suisse de compétence pour les droits humains (CSDH), Droit à un environnement sain - La future reconnaissance par les Nations Unies d'un droit à un environnement sain et ses conséquences pour la Suisse, 14 février 2021, p. 87 ss [en allemand]; Résumé de l'étude en français, p. 7 s).

TÜRKIYE

REPONSE GLOBALE

The Turkish authorities' response to the questionnaire dated 15 September 2022 within the context of CDDH-ENV

Introduction

1. The Turkish authorities observe that the questionnaire in issue comprises three questions:

   i. Is some explicit form of human right to a healthy environment protected under the constitution, legislation or jurisprudence, and if so in what terms?
   ii. Is the right justiciable, and if so on what conditions?
   iii. What, if anything, have the domestic courts said about this right in their caselaw?

2. In this regard, the Turkish authorities provide the following information in response to the said questions.

Questions & Answers

3. The Turkish authorities state that there are certain provisions aiming at protection and sustainability of the environment in the Turkish Constitution and legislation.

4. It should first be noted that Article 56 of the Turkish Constitution provides as follows:

"A. Health services and protection of the environment
ARTICLE 56- Everyone has the right to live in a healthy and balanced environment.
It is the duty of the State and citizens to improve the natural environment, to protect the environmental health and to prevent environmental pollution.
The State shall regulate central planning and functioning of the health services to ensure that everyone leads a healthy life physically and mentally, and provide cooperation by saving and increasing productivity in human and material resources.
The State shall fulfil this task by utilizing and supervising the health and social assistance institutions, in both the public and private sectors.
In order to establish widespread health services, general health insurance may be introduced by law."

5. Article 1 of the Environment Law ("Law no. 2872") provides as follows:

"Objective
Article 1 – (As amended on 26 April 2006 by Article 1 of the Law no. 5491)
The objective of this Law is to protect the environment, which is a common asset of all living beings, in accordance with the sustainable environment and sustainable development principles."

6. Article 2 of the Law no. 2872 provides as follows.

"Definitions:
Article 2 – (As amended on 26 April 2006 by Article 2 of the Law no. 5491)
The definitions of the following terminology of this Law read as follows;
Environment: Biological, physical, social, economic and cultural medium in which the living beings continue their relation through all their lifetimes and interact mutually,
"Environmental Protection": Entire efforts to prevent the demolition, degradation and destruction of environmental values and ecological balance, to eliminate the present deteriorations, to improve the environment as well as to prevent the environmental pollution,
"Environmental Pollution": All kinds of adverse effects that occur in the environment and may impair the health of living beings, environmental values and ecological balance,
Sustainable environment: The process of rehabilitation, protection and development of all environmental values in all areas (social, economic, physical etc.) that constitute the environment of both present and future generations without endangering the existence and quality of the resources that future generations will require,
Sustainable development: Development and progress based on a balance between environmental, economic and social objectives which guarantee that present and future generations live in a healthy environment.
…"

7. Articles 181 and 182 of the Turkish Criminal Law ("Law no. 5237") provide as follows.

Intentional Pollution of the Environment
Article 181- *(1) Any person who intentionally discharges waste or refuse material into the earth, water or air, contrary to the technical procedures as defined in the relevant laws and in such a way as to cause damage to the environment, shall be sentenced to a penalty of imprisonment for a term of six months to two years.*
(2) Any person who brings waste or refuse material into the country without permission shall be sentenced to a penalty of imprisonment for a term of one to three years.
(3). Where the waste, or refuse material, has the propensity to remain in the earth, water or air, the penalty to be imposed shall be double that of the penalty according to the above paragraphs.
(4) Where an offence is committed as defined under paragraphs one and two in relation to waste or refuse material which has a characteristic which may cause the alteration of the natural characteristics of plants or animals, enhance or create infertility or cause an incurable illness in humans and animals, the offender shall be sentenced to a penalty of imprisonment for a term of not less than five years and a judicial fine of up to thousand days.
(5) Where the offences regulated under paragraphs one, three, and four of this Article are committed by a legal entity, security measure specific to legal entities shall be imposed.

Pollution of the Environment due to Recklessness
Article 182- *(1) Any person who discharges waste or refuse material into the earth, water or air through his recklessness such as to cause environmental damage shall be sentenced to a penalty of a judicial fine. Where the waste or refuse material has the propensity to remain in the earth, water or air, the penalty to be imposed shall be imprisonment for a term of two months to one year.*
(2) Any person who causes, by his recklessness, the discharge of waste or refuse material which has a characteristic which may cause the alteration of the natural characteristics of plants or animals, enhance or create infertility or cause an incurable illness in humans and animals, the offender shall be sentenced to a penalty of imprisonment for a term of one to five years.

8. The Turkish authorities point out that the aforementioned provisions, among others, are the most explicit rules dedicated to protection and sustainability of environment in the legislation in force. As can be seen, the right to live in a healthy and balanced environment is guaranteed for everyone pursuant to Article 56 of the Turkish Constitution and, the domestic courts must rule accordingly.

9. In this connection, the Turkish authorities reiterate that the Turkish Constitutional Court has the power to receive individual applications from persons who complain of a breach of one of their rights protected under both the Constitution and the European Convention on Human Rights ("the ECHR" or "the Convention"). This is called "the joint protection." In other words, the jurisdiction of the Turkish Constitutional Court in examining complaints is connected to that of the ECHR. In order

for a right to be protected by the Turkish Constitutional Court in an individual application case, that particular right must fall within the protection provided for in one of the Articles of the Convention.

10. Bearing this in mind, the Turkish authorities indicate that it is possible to invoke Article 56 of the Constitution in an individual application before the Constitutional Court insomuch as it intertwines with one of the rights and freedoms protected under the ECHR. Therefore, it is not possible to rely on that Article in an individual application unless its sphere of protection and that of an Article of the Convention intersects and overlaps.

11. The Government notes that although there are certain judgments in which the Constitutional Court examined complaints under Article 56 of the Constitution from the standpoint of Articles 17, 20 and 21 of the Constitution, which correspond Articles 2 and 8 of the ECHR, there is no judgment finding a violation solely under Article 56 of the Constitution. The Turkish Constitutional Court sometimes employs Article 56 of the Constitution as being one of the complementary provisions of Article 20 and/or others of the Constitution in cases where an examination from the standpoint of the Convention is required. In that sense, if the Constitutional Court considers that an alleged interference with an individual's right under Article 56 of the Constitution intersects and overlaps with the rights under "the joint protection", it may examine the merits of the application. However, if a complaint in an individual application under Article 56 of the Constitution falls short of putting Article 20 and/or others of the Constitution into motion, the Constitutional Court lacks jurisdiction *ratione materiae* and thus cannot examine the merits of the case.

12. By way of example, the Constitutional Court, in paragraph 46 of its judgment of *Mehmet Kurt*, stated the following[47]:

The normative basis of the right to a healthy environment, in constitutional context, is the regulation that everyone has the right to live in a healthy and balanced environment, which is set forth in Article 56. However, this provision is enshrined within the section "social and economic rights and duties" of the Constitution. In Article 148 § 3 of the Constitution where right to an individual application is regulated, it is set out "Everyone may apply to the Constitutional Court on the ground that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights which are guaranteed by the Constitution has been violated by public authorities.". It is thereby indicated that an individual application cannot be lodged due to an alleged violation of the second and third generations of rights enshrined in the Constitution. However, the right to a healthy environment must be assessed in conjunction with Article 17 of the Constitution embodying the legal interests with respect to physical and mental integrity, and Articles 20 and 21 thereof, which respectively safeguards the right to respect for private and family life and the inviolability of domicile, and by also taking into account its impact on the legal interests inherent in these provisions (Mehmet Kurt [GC], B. No: 2013/2552, 25/2/2016, § 46)".

13. In paragraphs of 36 and 37 of its judgment of *İbrahim Örs and Others*, the Constitutional Court stated the following[48]:

The right to live in a healthy environment is, in essence, regulated in Article 56 of the Constitution which do not fall within the joint protection sphere of the Constitution and the Convention. Moreover, the Constitutional Court has stated in its several previous decisions that the relevant right must be assessed in conjunction with Article 17 of the Constitution embodying the legal interests with respect to physical and mental integrity, and Articles 20 and 21 thereof, which respectively safeguards the right to respect for private and family life and the inviolability of domicile, and by also taking into account its impact on the legal interests inherent in these provisions (Mehmet Kurt, § 46; Ahmet İsmail Onat, B. No: 2013/6714, 21/4/2016, § 59; Fevzi Kayacan (2), B. No: 2013/2513, 21/4/2016, § 39; Hüseyin Tunç Karlık and Zahide Şadan Karluk, B. No: 2013/6587, 24/3/2016, § 43; Ahmet Bilgin and others, § 52).

[47] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/2552?Dil=en
[48] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/34116

The first issue to be assessed in respect of the present application is as to whether the impugned environmental impact is of the minimum threshold of severity to engage the guarantees under Article 20 of the Constitution. In this regard, the existence of close relation between the environmental impacts occurred as a result of the relevant plant, operation or other activity and the applicants' right to respect for private and family life and right to domicile is sufficient (Mehmet Kurt, § 70; Ahmet İsmail Onat, § 84; Hüseyin Tunç Karlık and Zahide Şadan Karluk, § 68). It is understood that the applicants reside in the region, in which the relevant Project takes place. Therefore, the impact of the said Project on the applicants' right to respect for private life should be assessed within the scope of Article 20 of the Constitution.

14. As can be seen, the Constitutional Court examines the merits of complaints where Article 56 of the Constitution is at stake provided that those complaints are capable of inducing an examination not only from the standpoint of Article 56 of the Constitution but also from one of the rights that falls within the ambit of the aforementioned "joint protection."

15. When it comes to the Court of Cassation and the Supreme Administrative Court, the Government indicates that the same is true for their case-law as well. In other words, although there are some implicit references to Article 56 of the Constitution as being a human right within the ambit of Article 20 and/or others of the Constitution as well as Article 8 of the Convention, there is no explicit recognition that it is a separate human right for the purposes of the Convention.

Conclusion

16. In this regard, the Turkish authorities conclude that some explicit form of right to a healthy environment is protected under Article 56 of the Turkish Constitution. However, due to the "joint protection" mechanism in question it is not possible to classify it as a separate human right for the purposes of the Convention. In that sense, that right is justifiable in an individual application only when the alleged complaint intertwines with the applicant's rights that falls within the ambit of "the joint protection". In simple terms, the Constitutional Court has as much power as the ECHR does in this regard. Its case-law has therefore evolved in line with the ECHR's findings.

UNITED KINGDOM / ROYAUME-UNI

The right to a healthy environment has not been explicitly incorporated into UK legislation and the UK considers that the right, whilst politically recognised, is not legally defined.

However, the UK's environmental legislation is robust and world-leading. Existing UK domestic legislation and regulatory regimes satisfy our environmental obligations in a way that is sufficiently robust, and covers environmental and human health protection aspects.

QUESTION 2

Is the right justiciable, and if so on what conditions?

Ce droit est-il justiciable et, dans l'affirmative, à quelles conditions ?

ANDORRA / ANDORRE

Les lois qui ont été présentées dans la réponse apportée à la question 1 prévoient un régime d'infractions et de sanctions applicable en cas de non-respect des dispositions législatives qu'elles contiennent. En ce sens, comme il a été indiqué précédemment la volonté du législateur est celle d'instituer un régime juridique de protection et de conservation de l'environnement.

En fonction du type d'infraction, les divers textes de loi prévoient soit des sanctions administratives, soit, dans certains cas, des sanctions pénales. A titre d'exemple, nous pouvons citer l'article 289 du Code Pénal relatif à la pollution environnementale qui prévoit que « *Quiconque, en violation des lois ou autres dispositions administratives protégeant l'environnement, provoque ou réalise directement ou indirectement des émissions, déversements, radiations, extractions ou excavations, bruits ou vibrations, enfouissements, injections ou dépôts, dans l'atmosphère, dans le sol, dans le sous-sol, ou dans les eaux terrestres ou souterraines, avec une incidence même dans les territoires transfrontaliers, qui peuvent mettre en danger l'équilibre ou les conditions de la flore, des espaces naturels ou de la faune, doit être puni d'un emprisonnement de trois mois à trois ans, d'une amende pouvant aller jusqu'à 60 000 euros et interdiction d'exercer la profession ou d'exercer des fonctions jusqu'à quatre ans.* »

En conséquence, nous pouvons affirmer que ce droit reconnu par la législation andorrane est bel et bien justiciable à condition toutefois que l'infraction et la sanction correspondante soit prévue et typifiée par des textes de loi.

ARMENIA / ARMÉNIE

The Administrative Procedure Code of the Republic of Armenia ensures the right of each person and legal entity to appeal to an administrative court if they consider that the administrative act, action or inaction of a state or local self-government body or its official have violated or may directly violate the rights and freedoms of the persons and legal entities stipulated by the Constitution of the Republic of Armenia, international treaties, laws or other legal acts.

The Administrative Procedure Code states that a Non-Governmental Organization may represent the legal interests of its beneficiaries in court in the domain of environmental protection, provided that:

1) the suit follows from the statutory purposes and tasks of the organization and is aimed at the protection of the collective interests of its beneficiaries concerned with the statutory purposes of the organization;
2)
2) under The Law of the Republic of Armenia on Environmental impact Assessment and Expertise, the NGO has participated in public discussion of fundamental documents or planned activities, or was denied the opportunity to participate in public discussion.

AUSTRIA / AUTRICHE

At the outset, it is to be pointed out that the European Convention on Human Rights has been given constitutional status in Austria. Parties in proceedings can request compliance with the rights laid down in the Convention in all proceedings pending before civil, criminal and administrative courts, and, if necessary, also enforce such compliance before Austrian supreme courts.

The Constitutional Court may repeal *ex officio* laws and regulations which are precedent in proceedings before it against judgments and decisions of administrative courts (Judgment Complaint [*Erkenntnisbeschwerde*], see Section 144 of the Federal Constitutional Act [*Bundes-Verfassungsgesetz*, B-VG] if they contradict the Austrian Constitution and if they violate any rights guaranteed by the Convention, its Protocols or the Charter of Fundamental Rights of the European Union.

Under certain conditions, a person who is either directly concerned or who is a party in proceedings pending before an ordinary court may *directly* request that the Constitutional Court review the applicable legal norms (Individual Application [*Individualantrag*] or Party's Application for a Judicial Review [*Parteiantrag auf Normenkontrolle*]; Section 140 B-VG; similar provisions apply to the review of regulations, see Section 139 B-VG).

As described in the answer to question 1, the Austrian Constitutional Court may refer in its judgments and decisions to national objectives by way of interpretation and of striking a fair balance with regard to the public interest. This not only implies relevant national provisions but also obligations stemming from international treaties provided that these are directly applicable (see the already mentioned judgment of the Constitutional Court VfSlg. 20.185/2017). In this context, the principle of equality is of special significance. This principle has long been anchored at the constitutional level with Section 2 StGG and Art. 7 para. 1 B-VG for Austrian nationals. For decades, the Austrian Constitutional Court has interpreted these guarantees as a general requirement of objectivity that binds both the legislature and the entire administration. E.g., the administration is thus bound by the prohibition of arbitrariness and the principle of proportionality. The same applies to foreigners on the basis of the Federal Constitutional Law on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination.

Anyone who is an addressee of a decision by an Austrian authority or of a judgment or decision of an Austrian court or for whom an Austrian legal provision is directly applicable may invoke legal protection provided by the Austrian legal order. For example, he or she could argue that authorities and courts arbitrarily disregarded environmental protection standards:

> Certain projects the implementation of which is expected to have major effects on the environment must be subjected to a systematic environmental impact assessment (EIA) under the 2000 Environmental Impact Assessment Act (*Umweltverträglichkeitsprüfungsgesetz 2000*, UVP-G 2000), Federal Law Gazette No. 696/1993, as most recently amended by Federal Law Gazette I No. 80/2018. For example, this act applies to waste treatment facilities, amusement parks, shopping centres, powerplants, intensive livestock farms, groundwater abstractions, the clearing of woodland, and to industrial plants exceeding a certain size. The purpose of an environmental impact assessment is to identify and assess, with public participation and on the basis of pertinent expertise, the direct and indirect effects of a project, and to examine measures that prevent or mitigate harmful, disturbing or adverse effects of a project on the environment or that enhance its beneficial effects.
>
> EIA procedures take up the implementation of the goals of the Paris Agreement, and/or climate change and climate protection measures in general. Projects such as the construction of motorways and expressways, of wind farms, of a helicopter landing site and of the third runway at the Vienna Airport have been subjected to EIA procedures in the past.

The EIA procedure supplements the numerous regulations in place which serve the protection of the environment and the neighbours, and which must generally be complied with when implementing projects (plant and facility approval law, clean air law, forest and water law, building regulations, etc.); offences are sanctioned.

AZERBAIJAN / AZERBAÏDJAN

The right is justiciable. As can be seen from Article 9 indicated above, citizens can claim damages in a judicial manner.

Moreover, according to Article 6.1.8 of the Law on Protection of Environment, citizens, stateless persons and foreigners have right to demand administrative or judicial annulment of decisions on the placement, construction, reconstruction and commissioning of enterprises, installations and other environmentally harmful objects that have a negative impact on human life and the environment, as well as restriction or temporary suspension of the activities of individuals and legal entities, and liquidation of legal entities.

Furthermore, according to Article 7.2.4. of the Law on Ecological Safety, citizens, stateless persons, foreigners and public unions have right to apply to relevant state and local self-government bodies and courts when the requirements of the legislation in the field of ecological safety are violated.

BELGIUM / BELGIQUE

L'article 23 de la Constitution n'a pas d'effet direct. Une action en justice ne peut donc se fonder exclusivement sur cette disposition constitutionnelle qui ne consacre pas un droit subjectif permettant à celui qui s'estime atteint dans la qualité de son environnement d'exercer un recours juridictionnel.

La cour d'appel de Bruxelles a déclaré à propos de l'article 23 dans un arrêt du 24 janvier 1997 : « *il est généralement admis que le droit à la protection d'un environnement sain reconnu à chacun par l'article 23, alinéa 3, 4° de la C°, tel qu'il est invoqué par les intimés, n'est pas directement applicable en telle sorte qu'une action en justice ne pourrait se fonder exclusivement sur cette disposition constitutionnelle qui ne consacre pas un doit subjectif permettant à celui qui s'estime atteint dans la qualité de son environnement d'exercer un recours juridictionnel contre celui qui l'affecterait, par son fait non fautif ; qu'un tel droit subjectif n'existera que lorsque le pouvoir législatif ou décrétal le mettra concrètement en œuvre* ».

Les autorités publiques et les citoyens doivent veiller à ce que soit menée une politique qui réalisera les objectifs fixés dans l'article 23 de la Constitution. La responsabilité du législateur ordinaire est alors de savoir comment et suivant quel schéma. Le législateur se voit ainsi attribuer une très grande liberté de choix.

CROATIA / CROATIE

The right to a healthy environment is justiciable before ordinary or specialized courts depending of the issue in question in compliance with the formal requirements and time-limits laid down in domestic law.

CZECH REPUBLIC / RÉPUBLIQUE TCHÈQUE

There are several types of administrative actions under the Czech Code of Administrative Justice ("CAJ") which can be used against either non-existence or insufficiency of national or local programmes of environmental protection: in particular, the action against unlawful interference by an administrative authority under section 82 CAJ, and the action against a measure of general application under section 101a CAJ.

Under section 82 CAJ, anyone who claims that their rights have been prejudiced directly by an administrative authority's unlawful interference, which was not a decision and which was directed at them, has the right to resort to a court to seek protection against the interference or a declaration that the interference was unlawful. Under section 87(2), the court shall determine in its judgment that the interference in question was unlawful and, if such interference or its consequences persist(s) or if there is a risk of its repetition, the court shall prohibit the administrative authority from continuing violating the claimant's right and shall order it, if possible, to restore the situation to that before the interference occurred.

Under section 101a(1) CAJ, anyone who claims that their rights have been prejudiced by a measure of general application, issued by an administrative authority, has the right to request the court to quash this measure or its part. Under section 101d(2), if the court finds that the measure of general application or its part is contrary to law, or that the administrative authority issuing it had overstepped its competences, or that it had been issued in a way not prescribed by law, it shall quash the measure of general application or its part, effective as of the day indicated in the judgment.

ESTONIA / ESTONIE

The Constitution: In 2010 the Supreme Court of Estonia delivered a decision (3-3-1-101-09) where it declared that no right to a clean environment can be derived from Articles 5 or 53 of the Constitution.

General Part of the Environmental Code Act: the right to environment that meets health and well-being needs (Article 23) is justiciable for persons concerned directly (subsection 1). The environment concerns a person directly where the person often stays in the affected environment, often uses the affected natural resource or otherwise has a special connection with the affected environment (subsection 2).

According to Article 30, subsection 2, of the General Part of the Environmental Code Act, where an environmental organisation contests an administrative decision or a taken administrative step in accordance with the procedure provided for in the Code Administrative Court Procedure or in the Administrative Procedure Act, it is presumed that its interest is reasoned or that its rights have been violated where the contested administrative decision or step is related to the environmental protection goals or the current environmental protection activities of the organisation.
It is reiterated, however, (Article 23 subsection 4) that the right to environment that meets health and well-being needs can not be considered as an absolute right, but interests of other persons as well as of the general public have to be considered in due course.

FINLAND / FINLANDE

In the Finnish legal system, the constitutionality of legislation is primarily subject to *a priori* assessment and there is no constitutional court, for example. Instead, as provided in section 74 of the Constitution, the Constitutional Law Committee shall issue statements on the constitutionality of legislative proposals and other matters brought for its consideration, as well as on their relation to international human rights treaties. The *a priori* nature of constitutional controls serves to influence the manner in which the fundamental right to the environment is addressed by courts of law. Any need to directly invoke this right before a court may be considered to be reduced by the fact that the constitutionality of legislation, and hence also its conformity with the fundamental right to the environment, is assessed already at the enactment stage.

What is significant with regard to the application in court of the fundamental right to the environment provided in section 20 of the Constitution is expressly that it is constitutional legislation. The primacy of the Constitution derives from its section 106, which states that if, in a matter being addressed by a court of law, the application of an Act would be in evident conflict with the Constitution, the court of law shall give primacy to the provision in the Constitution. The matter is also addressed in section 107 of the Constitution, which states that if a provision in a Decree or another statute of a lower level than an Act is in conflict with the Constitution or another Act, it shall not be applied by a court of law or by any other public authority. Since it is part of the system of fundamental rights, section 20 is also subject to the requirement laid down in section 22 of the Constitution, that public authorities shall guarantee the observance of basic rights and liberties and human rights. The fundamental right to the environment, like all other fundamental rights provisions, also has an interpretative effect, meaning that it may affect the interpretation of other provisions in the Constitution as well as Acts and subordinate statutes.

The legislative history in respect of the fundamental right to the environment finds that the provision primarily impacts on the activities of the legislator and other issuers of norms, and the courts of law indeed play a role secondary to the legislator in implementing section 20 of the Constitution. The reports issued by the Constitutional Law Committee have repeatedly found that section 20 of the Constitution does not establish obligations that are verifiable down to the individual and that it does not constitute specific grounds to impose any obligations to tolerate extending expressly to land-owners (reports PeVL 69/2018 and PeVL 55/2018 and the earlier reports mentioned therein). The legal basis for obligations imposed on individuals is found in regulation at the level of an Act, in the drafting and interpretation of which the fundamental right to the environment is applied. Even though courts of law in practice most often make reference to regulation at the level of an Act that gives tangible expression to the fundamental right to the environment, this right may also be taken into account by courts of law not only when interpreting obligations but also in decisions concerning the rights of individuals, for example the issuance of a permit.

An examination of the application of the fundamental right to the environment by courts of law and other public authorities shall also take into account the obligation laid down in section 2, subsection 3 of the Constitution that in public activity, the law shall be strictly observed. This naturally applies also to law at the level of the Constitution. As far as the public interest nature of the fundamental right to the environment is concerned, attention should also be paid to section 37 of the Administrative Judicial Procedure Act (808/2019), subsection 1 of which states that an administrative court shall ensure that the matter is examined, while subsection 3 states that the authority shall give equitable consideration to public and private interests in judicial proceedings.

The right of appeal in matters linked to the fundamental right to the environment is determined on the basis of the regulation at the level of an Act that gives it tangible expression. Under section 191 of the Environmental Protection Act (527/2014), for example, subject to certain conditions, the right of appeal is held by: the party concerned; a registered association or foundation, whose purpose is to promote the protection of the environment or human health or nature conservation or the pleasantness of the living environment, and in whose operating area the environmental impacts in

question arise; the municipality in which the activity is located or another municipality in the area in which the environmental impacts arise; the state supervisory authority and the environmental protection authority of the municipality in which the activity is located or which is in the area of impact of the activity; an authority responsible for supervision of the public interest in the matter; the Sámi Parliament; the Skolt Village Assembly. The Act additionally provides for a further, more specific right of appeal held by the state supervisory authority and the municipal environmental authority for purposes of supervision of the public interest in environmental protection or for another justified reason.

GEORGIA / GÉORGIE

According to the Constitution of Georgia (art. 31.1), every person has the right to apply to a court to defend his/her rights. The right to a fair and timely trial shall be ensured. The fundamental human rights referred to in the Constitution, in terms of their contents, shall also apply to legal persons (art. 34). In Georgia, judicial powers are exercised by the Constitutional Court of Georgia and the common courts. The Constitutional Court is a judicial review body in Georgia.

As already mentioned above, the Constitution of Georgia guarantees everyone's right to live in a healthy environment, as well as procedural environmental rights. Accordingly, these rights also apply to legal persons.

Pursuant to the Constitution of Georgia (art. 60.4, a), the Constitutional Court, in accordance with the rules established by the Organic Law of Georgia "On the Constitutional Court", shall review the constitutionality of a normative act with respect to the fundamental human rights enshrined in the Constitution on the basis of a claim submitted by a natural person, a legal person or the Public Defender, if they believe that their rights and freedoms recognised under chapter two of the Constitution of Georgia have been violated or may be directly violated;. Correspondingly, normative acts can be challenged before the Constitutional Court of Georgia, if a person considers that his/her right to live in a healthy environment and/or procedural environmental rights have been violated by the legislation.

A judgment of the Constitutional Court shall be final. An act or a part thereof that has been recognised as unconstitutional shall cease to have legal effect as soon as the respective judgment of the Constitutional Court is made public, unless the relevant judgment envisages a later time frame for invalidating the act or a part thereof.

The General Administrative Code of Georgia (hereinafter referred to as GA Code) establishes procedures for administrative review, which is fully in compliance with the requirements of the Aarhus Convention with regard to the access to justice in environmental matters.

In accordance with the GA Code (art. 2.1, a), an administrative body is defined as all state or local self-government bodies/institutions, legal entities under the public law (other than political and religious associations), and any other person exercising authority under public law in accordance with the legislation of Georgia.

An administrative act is a legal act issued by an administrative body under the legislation (art. 2.1, c). There are two types of an administrative act: 1. individual legal act issued by an administrative body under the administrative law establishing, modifying, terminating, or confirming the rights and obligations of a person or a limited group of persons. The decision of an administrative body to refuse to address an applicant's issue within its competence, as well as any document issued or confirmed by an administrative body that may have legal consequences for a person or a limited group of persons, shall also be deemed an individual administrative act (art. 2.1,d); and 2. normative legal act issued by an authorized administrative body under a legislative act that includes a general code of conduct for permanent, temporary or multiple applications (art. 2.1, e).

According to the GA Code (art. 177.1), an interested party (i.e. any natural or legal person, or administrative body to whom an administrative act has been issued, as well as those whose legal interests are directly and immediately affected by an administrative act or by an action of an

administrative body (art. 2.1, b)) may appeal an administrative act issued by an administrative body. In addition, violation by an administrative body of the timeframe for issuing an administrative act shall be considered a refusal to issue the act. The refusal shall be appealed in accordance with the rules established for appealing an administrative act (art. 177.2). It is noteworthy that no state fees or charges may be established for reviewing administrative complaints (art. 204).

An action by an administrative body not connected with the issuance of an administrative act shall be appealed in accordance with the rules established for appealing an administrative act (art. 177.3)

According to the GA Code (art. 178.1) unless otherwise provided for by legislation, the administrative body issuing the administrative act shall review and resolve the administrative complaint if there is an official at the administrative body superior to the official or to the structural sub-division having issued the administrative act.

A superior administrative body shall review and resolve an appeal filed against an administrative act issued by a senior official of an administrative body (art. 178.2).

According to the Administrative Procedure Code of Georgia (art. 2.1), among others, the following may be a matter of administrative dispute in a court:

a) compliance of an administrative act with the legislation of Georgia;

b) conclusion, fulfilment or termination of a contract under public law;

c) an obligation of an administrative body to compensate damages, to issue an administrative act or to perform any other action;

d) declaration that an act is null and void.

Pursuant to the Administrative Procedure Code of Georgia, a person may also apply to a court, only after using the possibility to lodge an administrative complaint in accordance with the procedure laid down in the General Administrative Code of Georgia, unless otherwise provided by the law (art. 2.3).

All the above-mentioned appeal mechanisms are general and can be used by individuals and legal entities for the purpose of realization of any right (including the right to live in a healthy environment).

GERMANY / ALLEMAGNE

Article 20a of the Basic Law does **not grant individuals any individual, enforceable rights** (see above). As a consequence, the legal protection under administrative law available in the field of environmental law will not be extended. Provisions that are not enforceable by nature do not become enforceable just because they give further shape to the constitutional mandate to take climate action stipulated in Article 20a of the Basic Law.

For this reason, Article 20a of the Basic Law did not previously play a central role in German jurisprudence. This changed when the Federal Constitutional Court handed down its “climate protection order” on 24 March 2021, which clearly specified the substance of Article 20a of the Basic Law and, with that, increased its significance. See below.

The fundamental rights arising from Article 2(2) first sentence, Article 12(1) and Article 14(1), as mentioned in the answer to question 3, are directly applicable law and are therefore also justiciable. However, as stated in response to question 3, they do not generally confer a right to a specific state measure of environmental protection.

GREECE / GRÈCE

As affirmed by the case law, the provisions of article 24 (1) of the Constitution are not simple directives, but binding and self-executing rules addressed to the executive, legislative, and judicial branches as well as to individual persons (see *e.g.* Council of State, judgments n° 1615/1988, 2818/1997, 637/1998). Consequently, in accordance with this direct obligation, the administration's omission to take appropriate measures is subject to annulment for excess of power by the Council of State (see *e.g.* Council of State judgments n° 4665/1996, 2818/1997, 1439/1998, 303/2017). The relevant case law of the Council of State had established the existence of a subjective and justiciable right to environmental protection already before the abovementioned constitutional revision in 2001, which provides for "a right of every person" to the protection of the natural and cultural environment, including both legal persons – even local authorities – and natural persons, not only Greek citizens but also foreigners residing in Greece.

ITALY / ITALIE

National courts recognise citizens' right to an environment consistent with the protection of human health. In this context, the protection is intended as a subjective right of single persons to be restored by public administrations' conducts or omissions harming natural environment and its integrity. So, protecting the environment means protecting collective andindividuals' wellness.

In this prospective, the protection of the right to a health environment takes generally place before ordinary courts (in some cases before administrative ones), and it can be restored in case of violation or damage.

In order to protect this right in front of a judge claimants need an 'interest in bringing proceedings' and this is able to generate some complications in consideration of the super- individual nature of the right, defined as 'interesse collettivo' (collective interest) common toa community having the same status or being member of a specific group.

Judicial protection is ensured when a collective interest is taken before a judge by a subject effectively representative of the collective interest. In that case, this entity can act in the judgement like an individual.

Furthermore, the fact that Italian Constitution expressely provides for environmental protection as an objective that public authorities must pursue, means that it can also be enforced against the legislator, in the context of the judgment of constitutional legitimacy of the laws.

MINISTRY OF JUSTICE

Abstract of the justice framework

The system of jurisdictional remedies in the field of environmental damage is structured on a twofold possibility of safeguard divided between (civil/criminal) administrative and ordinary judge.

Regarding the administrative issues, private citizens and representative bodies of collective interest can lodge an appeal to the regional administrative court (T.A.R.) (Translator's note: T.A.R. stands for Tribunale Amministrativo Regionale) to challenge the legitimacy against all administrative acts which may adversely affect the right to a healthy environment.

As far as the civil jurisdiction is concerned, it is possible to claim compensation for environmental damage both via injunctions pursuant to Art. 844 of the Civil Code, Art. 700 of the Civil Procedure

Code and, finally, thanks to the safeguarded compensation as provided under Art. 2058 of the Civil Code (to be meant as the removal of the causes that have determined the pollution, namely, the reclamation and restoration of the area).

As far as the penal jurisdiction is concerned, the safeguard is ensured by challenging, against the liable persons, the charges expressly specified in the Criminal Code and national legislation, on the initiative of a party, by means of reporting and complaint procedures or, according to the circumstances, via verifications carried out by the bodies in charge, with consequent celebration of criminal proceedings. It should be noted that, regarding different offences, in order to provide greater safeguard, the legislator has provided the institution of confiscation (for example, par. 3 of Art. 256 of the Legislative Decree No. 152/2006 and Art. 542 undecies of the Criminal Code).

Regarding the environmental offences, with the entry into force of 318, par. 2, lett. a) of the Legislative Decree No. 152/2006, it is up to the State and, on its behalf, Ministry of the Environment, the right to take a civil action in proceedings for environmental offences in order to obtain compensation for environmental damage of a public nature considered, per se, an impairment of public and general interests in the environment. Otherwise, all different subjects of the State, alone or in association, including the Regions and other territorial public bodies, can take civil action under criminal law pursuant to Art. 2043 of the Civil Code to obtain compensation for further and real patrimonial and non-material damage resulting from the impairment of special rights, other than the public interest in the safeguard of the environment, even if resulting from the same detrimental conduct.

The evolution of the justice system in environmental matters

The issue of the **right to the health of the environment** and compensation for **environmental damage in the Italian legal system was initially raised** with reference to the safeguard of the **right to health,** since, from the outset, the topic of the direct safeguard of a right that, according to a former approach, relates, first, to the so-called widespread interests whose safeguard is entrusted to the State and its delegated peripheral structures.

On a regulatory level, the first reference traces back to the **Law No. 349 of 1986** establishing the Ministry of the Environment, where the Articles 13 and 18 provide for, regarding associations recognised by a special ministerial decree, legitimising **the intervention in environmental damage proceedings, as well as resorting to the annulment of unlawful acts** affecting the environmental interests. This provision was not repealed by the **Legislative Decree No. 152 of 2006** (the so-called Consolidated Act on environment) that, pursuant to par. 2 of art. 309, granted, to the associations selected pursuant to art. 13 of Law No. 349 of 1986, Regions, autonomous Provinces and local bodies, as well as **natural and legal persons who are or could be affected by environmental damage**, the only right to **submit complaints and observations**, accompanied by documents and information **to adopt all precautions relative to any type of environmental damage or imminent threat of environmental damage, as well as a State intervention to safeguard the environment in conformity with the sixth paragraph of the aforementioned decree**.

This approach has been received within the framework of the reform of the Title V where the subject «environment and ecosystem safeguard» has been clearly specified in the Art. 117, par. 2, lett. s) of the Constitution as an **exclusive competence of the State**. At the same time, the third paragraph has recognised the relevance of the numerous and different interests relating to the Regions and, therefore, their territorial bodies.

Regarding the instruments **the State can adopt for a direct safeguard**, to be compensated for damages, the Minister of the Environment can act procedurally or issue an **immediately enforceable ordinance** aimed, first, at **restoring the environment** and, second (by means of a second ordinance), compensating for damages equivalent to the **established and residual environmental damage**.

Subsidiarily, Article 310 of the Consolidated Act on Environment provides that the territorial bodies, as well as natural or legal persons affected or threatened by an environmental damage have the right to take action to annul the administrative acts and measures, and solicit the Minister of the Environment in case of delays in the implementation of measures preventing or containing damage. Article 311 of the Consolidated Act on the Environment, in accordance with the Directive 2004/35/EC, allows individuals, damaged or potentially affected by an environmental damage, to take action against the Minister of the Environment to obtain compensation for damages affecting their fundamental rights, resulting from unadopted and unimplemented preventive measures.

In any case, from the legal point of view, when enforcing the provisions of the Law No. 349 of 1986, it was discussed if the alleged defects are those ones **inherent in the features of the assessment on the environmental interest** only or if, regarding the measures, for an allegedly detrimental nature of the interests to the environment, those bodies are entitled to denounce **defects of different nature as well**. As far as this aspect is concerned, it is relevant the judgement issued by the **Joint Chambers of the Court of Cassation** No. **5172/1979 that** identified the right to health as the right to a healthy environment whose safeguard is assimilated to the **fundamental and inviolable rights of the human being**.

As a matter of fact, it is the first act of recognition, from the jurisprudence point of view, of the **right to the environment as an absolute subjective right connected to the human being**, and as such it can be safeguarded, procedurally as well, against the Public Administration, to ask for restoring it in case of impairment regardless of the plaintiff's entitlement of properties or real rights.

Jurisprudence has never abandoned this principle and had many occasions to confirm it in relation to the underlying collective interests. The judgements **No. 210/1987 and No. 641/1987** issued by the Constitutional Court has subsequently legitimised the right to the environment in the list of the absolute subjective rights. The **judgement No. 210/1987** issued by the Constitutional Court highlighted this indissoluble hendiadys: the right to the environment as a **fundamental right of the person** and as a **fundamental interest of the community**. For the first time, in this way, it was pointed out the **need of** creating legal institutions for its safeguard and **reintegration** of the ensuing environmental damage that is an offence to the right that every citizen has individually and collectively. Therefore, by means of the **judgement No. 641/1987, the** Constitutional Court has assessed the determining element of the quality of life as primary and absolute value of the person.

According to the aforementioned judgements issued by the Constitutional Court, Articles 9, 32, 41 and 42 of the Constitution determine the jurisdiction of the Ordinary Judge on compensation for damages suffered personally because of the environmental damage and underline that, more generally, the right to the environment must always prevail over conflicting interests connected to ownership and public or private economic initiatives.

Consequently, pursuant to Art. 2043 of the Civil Code, individuals or associated subjects, including territorial public bodies and Regions, can take legal action procedurally to obtain compensation for whatever suffered damage resulting from the conduct of another person (public or private party) detrimental to the environment meant as an "asset", reflected negatively on their specific rights, different from the public interest which is safeguarded directly by the State differently (Court of Cassation, Criminal Chamber, No. 633/2012).

Being a right inherent in the human being, by judgement No. 90 issued by the I Civil Chamber on 19th January 2011 against the Ministry of the Environment, the Court of Appeal of Naples judged that the environmental damage can be safeguarded even before the entry into force of the Law No. 349 of 8th July 1986: as a matter of fact, the safeguard of the environment must be considered the expression of an autonomous collective value of all environmental resources and living beings featuring a given habitat which has its genetic source in the constitutional prerequisites set down to safeguard individuals and communities in their economic, social and environmental habitat (Art. 2, 3, 9, 41 and 42 of the Constitution).

Hence, as far as criminal matters are concerned, reference is made to a **broad concept of environment meant as a safeguarded asset**. For example, regarding landscape and environmental crimes, a prior authorisation is needed for civil works that, despite having agriculture, forest, and livestock-nature purposes, are suitable to cause a permanent alteration of the landscape, safeguarded by law as an aesthetic form of the territorial planning and as an «external aspect». The case taken into consideration by the Court of Cassation is relative to the activity of tillage of the soil by removing boulders and stumps of all pre-existing vegetation with the help of mechanical means. Therefore, the concept of "civil works" affecting the environment is wider than that one of "construction", since the human works that transform the original environment fall under the first ones. (Court of Cassation, Third Civil Chamber, Judgement No. 28939 of 7th May 2021 – filed on 23rd July 2021).

LATVIA / LETTONIE

As the case law examples provided above show, the right is justiciable.[49]

In so far as the access to courts is concerned under the *Environmental Protection Law*, Latvia has adopted the widest possible interpretation of this right as provided also under the *Aarhus convention*. Namely, anyone has the right to submit a complaint before the domestic administrative courts, if they consider that the environment has been adversely affected by the decisions or *de facto* actions of the State and/or its officials. In other words, the domestic law in Latvia establishes an *actio popularis* right to anyone who wishes to protect the environment. However, according to the domestic case law of the administrative courts, this right must not be exercised *mala fide*. Then, the courts maintain the right to reject such applications.

As for Article 115 of the *Constitution*, first, it must be underlined that the conditions for submitting a complaint before administrative courts under this provision are identical to those under the *Environmental Protection Law*, *i.e.* the provisions do not require that the rights of the individual would have been affected. What matters is the *bona fide* protection of the environment. However, the preconditions are slightly different before the Constitutional Court. Namely, pursuant to Article 16 of the *Law on the Constitutional Court*, the Constitutional Court may only examine cases that concern the compatibility of domestic law provisions with provisions of a higher legal force, *e.g.* provisions of a law with the *Constitution*. Therefore, an individual may lodge a complaint before the Constitutional Court only if it concerns the question of the compatibility of a norm with a norm of a higher legal force.
Moreover, an individual or a group of individuals must establish that the provision/-s contested before the Constitutional Court have them personally affected adversely. As for legal persons, the Constitutional Court in its practice has established two avenues to pursue. In one, the legal entity that wishes to submit a constitutional complaint in cases that concern environmental protection has to:

a) practice and work in the field of environmental protection (the protection of the environment is listed among the aims of the NGO in its charter/ regulations);
b) be official entity, meaning that it is officially registered;
c) have participated in the public consultations related to the particular decision that affects the environment.[50]

In such cases, legal persons do not have to establish that they have been affected by the law in question because the “victimhood” of the entity established according to the above criteria.

[49] See, additionally, the Court’s analysis in the case of *Vecbaštika v. Latvia* (application no.52499/11), decision of 19 November 2019, Relevant domestic law and practice.
[50] The judgment of the Constitutional Court in the case no.2007-11-03, available in English: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2007/05/2007-11-03_Spriedums_ENG.pdf#search=2007-11-03, paras.13.-13.2.

In the other avenue, the legal entity, like an individual, has to prove that it has been affected by the provision that is challenged before the Constitutional Court. In such circumstances, the legal entity does not have to be an entity that works in the field of environmental protection, participated in the public consultations, etc.

The issues concerning environmental protection may be raised before the Constitutional Court by other Government authorities and officials, as well. According to Article 17 of the *Law on the Constitutional Court* complaints pertaining to the compatibility of the domestic law provisions with Article 115 of the *Constitution* may be brought by the President, the Parliament, at least 20 Members of the Parliament, the Cabinet of Ministers, the Prosecutor General, the Council of the State Audit Office, a local government, the Ombudsman, and the domestic courts, when examining a particular case that requires the application of a provision that may be unconstitutional. For example, in 2017, the Constitutional Court examined a case that was brought before it by the Administrative District Court and the Ombudsman, and concerned noise pollution. The applications by the Ombudsman and the Administrative District Court alleged that the provisions of the Cabinet of Ministers' Regulations no.16 "*On the assessment and management of noise*" among others were contrary to Articles 111 (right to health) and 115 of the *Constitution*. In its judgment,[51] the Constitutional Court found that the impugned provisions of the domestic legal framework on noise pollutions in motor-tracks were incompatible with Articles 111 and 115 of the *Constitution*.

As for local government authorities, the Constitutional Court may examine applications brought by local government authorities that concern the decision of the Minister for the Environmental Protection and Regional Development to stay its regulations, for example, in the field of territorial planning. The procedure according to Article 49 of the *Law on Local Governments* in this regard is very different from other procedures.[52] Namely, first, the local government authority adopts a set of regulations. If the Minister for the Environmental Protection and Regional Development considers that these regulations do not comply with the law, the Minister will adopt a decision to stay them. Then, the local government authority has an obligation within 2 months after the decision of the Minister to call for a meeting of the local government authority to examine the decision of the Minister and to decide on whether to comply with it or to apply before the Constitutional Court. Moreover, before lodging an application with the Constitutional Court, the local government authority has an obligation to adopt a decision as to why it considers that the decision of the Minister is unfounded. Moreover, the local government authority may submit an application before the Constitutional Court within 3 months after the decision of the local government authority on the decision of the Minister. However, if the local government authority fails to comply with this pre-trial procedure, it is barred from submit an application before the Constitutional Court, and the impugned regulations of the local government become void.

MALTA / MALTE

No, the right is not justiciable. The right is enunciated in Chapter II of the Constitution, 'Declaration of Principles', which contains a list of non-justiciable rights, such as the right to work, promotion of culture, protection of work, and so on.

NETHERLANDS / PAYS-BAS

[51] The judgment of the Constitutional Court in the case no.2017-02-03, available in Latvian: https://www.satv.tiesa.gov.lv/wp-content/uploads/2017/01/2017-02-03_Spriedums.pdf; The press release of the Constitutional Court concerning the judgment in the case no.2017-02-01 in English, available: https://www.satv.tiesa.gov.lv/en/press-release/the-norms-that-set-the-threshold-values-of-environmental-noise-of-open-air-moto-racing-tracks-are-incompatible-with-a-persons-right-to-health-and-the-right-to-live-in-a-benevolent-environment/.

[52] *Law on Local Governments*, available: https://likumi.lv/ta/en/id/57255-on-local-governments.

Article 21 of the Constitution encompasses an obligation of conduct for the Dutch Government. It is not possible to invoke such an obligation of conduct before a Dutch judge, which means that the right itself is therefore not justiciable. However, it is possible that the obligation of conduct is further elaborated upon in Dutch (civil) law and through the implementation and effect of relevant European legislation.

NORWAY / NORVÈGE

Depending on their content, Articles of the Constitution may as other legislative provisions be invoked before the courts, provided that the criteria set out in the Civil Procedure Act (Act of 17. June 2006 No. 90) are fulfilled. According to the Act, any physical or legal person can bring a case before the courts if it can show that it has an actual need to have its claim settled and that it has a legal interest in the matter, see Section 1-3 second paragraph of the Act. Organisations may also bring a case concerning a matter that comes within the scope of the organisation's objectives and natural scope of operations, provided that the requirements in Section 1-3 are also fulfilled, see Section 1-4 of the Act.

The extent to which Article 112 of the Norwegian Constitution is justiciable is described in answer to Question 1 above and question 3 below.

POLAND / POLOGNE

The provisions on environmental protection are interdisciplinary in character, bringing together regulation methods and liability regimes typical of the administrative, civil, and criminal branches of law.

In terms of state authorities, environmental protection tasks are carried out by public administration bodies on the level of both central government (such as the General Director for Environmental Protection, the regional directors for environmental protection, the minister in charge of the environment) and local authorities (mayors in all types of municipalities, chairs of district and provincial executive boards).
As a consequence, environmental protection proceedings include in particular administrative proceedings before public administration bodies, settled by way of an administrative decision on the rights or obligations of an entity.
Where an administrative decision is made, the parties are entitled to appeal against it; where the appellate body decides to the appellant's disadvantage, the latter has the right to forward the appeal to a provincial administrative court, and after that, to bring it further to the Supreme Administrative Court as the highest instance.

The administration of justice in cases implying civil and criminal liability for acts against the environment rests with ordinary courts.

Offences against the environment are regulated in Chapter XXII of the Criminal Code (Articles 181-188a). Article 225 of the Criminal Code concerns the prevention or hindrance of environmental and labour inspections. Article 47(2) regulates the matter of surcharge that either is ordered by the court if an offender is sentenced for an intentional offence against the environment or may be so ordered if an offender is sentenced for an unintentional offence against the environment. Article 607w(12) of the Code of Criminal Procedure lifts the prerequisite of double criminality with regard to offences against the natural environment, including trading in endangered species of animals and plants.

The principles of environmental protection and the conditions of using environmental resources, taking into account the requirements of sustainable development, are laid down in the Act of 27 April 2001 – Environmental Protection Law (Journal of Laws of 2021, item 1973 as amended). Title V Part III of the Act regulates the matter of administrative fines imposed by the Provincial Inspector for Environmental Protection by way of a decision for exceeding the limit values of gas or dust emissions into the ambient air in terms of quantity and type as set out in the permits referred to in Articles 181(1)(1) and 181(1)(2), violating the conditions of a decision approving the instruction for the operation of a waste landfill or a decision setting out the place and manner of waste storage, as required by the provisions of the Waste Act, relating to the type and manner of waste landfill or storage, and exceeding the noise levels as set out in the permissible sound level decision or the permit referred to in Article 181(1)(1) (Article 298 of the Act – Environmental Protection Law). Title VI Part I regulates the matter of civil liability for damage caused by impact on the environment (Articles 322-328), including the scope in which the Civil Code applies to this liability (Article 322 of the Act – Environmental Protection Law), the claims that may be brought by the aggrieved party due to illegal impact on the environment (Article 323 of the said Act), the matter of civil liability for damage caused to the environment by an increased-hazard or high-hazard establishment (Article 324), claims brought against the entity which has caused damage to the environment in order for that entity to compensate for the resources expended to rectify the damage (Article 326) etc. Moreover, Title VI Part II of the Act regulates the matter of criminal liability (Articles 330-360). As laid down in Article 361 of the Act – Environmental Protection Law, rulings on the offences set out in Articles 330-360 are made pursuant to the provisions of the Code of Procedure for Minor Offences. Furthermore, Title VI Part III of the Act – Environmental Protection Law regulates the matter of administrative liability (Articles 362-375).

Article 61(1)(2) of the Code of Civil Procedure (CCP) stipulates that, within the scope of their statutory duties, non-governmental organisations have the capacity to take legal action on behalf of natural persons who have authorised them in writing to do so in cases concerning protection of the environment. Pursuant to Article 458^{2}(1)(4) of the CCP the cases brought against entrepreneurs to make them stop violating the environment and restore it to its condition as it was before the violation or to repair the corresponding damage and to prohibit or restrict their activity that threatens the environment are classified as cases concerning economic activity. According to Article 753^{1} of the CCP, the court may issue an injunction ordering the obligor to make one-off or periodic payments to the obligee in order to repair damage caused by breach of environmental protection provisions. In such cases, a plausible claim is enough for the court to issue an injunction.

PORTUGAL

Portuguese courts play, in fact, a significant role when it comes to holding decision-makers, and public administration accountable for complying with both their Human Rights obligations and their environmental commitments. The Constitution of Portugal provides for an *actio popularis* or public action (Article 52.º).

Portuguese courts, including the *Supremo Tribunal de Justiça* and the Constitutional Court have issued some important decisions in environmental cases involving matters such as pollution, landfills, and conservation of nature.

The jurisprudence of the *Supremo Tribunal de Justiça* has dealt with 109 cases between 1995 and 2020 concerning a wide range of environmental harms, with many referring to the right to a healthy environment. Recently, the Constitutional Court established that the right to a healthy environment includes the conservation of biodiversity.

Law n.º 19/2014, de 14 de Abril, lays down the foundations of environmental policy,
And states in Article 6 and 7 several procedural rights in environmental matters:

Article 6
Procedural ("Procedimentais") rights in environmental matters
1 - Everyone shall enjoy the rights to intervene and participate in administrative procedures concerning the environment, under the terms established by law.

2 - In particular, the said procedural rights include
a) The right of participation of citizens, non-governmental associations and other interested agents, in environmental matters, in the adoption of decisions regarding authorisation procedures or concerning activities that may have significant environmental impacts, as well as in the preparation of environmental plans and programmes;
b) The right of access to environmental information held by public authorities, which must make it available to the public through appropriate mechanisms, including the use of computerised or electronic technologies.

Article 7
Procedural ("Processuais") rights in environmental matters
1 - Everyone is recognised as having the right to full and effective protection of their legally protected rights and interests in environmental matters.

2 - In particular, the said procedural rights include
a) The right of action for the defence of legally protected subjective rights and interests, as well as for the exercise of the right to public and popular action;
b) The right to promote the prevention, cessation and remedying of violations of environmental goods and values in the most expeditious manner possible
c) The right to demand the immediate cessation of the activity causing threat or damage to the environment, as well as the restoration of the previous situation and the payment of the respective compensation, in accordance with the law.

This constitutional protection of the right to the environment must be linked with the **right of popular action** conferred by Article 52(3) of the Portuguese Constitution. It governs that:

Article 52
<u>Right to petition and right to popular action 1.</u>

All citizens shall have the right to individually or collectively submit petitions, representations, claims or complaints to organs of sovereignty, organs of self-government of the autonomous regions, or any authorities in order to defend their rights, the Constitution, the laws, or the general interest, as well as the right to be informed, within a reasonable period of time, of the result of their consideration.

2. The law shall establish the conditions under which petitions collectively presented to the Assembly of the Republic and the Legislative Assemblies of the autonomous regions shall be considered in plenary session.

3. Everyone, personally or through associations for the defense of the interests in question, shall be granted the right to popular action in the cases and under the terms prescribed by law, including the right to petition the injured party or parties for the corresponding compensation, namely in order to

a) <u>promote the prevention, cessation or prosecution of infractions against public health, consumer rights, quality of life, preservation of the environment and cultural heritage;</u>

b) Ensure the defense of the property of the State, the autonomous regions and the local authorities.

The right to popular action is already a question of legitimacy, it guarantees any individual the possibility of acting in defense of environmental values, which correspond to diffuse interests, regardless of any direct affectation of their individual sphere.

In essence, it expands the concept of interest in acting, legitimizing anyone to recourse to an action for the defense of environmental goods that, by their nature are not individually appropriable.

It is this instrumental character that allows it to be classified as a guarantee, as opposed to fundamental rights in the strict sense, such as the right to the environment.

With the amendment to Article 52(3) made in the 1989 revision, the protection of environmental values was included, by way of example, in the list of those that enjoy the protection of the right of popular action. In April 1987, Laws no. 11/87 (Basic Law of the Environment) and no. Law No. 10/87 (Law on Environmental Protection Associations) had been published in.

Several provisions of these two laws presupposed even then, the possibility of resorting action for the defense of purely environmental values, namely Articles 40(5), 41(1) and 45(3) of Law no.11/87, 7(1)(a) and 13 of Law no. 10/87 and finally, in the present Law no. 19/2014, de 14 de Abril, that lays down the foundations of environmental policy, in what regards Procedural rights in environmental matters, as established on Article 7:

Article 7
Procedural rights in environmental matters

1 - Everyone is recognised as having the right to full and effective protection of their legally protected rights and interests in environmental matters.

2 - In particular, the said procedural rights include

a) The right of action for the defense of legally protected subjective rights and interests, as well as for the exercise of the right to public and popular action;

b) The right to promote the prevention, cessation and remedying of violations of environmental goods and values in the most expeditious manner possible

c) The right to demand the immediate cessation of the activity causing threat or damage to the environment, as well as the restoration of the previous situation and the payment of the respective compensation, in accordance with the law.

SLOVAK REPUBLIC / RÉPUBLIQUE SLOVAQUE

Natural and legal persons and NGOs can participate in the environmental protection through several types of legal action. They can protect their personal rights including health and privacy and their ownership rights relating to the environment through civil proceedings under the Civil Code. They can participate in administrative proceedings relating to the environment conducted by public authorities and can subsequently bring actions against acts (e.g. decisions) of public authorities within the system of administrative justice in accordance with the Code of Administrative Judicial Procedure. They can initiate criminal proceedings in the case of an environmental crime or other proceedings (carried out by special environmental supervisory authorities) in the case of an infringement of environmental regulations. They can protect their environmental constitutional rights and rights guaranteed by international conventions by filing constitutional complaints with the Constitutional Court.

The basic principle is that in administrative proceedings and in judicial procedures, the legal standing (right to be a party to the proceedings) is provided for anyone (natural or legal persons) directly affected by the case (e.g. by proposed project).

Legal standing in the administrative proceedings:

Legal standing in the administrative proceedings is generally regulated by the Administrative Procedure Code. However, special environmental laws regulate the standing in administrative proceedings (and define the status of a party to the administrative proceedings) in a different way from the general regulation in the Administrative Procedure Code. These laws include the Building Act, the Nature Conservation Act, the IPPC Act or the EIA Act (for other examples see above).

The EIA Act regulates the procedure of environmental impact assessment. In the EIA procedure, the parties to the administrative proceedings are those whose rights, obligations or legally protected interests may be affected in the proceedings. The status of a party to the proceedings also belongs to the "public concerned", if it meets the legal conditions (set out in Art. 24 §§ 2 - 5 of the EIA Act). The public concerned has the status of a party to the obligatory EIA assessment procedure and to the screening procedure (and subsequently the status of a participant in the permitting procedure for the proposed project) if it submits a reasoned written opinion during one of the stages of the EIA procedure (project proposal, scoping phase, evaluation report) and attaches document formalities (statute in the case of NGOs). The public concerned can also become a party to the proceedings by lodging an appeal against an administrative decision in the EIA procedure. By participating in the EIA procedure the public becomes the "public concerned" and thus becomes a party to all subsequent administrative proceedings on project authorization (i.e. permit proceeding under the Building Act, Atomic Act, Mining Act, Act on Forests, Nature Conservation Act etc.).

Within the EIA process, the public concerned shall have access to all information on the activity or strategic document under assessment just like the bodies concerned, permitting body, departmental body, municipalities concerned and other entities. As a party to the procedure, they can appeal against the decisions from the screening procedure and against the final statement from the assessment process, and subsequently, they can also file a complaint with the court. All mandatory information about the EIA/SEA process is compulsorily published at http://www.enviroportal.sk/sk/eia. In the permitting process (in general, it is an administrative procedure), the public in the position of a party to the procedure has the same rights in finding all relevant information related to the background documents for decision making as the other entities in the permitting procedure. These rights of the public result from the administrative rules.
In many situations, the law requires the administrative authority to inform the public or the parties to the proceedings about facts relevant to access to justice – i.e. the initiation of the proceedings, taking of the evidence, the right to access to the files, the course or termination of the proceedings. Every administrative decision must contain instructions as to whether the decision is final or can be appealed and whether the decision can be reviewed by a court.

Legal standing in court proceedings:

The Code of the Administrative Judicial Procedure ensures the right of access to the court for "the interested public". The term "interested public" may have a different meaning than the term "public concerned" mentioned above.

According to Art. 42 § 1 of the Code of the Administrative Judicial Procedure, if the "interested public" has the right under a special regulation to participate in administrative proceedings in environmental matters, it is entitled to bring an action before the court against administrative decision or administrative measure, to bring an action before the court against illegal inactivity of the public authority or to bring an action before the court against a generally binding regulation (e.g. zoning plan regulating land use and building permissions).

This means that according to the Code of the Administrative Judicial Procedure, the "interested public" is a person who has the "right to participate in administrative proceedings" concerning environmental matters under specific environmental laws. The "interested public" may be a natural person, legal entity, local civic association, or environmental non-governmental organization. In practice, there are also cases where both the municipality and the foreign legal entity (foreign environmental NGO) have become "interested public".

The decision of the court must contain instructions on the admissibility of the cassation complaint, on the time limit for filing a cassation complaint, on the requisites of the cassation complaint, on the mandatory representation of lawyers in the cassation proceedings or on the inadmissibility of a remedy. The party to the proceedings may file an administrative appeal against the decision within 15 days from the date of notification of the administrative decision (screening decision, EIA final statement, project permit).

Parties to the administrative proceedings may bring an administrative action in court against the valid administrative decision.

In addition, the "interested public" that participated in administrative proceedings in environmental matters (e.g. foreign environmental NGO that participated in transboundary impact assessment proceeding) is entitled to bring an administrative action in court also against a measure of a public administration body or general binding regulation of a municipality, if it claims that the public interest in the field of the environment has been violated. For more information see also the European e-Justice Portal, Access to justice in environmental matters, part concerning the Slovak republic[53].

SLOVENIA / SLOVÉNIE

Already the Constitution provides (paragraph 3 of Article 72) " *that the law shall establish under which conditions and to what extent a person who has damaged the living environment is obliged to provide compensation.*"

Based on Article 231 of the Environmental Protection Act (ZVO-2) everyone has a right to a healthy living environment. In order to exercise this right, a natural person, a non-governmental organization or a civil initiative can turn to the court in situations envisaged in paragraph three of this Article. In addition, in the event of the excessive environmental burdon, anyone can turn to the competent inspectorate and request the prohibition of activities causing excessive burdon. Protection of the right to a healthy living environment also falls within the competence of the Human Rights Ombudsman in accordance with the act.

Access to justice to the public concerned is also regulated in the Environmental Protection Act (ZVO-2) in Articles 103, 122 and 129 respectively.

The provisions of Article 133 of the Obligations Code (OZ) are also relevant in this regard as anybody may request from another to remove a source of danger that threatens major damage to him or to an indeterminate number of persons and to refrain from the activities from which the disturbance or risk of damage derives, if the occurrence of disturbance or damage cannot be prevented by appropriate measures. At the request of a person with legitimate interest the court shall order appropriate measures to prevent the occurrence of damage or disturbance or to remove the source of danger at the expense of the possessor should the latter fail to do so.

SWEDEN / SUÈDE

Not applicable, please see reply under question 1.

[53] https://e-justice.europa.eu/300/EN/access_to_justice_in_environmental_matters?SLOVAKIA&member=1

SWITZERLAND / SUISSE

Comme indiqué dans la réponse à la question 1, il n'existe pas un droit explicite à un environnement propre, sain et durable au niveau fédéral.

Quant à l'article 19 Cst.-GE, la jurisprudence ne s'est pas encore prononcée explicitement sur le caractère justiciable de cette disposition (cf. réponse à la question 3). Une auteure soutient que le droit à un environnement sain garanti par cette disposition peut être considéré comme un droit justiciable; tout en admettant que nombreuses constitutions nationales qui ont reconnu ce droit en ces termes ne lui accordent pas un caractère justiciable (cf. FRANCESCA MAGISTRO, Le droit à un environnement sain revisité, Étude de droit suisse, international et comparé, Schulthess, 2017, p. 227).

De leur côté, les tribunaux suisses ont eu à se prononcer sur un recours de l'association "Aînées pour la protection du climat Suisse" et de plusieurs de ses membres, qui s'étaient plaintes d'omissions dans le domaine du climat et avaient exigé un renforcement des mesures prises par les autorités. Le ministère compétent (Département fédéral de l'environnement, des transports, de l'énergie et de la communication DETEC) avait refusé d'entrer en matière sur cette demande et le Tribunal administratif fédéral, puis le Tribunal fédéral, ont confirmé cette approche au motif que les recourantes - comme le reste de la population - ne sont pas touchées avec l'intensité requise dans les droits (fondamentaux) invoqués en relation avec les omissions reprochées (ATF 146 I 145). L'affaire est actuellement pendante devant la Grande Chambre de la Cour européenne des droits de l'homme (cf. *Verein KlimaSeniorinnen Schweiz et autres c. Suisse*, req. n° 53600/20).

UNITED KINGDOM / ROYAUME-UNI

English law is a dualist legal system, under which international law or an international treaty has legal force at the domestic level upon implementation by a national statute. The UK's environmental legislation, including the incorporation of our environmental treaty obligations, is justiciable. The right is not per se justiciable, however, not least because there is no international consensus on its status in international law.

QUESTION 3

What, if anything, have the domestic courts said about this right in their caselaw?

Quelle est la position, le cas échéant, des tribunaux nationaux au sujet de ce droit dans leur jurisprudence ?

ANDORRA / ANDORRE

Après avoir consulté les autorités judiciaires andorranes compétentes, il semble qu'à ce jour, l'ensemble des juridictions s'accordent sur l'existence d'un droit à un environnement sain. Toutefois, il a été fait mention du fait que jusqu'à la présente date, aucune juridiction andorrane n'a eu à se prononcer en la matière.

ARMENIA / ARMÉNIE

As seen from the information mentioned above the human right to a healthy environment protected under the constitution is not direct in the Republic of Armenia therefore there is no relevant information on the question 3.

AUSTRIA / AUTRICHE

The Austrian Constitutional Court had, so far, only a few opportunities to deal with climate protection issues.

> In its judgment VfSlg. 20.185/2017 mentioned above, the Constitutional Court stated in the context of the approval proceedings for the construction of a third runway at the Vienna Airport that (among other things) the Paris Agreement was not directly applicable and thus could not be used as reference for assessing the effects of the estimated emissions. The Constitution stipulates that in weighing the interests involved, which also include mitigating risks to life, health and property, ensuring the safety of both persons and property, and protecting persons or property from negative impacts, comprehensive environmental protection within the meaning of the national objective mentioned above must be taken into consideration both when interpreting and prioritising the relevant interests. The relevant national objective, however, does not grant absolute priority for interests related to environmental protection.
>
> In 2018, the Constitutional Court found that the legal provision stating that replacing oil-fired heating systems with new oil condensing boilers would no longer be considered an energy efficiency measure does not violate the Constitution. According to the Constitutional Court, it was at the legislative power's discretion to put a stronger emphasis on the transition to renewable energy sources and on the reduction of carbon dioxide emissions, when balancing public interests and pursuing environmental objectives (judgment of 10 October 2018, G 144/2018).
>
> In 2020, an individual application to repeal certain provisions that provide for tax reliefs on kerosine was rejected by the Constitutional Court for procedural reasons; therefore, the environmental concerns were not addressed meritoriously (judgment of 30 September 2020, G 144-145/2020, V 332/2020).

The Austrian Supreme Administrative Court, too, deals with climate protection issues in the context of environmental impact assessment proceedings (EIA). E.g., in its judgment regarding the licence for the third runway at the Vienna Airport (judgment of 6 March 2019, Ro 2018/03/0031, et al). Mitigation of climate change may e.g. be relevant when it comes to assessing the public's interest in energy generation from hydropower; (judgment of 30 June 2022, Ra 2021/07/0003).

BELGIUM / BELGIQUE

La doctrine et la jurisprudence (Cour constitutionnelle, Conseil d'Etat, Cour de cassation) considèrent que cet article comporte, au sujet des droits qu'il consacre, une obligation de « standstill » pour les législateurs concernés. En raison de cette obligation, les différents législateurs belges ne peuvent réduire sensiblement le niveau de protection accordé aux administrés dans les droits visés par l'article 23 que s'ils se fondent sur des motifs d'intérêt général.

« Dans les matières qu'il couvre, l'article 23 de la Constitution implique une obligation de standstill qui s'oppose à ce que l'autorité compétente réduise sensiblement le degré de protection offert par

la législation applicable sans qu'existent pour ce faire de motifs liés à l'intérêt général » : **Cour de cassation arrêt du 8 mai 2015.**

«*L'article 23 de la Constitution implique, en ce qui concerne la protection de l'environnement, une obligation de standstill qui s'oppose à ce que le législateur compétent réduise sensiblement le niveau de protection offert par la législation en vigueur sans qu'existent pour ce faire des motifs liés à l'intérêt général* » ; **Cour constitutionnelle 27 janvier 2016**, **n° 12/2016.**

« En relevant de 200 à 400 le nombre d'emplacements pour véhicules à partir duquel le projet de parking doit faire l'objet d'une étude d'incidences, sans qu'existe un motif d'intérêt général pour ce faire, le législateur ordonnanciel a violé l'obligation de standstill en matière de droit à la protection d'un environnement sain contenue dans l'article 23, alinéa 3, 4°, de la Constitution, lu en combinaison avec l'article 6 de la Convention d'Aarhus et avec les articles 3 à 5 de la directive 2011/92/UE » ; **Cour constitutionnelle, arrêt du 21 janvier 2021 n° 6/2021.**

CROATIA / CROATIE

See ECtHR cases Tolić and others and Turković and others.

CZECH REPUBLIC / RÉPUBLIQUE TCHÈQUE

In recent years, the Czech courts have addressed various issues concerning environmental protection, especially as regards reduction of emissions and prevention of air pollution. Bellow, there is an overview of the case law of both the Constitutional Court and the Supreme Administrative Court, as well as a description of a comprehensive climate litigation recently launched in the Czech Republic.

Case law of the Constitutional Court

In its judgment no. Pl. ÚS 44/18 of 17 July 2019, the Constitutional Court stated that the essence of the right to a favourable environment under Article 35(1) of the Charter is mainly a possibility of everyone to claim – in a manner specified by law – the protection of natural environmental conditions of his or her existence and sustainable development, which is accompanied by the corresponding duty of the State to protect the natural resources. In other words, the State has a positive obligation to prevent such interferences into environment that would make it impossible for human beings to satisfy their basic needs in life.

Case law of the Supreme Administrative Court

a) Judgment no. 6 Aps 1/2013–51
In its judgment of 26 June 2013, the Supreme Administrative Court acknowledged the possibility to file the action against unlawful interference by an administrative authority under section 82 CAJ in the situation where the applicant claims the inactivity or insufficient activity of State authorities (in this case namely the Government, the Ministry of Environment and the Ministry of Transport) in the area of air quality protection and control of harmful emissions. The Court also noted that the alleged interference has a continuous nature; therefore, the time limit for filing the action cannot expire while the interference still lasts, and this applies to both the subjective time limit (two months) and the objective one (two years). In other words, the action against interference which lasts at the time of the filing of the action cannot be – by definition – submitted late.

b) Judgment no. 2 As 127/2014–32
In its judgment of 29 October 2014, the Supreme Administrative Court was deciding on an action under section 82 CAJ submitted by two natural persons against the Regional Authority of the

Moravian–Silesian Region and claiming that the respondent authority had not adopted an action plan of emission control, as required by Act on Air Protection. The Court referred to the case law of the European Court of Justice according to which the provisions of the EU law which set the limit values with the aim of health protection are to be taken also as conferring on the respective persons a right to compliance with these limit values which is judicially enforceable.

c) Judgment no. 9 As 101/2019–42
In its judgment of 27 November 2019, the Supreme Administrative Court was confronted with an action under section 82 CAJ submitted by two natural persons against the Ministry of Environment and alleging that the respondent authority had not adopted a sufficient and complete programme of air quality improvement, as required by Act on Air Protection, with respect to the agglomeration of cities of Ostrava, Karviná and Frýdek Místek. The Court concluded that this type of action can be used also in situations where the programme of air quality improvement has been released by the competent body, but it is necessary to revise and amend it.

d) Judgment no. 6 As 288/2016–146
In its judgment of 20 December 2017, the Supreme Administrative Court acknowledged the possibility to file an action against a measure of general application under section 101a CAJ in case of a programme of air quality improvement, adopted by the Ministry of Environment under Act on Air Protection which, according to the applicants, was not adequate with respect to the implementation of the emission limits. The Court stated that it is necessary to evaluate the programme of air quality improvement with respect to its content, i.e. whether it contains all the elements prescribed by the Act on Air Protection and the Directive on Air Protection (formal aspect), but also to assess whether the measures undertaken are adequate, i.e. whether they shorten up the period of exceeding the limit values as much as possible (material aspect). The court should also verify whether the plaintiff had proven that they had included into the programme *bona fide* all measures which could have been considered as essential on the basis of the state of knowledge at the given time, and the simultaneous implementation of which (according to the respective time frame) would or could in all likelihood lead to the set goal, or that they had not omitted intentionally any such measure. As for the final deadline of reaching the goal, the court shall verify whether this deadline has not been set arbitrarily or manifestly unreasonably. The compliance with the immission limits is not only an international obligation of the Czech Republic towards the EU, but also an obligation of the State versus those of its citizens who live in the regions where the air pollution exceeds limits set by law. This brings into play the rights guaranteed by the Constitution, namely the right to health (Article 13 of the Charter of Fundamental Rights) and the right to a favourable environment (Article 35 of the Charter). These rights are merely implemented and fulfilled by the Act on Air Protection.

e) Judgment no. 2 As 354/2018–20
In its judgment of 16 November 2018, the Supreme Administrative Court was faced with an action against a measure of general application under section 101a CAJ filed by a group of natural and legal persons against the programme of territorial development for the South Moravian Region. One of the applicants in this case was a natural legal person living in Austria who claimed that the impugned measure will affect his immovable property on the Austrian territory, as it includes a plan to build a highway connecting the Czech Republic with Austria which is supposed to pass close to this property. The Court noted that in principle, it cannot be excluded that the applicant could be affected by the respective territorial measure merely because he lives in Austria, as the South Moravian Region plans a construction which can have significant extraterritorial impacts, affecting also the immovable property of the applicant. At the same time, it has to be taken into account that the respective highway forms a part of an international transport line, and already given the fact that it presupposes a certain continuation in another state, the eventual implications have to be considered.

f) Judgment no. 1 Ao 7/2011–526
In its judgment of 21 June 2012, the Supreme Administrative Court assessed the precautionary principle in relation to the assessment of cumulative and synergistic effects on the environment. It noted that when conducting Cumulative Effect Assessment (CEA), the processor is always obliged

to proceed in accordance with the precautionary principle, i.e. to proceed from the worst possible scenario and to take into account those of the planned intentions (activities), the implementation of which is uncertain in the future. In accordance with the principle of minimizing judicial interference, the Court will examine whether the assessment has those elements (whether it has been properly carried out), whether it is comprehensible and logically consistent; however, it does not deal with the professional content itself. The Court will also verify whether the results of the CEA have been taken into account in subsequent decision-making processes while adopting measures of general character.

g) Judgment no. 6 As 104/2019–70
In its judgment of 28 February 2020, the Supreme Administrative Court extended the application of the precautionary principle concluding that it implies a general obligation applicable to all environmental decisions. It noted that this principle must be applied in all (especially administrative) processes affecting the environment. Therefore, if the administrative authority has the slightest doubt as to whether the project is likely to have a significant adverse effect on the environment, it should always give priority to carrying out an inquiry procedure. Doubts may arise both from insufficient or unclear data provided by the notifier and from a lack of scientific information on the environmental impacts of certain activities. Doubts may be brought into the assessment process in the form of reservations and comments 'from the outside' by the public affected by the activity, if the administrative authority is not able to convincingly refute them using its expertise.

Czech Climate Litigation

On 21 April 2021, a so-called "Czech Climate Litigation" was submitted to the Prague Municipal Court by a group of plaintiffs which includes an environmental NGO, a municipality and several natural persons. The lawsuit is based on section 82 of the Code of Administrative Justice (as described above), i.e. it is an administrative action against the claimed inactivity of the Czech State authorities – namely the Government and four of its ministries – in the field of environmental protection, in particular regarding the reduction of emissions and mitigation of climate change. The action asks the court to rule that the State bodies do not sufficiently fulfil their obligations in relation to climate change established by both domestic and international law, and that they be ordered to undertake necessary and adequate measures in this area within 6 months after the delivery of the judgment.

In its judgment no. 14 A 101/2021-248 of 15 June 2022, the Prague Municipal Court partially granted the claim. In particular, it held that it is contrary to the law that the four respective ministries had not yet established detailed mitigation measures leading to the reduction of greenhouse emissions by at least 55% until 2030 compared to levels in 1990. It also prohibited these ministries to continue in their illegal violation of the rights of the plaintiffs. As for the right to a favourable environment under Article 35(1) of the Charter, the Prague Municipal Court stated that the content of this right is not limited to the duty of the State to prevent such interferences into environment that would make it impossible for human beings to satisfy their basic needs in life. In accordance with the precautionary principle, the holders of this right are entitled to pursue the quality of their environment, and they do not have to wait for the climate situation to be so detrimental that their basic life needs could not be met anymore. In other words, this right is interfered with already when the possibility to satisfy the basic needs in life is restricted; it does not have to be entirely eliminated. Therefore, the global warming caused by greenhouse emissions interferes with the right to a favourable environment under Article 35(1) of the Charter.
The case is currently pending on appeal.

ESTONIA / ESTONIE

Until the entry into force of the General Part of the Environmental Code Act in 2014, the courts of Estonia have partly recognised, on the basis of Article 53 of the Constitution, the right of everyone to expect from the state to protect the environment he or she is influenced by. However, the entry

into force of the General Part of the Environmental Code Act set limits to this right in its Article 23 - the right to environment that meets health and well-being needs is justiciable for persons concerned directly (subsection 1). Since 2014, the courts have delivered several judgements arguing on the essence of being directly concerned and the limits of application of this right.

The Supreme Court of Estonia's first decision in this matter from 2015 states that Article 23 of the new General Part of the Environmental Code Act declares that only a person's subjective right, based on being directly involved, can be considered as a right to be protected by courts.

Ever since, the Supreme Court as well as district courts and courts of first instance have furnished the term of direct subjective involvement.

In 2021 the Supreme Court stated (3-18-913) that a specific intense connection with a Natura 2000 area must exist for a person to declare infringement of the right foreseen in Article 23, i.e the planned activity in the area must influence his or her health and well being really and substantially. So far, the right of Article 23 of the General Part of the Environmental Code Act has not been fully recognised. However, the Administrative College of the Tallinn Disctrict Court said in its decree in July 2022 (3-22-1220) in a case involving forestry that the infringement of the right deriving from Article 23 can not be excluded in respect of a plaintiff living 500 m away from a forest between him and a planned sand mine, subject to cutting. In 2015 the same court recognised the possible infringement also in respect of enlarged cutting of a recreation forest or destruction of natural environment by military vehicles, tanks or explosives (3-15-2432).

In the course of several court proceedings it is found by courts that the following does not consitute the violation of the right to environment that meets health and well-being needs:

- Mobile communication antenna that does not exceed the radiation limits, nor does it have a visual influence in a city environment that be considered as an infringement (Supreme Court 2019, 3-15-2232);
- Mere visual change caused by wind turbines to be constructed in the sea 12 km away from the coastline can not be adequate basis for infringement of the Article 23 right (Tallinn Administrative Court 2022, 3-22-1234);
- Cutting down of five trees in a tensly populated area, nor a small decrease in a public recreation area in order to construct a parking lot (Tallinn Disctrict Court 2015, 3-15-1266);
- Small increase in traffic in a city (Tartu Disctrict Court 2017, 3-16-2611);
- Temporary closure of one out of three public swimming areas (Tallinn Disctrict Court 2019, 3-18-330)
- Limited obstacles in the recreational use of public forests due to military trainings as the latter constitutes a significant public interest (Tallinn District Court 2015, 3-15-2432).

The Courts have clearly stated that regional specifity must be also taken into account and that the same standards of natural environment can not be expected in a tensely populated areas as in a remote, more natural areas. It is also said by the courts that the temporary nature of negative influence can indicate that the rights of Article 23 are not infringed.

Article 23 of the General Part of the Environmental Code Act can only be exercised against a public authority. However, the court practice is only under development as there have not been yet too many cases during the past eight years that would elaborate on Article 23 of the General Part of the Environmental Code Act.

FINLAND / FINLANDE

Supreme Administrative Court

In its case law, the Supreme Administrative Court has ruled on the fundamental right to the environment laid down in section 20 of the Constitution even though, as stated in the foregoing, the provision has binding impact first and foremost on the legislator, which in turn shifts assessment of the provision away from the courts of law and towards the legislative stage. The fundamental right to the environment also finds tangible expression in regulation at the level of an Act, and there is a considerably greater volume of case law involving such regulation. However, reference to the fundamental right to the environment is made for example, when balancing -between fundamental rights.

In the case law of the Supreme Administrative Court concerning the fundamental right to the environment, the focus has been on the latter half of section 20, subsection 2 of the Constitution regarding the obligation of public authorities to guarantee for everyone the possibility to influence the decisions that concern their own living environment. Case law has also contributed to development in the right of appeal held by environmental protection associations and today, provisions on associations' right of appeal are laid down in several Acts. Supreme Administrative Court decisions concerning associations' right of appeal and consequently the obligation of public authorities to guarantee for everyone the possibility to influence the decisions that concern their own living environment include those under reference numbers KHO 2003:99, KHO 2004:76, KHO 2006:54 and KHO 2018:1. Since the right of appeal became firmly established, the case law of the Supreme Administrative Court has involved assessment of topics such as whether an association was the kind of registered local or regional entity whose purpose was to promote the protection of the environment or nature conservation in the manner referred to in law (Court decisions KHO 2012:25, KHO 2015:79 and KHO 2018:50 as well as the Supreme Administrative Court decision of 31 January 2020 (record 433).

A yearbook decision of the Supreme Administrative Court in the matter of building the Vuotos reservoir, KHO 2002:86, to a certain extent illustrates the interpretative effect of the provision of section 20, subsection 1 on responsibility for the environment. The decision makes reference to section 20 of the Constitution as one rationale for the assessment of how to interpret the expression "considerable and widely felt adverse change in the natural conditions of the environment or in aquatic nature and its functioning" appearing in chapter 2, section 5 of the Water Act (467/1987) in force at the time. The decision found that the provision on responsibility for the environment involved "a position at the level of the Constitution on the significance of natural values and serves to guide the application and interpretation of the law for its part," and that when assessing the relevance of the provision in isolated cases of application of the law, "account must also be taken of the impacts of other fundamental rights provisions, including the fundamental right concerning protection of property".

In its decision KHO 2011:15, the Supreme Administrative Court drew express attention to responsibility for the environment as laid down in section 20, subsection 1 of the Constitution, which impacted on the assessment of the proportionality of restrictions on the freedom to engage in commercial activity guaranteed under section 18 of the Constitution. The matter involved a regional Centre for Environment that had rescinded its decision to approve the entry of a company in the waste data register and had removed the company from it. In its assessment of the facts, the Court found that taking into account, among other things, the supervisory authority's responsibility for the environment that specifies the responsibility for the environment under section 20 of the Constitution, the Centre for Environment, taking into account the information available to it and the nature of the activities, was within its rights to rescind the approval of the company's entry in the waste data register without resorting to the other supervisory instruments referred to in the Waste Act either prior to or instead of such decision to rescind. The Court found that the decision to rescind the approval was also not contrary to the proportionality principle. The decision furthermore states that the decision of the Centre for Environment did not violate the

protection of property safeguarded by Protocol No. 1 to the European Convention on Human Rights.

In decision KHO 2015:3, the Supreme Administrative Court held, by a majority of Justices, that interpretation of the protection provisions of section 39 in chapter 6 of the Nature Conservation Act "must take into account the provision of section 15, subsection 1 of the Constitution of Finland on protection of property, yet also, on the other hand, the provisions of section 20 of the Constitution on fundamental rights to the environment".

In the yearbook decision KHO 2014:57, the Supreme Administrative Court took the fundamental right to the environment into account when assessing restriction of property rights in respect of joint owners. The Court held that any restriction of the property rights of joint owners must be balanced against the provision on fundamental rights to the environment enshrined in section 20 of the Constitution. In its decision, the Court found that even though "regulation under section 37a, subsection 1 of the Fishing Act, on the basis of the foregoing, is not without flaws in terms of constitutionality, the subsection nonetheless is not unconstitutional on the grounds put forward by the appellants, that it would violate protection of property, when taking into account its intent to protect the fundamental right to the environment".

In its decision KHO 2006:58, the Supreme Administrative Court found that "when assessing the substance of environmental protection regulations, account shall likewise be taken of the requirement that the regulation be necessary for the enforcement of the Environmental Protection Act. The provisions of sections 15 and 18 of the Constitution, concerning protection of property and freedom to engage in commercial activity, respectively, require that regulations do not unduly and disproportionately hamper land asset usage or commercial activity. Instead, the necessity of regulations to combat degradation of the environment must be balanced against the provision of section 20 of the Constitution concerning responsibility for the environment."

Supreme Court
The Supreme Court addressed the fundamental right to the environment in its precedent KKO 2022:25 concerning fishing in Utsjoki River outside the permitted fishing season as well as the cultural rights guaranteed for the Indigenous Sámi People by section 17, subsection 3 of the Constitution. The Supreme Court made reference to the reports of the Constitutional Law Committee, according to which section 20 of the Constitution does not establish obligations that can be targeted to the level of individual. With regard to the relationship between protection of property and responsibility for the environment, for example, the Constitutional Law Committee has on the one hand found that the provision does not constitute specific grounds to impose any obligations to tolerate extending expressly to owners. On the other hand, the provisions on protection of property and responsibility for the environment, both part of the set of fundamental rights, may each have an impact on interpretation of the other in situations where the goal is to achieve legislation that promotes balance between humans and nature (para 25). The Supreme Court held that although regulation to restrict fishing was underpinned by acceptable objectives linked to the fundamental right to the environment, the provision was in conflict with the fundamental right of the Sámi to their culture guaranteed under section 17, subsection 3. The Supreme Court also made reference (para 47) to Constitutional Law Committee report PeVL 5/2017 addressed below and concerning the Tenojoki Fishing Treaty, in which report the Committee found that even though everyone has responsibility for the environment, regulatory measures on the part of public authorities could be used to realise responsibility for the environment by imposing restrictions and obligations on different entities on grounds acceptable in different ways and relating in particular to the safeguarding of fundamental rights.

Supreme Court precedent KKO 2022:26 also involved balancing the cultural rights of the Sámi against the fundamental right to the environment in fishing matters. In this decision, the Supreme Court finds that the right of the local Sámi to fish, protected by the Constitution, is not absolute and instead, also the right of the Sámi to fish may be restricted, in reliance on the fundamental right to the environment under section 20 of the Constitution, in order to protect migratory fish stocks. The Supreme Court went on to find that also from the perspective of the proportionality of fishing

restrictions it was, in principle, possible to require local residents to hold a personal permit. The permit system is based on reasons of reliable compilation of data on catches and fishing as well as of monitoring the status of salmon stocks, and these reasons link to the fundamental right to the environment under section 20 of the Constitution (para 42). The Supreme Court finds in its conclusion that taking into account the requirement of a separate fishing permit under section 10, subsection 2 of the Fishing Act (379/2015), inclusive of the conditions attached to it and the *de facto* restriction of the cultural fundamental rights of the Sámi resulting from the application of the provision, application of the provision in the case in hand would be in evident conflict, in the manner referred to in section 106 of the Constitution, with the fundamental right protected by section 17, subsection 3 of the Constitution (para 45).

Constitutional Law Committee of Parliament
As already referred to above, in the Finnish legal system, the constitutionality of legislation is primarily subject to *a priori* assessment and there is no constitutional court, for example. Instead, as provided in section 74 of the Constitution, the Constitutional Law Committee shall issue statements on the constitutionality of legislative proposals and other matters brought for its consideration, as well as on their relation to international human rights treaties. Consequently, the positions of the Constitutional Law Committee are key to the question now in hand when examining the matter from a constitutional perspective.

The Committee has reiterated its positions on the fundamental right to the environment in its report PeVL 69/2018. On the one hand, the Committee finds that section 20 of the Constitution does not establish obligations that are verifiable down to the individual and that it does not constitute specific grounds to impose any obligations to tolerate extending expressly to land-owners. On the other hand, as elements of the set of fundamental rights, the provisions of section 15 of the Constitution and the fundamental right to the environment may each have an impact on interpretation of the other in situations where the goal is to achieve legislation that promotes balance between humans and environment (see e.g. reports PeVL 36/2013, p. 2/I, PeVL 32/ 2010, p. 9/I, PeVL 20/2010, p. 2/II and PeVL 6/2010, p. 2). The Constitutional Law Committee has on several occasions addressed restrictions on the use of property based on reasons of environmental protection (see e.g. reports PeVL 55/2018, PeVL 25/2014, PeVL 10/2014, PeVL 36/2013 and PeVL 20/2010). In its acceptability and proportionality assessment of restrictions on the use of property, the Committee has assigned particular weight to reasons anchored in section 20 of the Constitution (see e.g. reports PeVL 36/2013, p. 2/I and PeVL 6/2010, p. 3/I). In its consideration of amendment of the Fishing Act, the Committee also made reference to section 20 of the Constitution when it assessed the magnitude of the compensation payable to the owner or holder of water areas for restriction on the use of the property. According to the Committee, the Constitution poses no obstacle to a standard of compensation higher than required under it unless because of this, the compensation rises so high that the responsibility for nature and its biodiversity referred to in section 20, subsection 1 of the Constitution comes to suffer, as nature values are relegated to second place when the financial burden of protection increases (report PeVL 20/2010, p. 4).

Constitutional Law Committee report PeVL 69/2018 has significantly strengthened the legal status of the fundamental right to the environment, as the legislative proposal addressed in the report had constitutional issues with regard to section 20 of the Constitution and resulted in the Committee issuing a resolution on order of enactment. The Committee held that the government proposal on amending the Bankruptcy Act did not to a sufficient extent take into account the need to balance protection of property, secured under section 15 of the Constitution, and the fundamental right to the environment under section 20 of the Constitution. The Committee found it to be clear that extensive continued drafting was necessary in order to render the proposal constitutional, and that this drafting was to examine and regulate, in detail and accompanied by appropriate impact assessments, the relationship of bankruptcy proceedings to obligations imposed in both EU regulation and national substantive environmental legislation, in terms of substance and procedure alike (report PeVL 69/2018, p. 5).

In its report on the topic of prohibiting the use of coal for energy, the Committee held that any restrictions under the proposal, significant as they might be, had to be proportionate to the equally

significant aims of the proposal relating to climate and environmental protection, the aims thus anchored in section 20 of the Constitution. When assessed as a whole, the proposal's restriction of the freedom to engage in commercial activity could, in the opinion of the Constitutional Law Committee, also be considered proportionate, taking into account the very weighty aims of the restriction (report PeVL 55/2018, p. 2 and 4).

In its consideration of the government proposal concerning fishing in the waters of Tenojoki River, the Constitutional Law Committee held that the highly restrictive understanding of fishing restrictions arising from the government proposal in many way becomes tangible expressly among the Sámi. Even though everyone has responsibility for the environment, the Committee found that regulatory measures on the part of public authorities could be used to realise responsibility for the environment by imposing restrictions and obligations on different entities on grounds acceptable in different ways and relating in particular to the safeguarding of fundamental rights. The Committee went on to state that putting salmon stocks on a sustainable footing was capable of promoting the continuity of Sámi culture also in the future. Nonetheless, the Committee emphasised that also in the context of regulation to realise responsibility for the environment, legislation should strengthen the right of the Sámi as an Indigenous People to maintain and develop their language and culture. The Committee held that the fishing restrictions should more strongly have been directed at the kind of fishing not protected under section 17, subsection 3 of the Constitution and Article 27 of the International Covenant on Civil and Political Rights (PeVL 5/2017, p. 7).

The fundamental right to the environment guaranteed under section 20 of the Constitution is closely linked to section 2, subsection 2 of the Constitution, which states that democracy entails the right of the individual to participate in and influence the development of society and his or her living conditions (PeVL 32/2009, p. 2). The latter provision has been relevant also in the assessment of proposed regulation of the right of appeal in the field of environmental law (reports PeVL 23/2009, p. 2, PeVL 33/2006, p. 2 4, PeVL 38/1998, p. 2). Section 20 of the Constitution has also been an element in the Committee's consideration of administrative enforcement, which is a tool employed in the event of failure to comply with an obligation under administrative legislation or a permit. According to the Constitutional Law Committee, the applicability of administrative enforcement proceedings under environmental law is of relevance when assessing the realisation of section 20 of the Constitution (reports PeVL 69/2018, p. 4, PeVL 23/2009, p. 2/II).

GEORGIA / GÉORGIE

There is a landmark case of the Constitutional Court of Georgia, where the Court first defined the right to a healthy environment, namely 'Citizen of Georgia Giorgi Gachechiladze vs. Parliament of Georgia' (Decision of 10 April, 2013, №2/1/524). By the time the constitutional complaint was lodged, there was a slightly different wording of the right to a healthy environment and it was envisaged by article 37 of the Constitution of Georgia. Amendments to the Constitution were introduced on 23/03/2018 (constitutional law 2071-IIს). After the amendments, there was no decision made by the Constitititional Court with regard to the interpretation of the substantive right to a healthy environment, but rather procedural environmental rights, such as access to environmental information and participation in environmental decision-making.

Pursuant to the previous wording of the Constitution, namely article 37:

3. "Everyone shall have the right to live in healthy environment and enjoy natural and cultural surroundings. Everyone shall be obliged to care for natural and cultural environment".
4. With the view of ensuring safe environment, in accordance with ecological and economic interests of society, with due regard to the interests of the current and future generations the State shall guarantee the protection of environment and rational use of nature.
5. A person shall have the right to receive a complete, objective and timely information as to a state of his/her working and living environment."

In its decision 'Citizen of Georgia Giorgi Gachechiladze vs. Parliament of Georgia', the Constitutional Court stated that the right to live in a healthy environment, on the one hand guarantees individual's right to live in a healthy environment and on the other hand, it imposes an obligation on each member of the society to take care of natural and cultural environment. Accordingly, the Court should interpret the right taking into consideration both components. So the Court in this case took the approach of third generation human rights that envisage a broader concept of obligations, in particular obligations of individuals along with their fundamental rights.

The court also stated that 'when determining the content and the scope of the constitutional right, the main guiding point is the standard of accessibility of the environment that is healthy for humans. This constitutional provision cannot provide the right of an individual to live in a comfortable or aesthetic environment and require regulation from the state. The main aim of the provisions is to ensure that everyone is taking care of an environment and protect it from the state. Degradation of environmental conditions and related problems made it inevitable to ensure the constitutional protection of the right to live in a healthy environment. The text of the Constitution explicitly states that 'everyone has a right to live in a healthy environment' and excludes the possibility to consider this provision as a constitutional principle aimed at the sole protection of environment. Taking into consideration the objective and spirit of the provision, it is undisputed that Constitution strives to establish a high standard of the right to live in a healthy environment. Constitutional regulation of the ecological rights is especially important for the effective functioning and coordination of state responsibility in the environmental field, access to environmental information, participation in environmental decision-making and other environmental mechanisms. By establishing the right to live in a healthy environment, Constitution of Georgia approves and strengthens the significance of sustainable ecological development within constitutional values agenda.'

Art. 37 (par. 3, 4) establish two types of obligations of the state 1) state is obliged, whilst acting, to take into account and reduce the negative impacts on environment caused by economic, infrastructural or other projects (negative obligation); 2) state should protect environment from private activities (positive obligation).

'Article 37 (par. 3, 4) establishes individuals' right to natural environment, in particular to the environment that exists without anthropogenic interventions and imposes a duty to take care of that environment. The protective aim of article 37 (par. 3, 4) is not to set an obligation or a right of the state to define the best living environment for the human and afterwards try to create it with the active intervention, to its own perception, as a result of the public consultations or any other form. But rather, above-mentioned provisions announce the living environment without anthropogenic intervention as a constitutional value. The aim of article 37 (par. 3) is to maintain the environment free from human impact as much as possible and not to allow third parties to cause unlimited impact on it. This should be reflected in the prohibition of certain activities and imposing respective liabilities for these activities.

Pursuant to art. 37 (par. 3,4), state is obliged to establish such legal system that ensures the reasonable expectation of the individual that in case of environmental damage, adequate legal measures will be applied to any responsible person. State is obliged to create such legal mechanisms that will perform the preventive function for the acts causing the environmental harm."

GERMANY / ALLEMAGNE

As explained above, German law does not provide for a right to a healthy environment as such. However, key aspects of such a right are protected via fundamental rights, which are also justiciable as directly applicable law.

According to Article 2(2) first sentence of the Basic Law, every person has the right to life and physical integrity. This gives rise to a right for each individual to be protected from any violations

of and interferences with their physical integrity that are caused by state measures. The provision also gives rise to a state duty of protection. Accordingly, the legislator is obliged to prohibit the causing of risk to life and limb and to take sufficient precautions to protect individuals against impairment of life and health by other individuals. However, the legislator does have considerable leeway to design the manner in which this protection is implemented. This does not generally result in an entitlement to specific state measures of environmental protection. The same applies to state protection obligations arising from the fundamental right to freedom to practise an occupation under Article 12(1) of the Basic Law and the fundamental right to property under Article 14(1) of the Basic Law.

From the fundamental rights enshrined in the Basic Law, the Federal Constitutional Court has derived – in the field of climate protection – certain environment-related state **duties of protection** (see question 1) and **defensive rights** against state action (see question 2) that individuals can assert before the Federal Constitutional Court by way of a constitutional complaint. **In summary, the Federal Constitutional Court found the following in its "climate protection order" (order of 24 March 2021):**

1.) Duties of protection due to the risks posed by climate change

The protection of life and physical integrity under Article 2(2) first sentence of the Basic Law encompasses protection against impairments caused by environmental pollution, regardless of who or what circumstances are the cause ("positive obligation"). It also particularly includes protection against risks to human life and health caused by climate change. This means that the **state has the duty to protect individuals against the risks posed by climate change** including climate-related extreme events such as heat waves, forest fires and wildfires, hurricanes, heavy rainfall, floods, avalanches or landslides. On the one hand, Article 2(2) first sentence of the Basic Law obliges the state to afford protection by taking measures that help to limit global warming and the associated climate change. The fact that the German state is incapable of halting climate change on its own and is reliant upon international involvement because of climate change's global impact and the global nature of its causes does not, in principle, rule out the possibility of a duty of protection arising from fundamental rights. On the other hand, where climate change is not preventable or has already taken place, Article 2(2) first sentence of the Basic Law also obliges the state to address the risks by implementing positive measures aimed at alleviating the consequences of climate change (referred to as "adaptation measures", for example the preservation of non-built areas in areas faced with flood risks). These measures are additionally necessary in order to keep the risks posed by the actual impacts of climate change to levels that are tolerable under constitutional law. As regards the implementation of this duty of protection, the legislator retains a wide margin of appreciation. The duty of protection is violated only if no precautionary measures whatsoever have been taken, or if the adopted provisions and measures prove to be manifestly unsuitable or completely inadequate for achieving the required protection goal, or if the provisions and measures fall significantly short of the protection goal.

In view of the fact that climate change can result in property such as agricultural land or real estate suffering various forms of damage, for example due to rising sea levels or droughts, the fundamental right to property under Article 14(1) of the Basic Law also includes the state's duty to protect property against the risks of climate change. Here, too, the legislator enjoys a wide margin of appreciation.

In its "climate protection order", the Federal Constitutional Court did not find a violation of the aforementioned duties of protection by the German Federal Climate Change Act of 2019 as, in view of the legislator's margin of appreciation, a breach of the constitutional duties of protection was not ascertainable at that time.

2.) Fundamental rights as intertemporal guarantees of freedom affording protection against future interferences with fundamental rights resulting from the fight against climate change

In another respect, however, the Federal Constitutional Court did in fact find a violation of fundamental rights: As the Climate Change Act had provided for measures to reduce emissions only until the year 2030 and not beyond, thus offloading the risks posed by climate change onto periods thereafter and placing the burden of climate change on the younger generations, there is a **disproportionate risk that freedom protected by fundamental rights will be impaired in the future**. Freedom is comprehensively protected by the Basic Law through special fundamental rights, and in any case through the general freedom of action enshrined in Article 2(1) of the Basic Law as the elementary fundamental right to freedom.

The risk that freedom protected by fundamental rights will be impaired in the future results from the provisions made in Article 20a of the Basic Law,
which obliges the state to take climate action and includes the aim of achieving climate neutrality and meeting the "Paris target" of limiting global warming to well below 2°C and preferably to 1.5°C above pre-industrial levels. Article 20a of the Basic Law is a justiciable legal provision designed to commit the political process to a favouring of ecological interests, partly with a view to future generations.

Given this background, **the Basic Law imposes – under certain conditions – an obligation to safeguard fundamental freedom over time and to spread the opportunities associated with freedom proportionately across generations.** In their subjective dimension, fundamental rights – as **intertemporal guarantees of freedom** – afford protection against the greenhouse gas reduction burdens imposed by Article 20a of the Basic Law being unilaterally offloaded onto the future. Furthermore, in its objective dimension, the protection mandate laid down in Article 20a of the Basic Law encompasses the necessity to treat the natural foundations of life with such care and to leave them in such condition that future generations who wish to carry on preserving these foundations are not forced to engage in radical abstinence.

Respecting future freedom also requires initiating the transition to climate neutrality in good time. In practical terms, this means that transparent specifications for the further course of greenhouse gas reduction must be formulated at an early stage, providing orientation for the required development and implementation processes and conveying a sufficient degree of developmental urgency and planning certainty.
Interference with fundamental rights and any measures that have an advance interference-like effect such as the Climate Change Act can only be justified under constitutional law if the underlying provisions comply with the elemental precepts and general constitutional principles of the Basic Law. Article 20a of the Basic Law contains a constitutional provision of the elemental type mentioned above. Therefore, compatibility with Article 20a of the Basic Law is required in order to justify under constitutional law any state interference with fundamental rights. At the same time, the risk to future freedom cannot be justifiable under constitutional law if these provisions violate Article 20a of the Basic Law because the climate action required under constitutional law can no longer be achieved.

Article 20a of the Basic Law does not take absolute precedence over other interests. In cases of conflict, it must be balanced against other constitutional interests and principles. However, within the balancing process, the obligation to take climate action is accorded increasing weight as climate change intensifies.

GREECE / GRÈCE

The Council of State's case law during the 1990s has had a profound impact on the protection of the natural and cultural environment, especially by recognizing a fundamental subjective right to environmental protection, even before the 2001 constitutional amendment, and by proclaiming the principle of sustainable development and defining the notions of "forest" and "forest ecosystem". In addition, the case law has made a significant contribution to the emergence of the principle of the "*environmental acquis*" (see *e.g.* Council of State, judgments n° 10/1988, 1528/2003,

123/2007, 3059/2009, 415/2011, 1970/2012, 376/2014), while it has often proceeded to balancing the right to the environment with other constitutional rights and interests, namely the right to property (article 17), the right to work (article 22 (1)), or economic development (article 106) (see *e.g.* Council of State, judgments n° 613/2002, 1468/2004, 4002/2004).

ITALY / ITALIE

In the last years, a lot of environment and climate cases have been started before national courts. The general protection of the right as a human right is mostly treated in the statements of the European Court of Human Rights.

In Italian courts, can be mentioned some recent cases specifically related to climate change.

The civil Court of Cassation, which has a role of unification on the interpretation of the national law, recognised the status of refugee to climate migrants, broadening the notion given at the international level. According to its statement (decision n. 5022, 9th March 2021), there is an ineradicable core of the personal dignity which includes not only the protection from situations of armed conflict or persecution, but also situations able to put fundamental rights to life freedom and individual self-determination under hazard, like cases on environmental disaster, climate changes and unsustainable use of natural resources.

Otherwise, the refugee status can be refused when the country of origins of the applicant adopted significative policies of mitigation and adaptation to climate change and against pollution.

The decision of the Court of Cassation turns out to be extremely interesting below different profiles: firstly, for the recognition of a principle that has now become a fundamental importance, namely the need to ensure protection for the migrant who leaves his country of origin for reasons related to environmental disasters; secondly, because the reasoningfollowed by the Court is based on the decision of the United Nations Committee on Human Rights related to the Teitiota case, thus bringing out the great scope that can assume the quasi-judicial activity of supranational control bodies; in the end, for the recognition of the humanitarian protection institute as a useful tool a guarantee protection for the so-called environmental migrants, in the absence of a specific protection system.

In June 2021, a coalition of nearly 50 Italian organisations called ‘Giudizio Universale’ sued the Italian government over the alleged lack of ambition and efficacy of Italian climate policies. According to the coalition, the goal of the lawsuit is to make the State recognise the urgency of solving the climate crisis, in light of the implication it has for fundamental human rights such as life and death. This grassroots action asks the Italian State to target more ambitious emissions reduction by following the recommendations coming from the scientific community. They base their claims on the Aarhus Convention and on the European Convention on Human Rights (ECHR), as they want to protect the citizens’ right to life, health and access to scientific information. The claimants plan to appeal to article 2043 ofthe Italian Civil Code, which enables to sue public authorities on the basis of their omissions.The ‘Giudizio universale’ community asked the civil Court of Rome to declare the ItalianState non-complying with its commitments on contrasting climate changes and order it to reduce GHGs emissions of 92% within 2030 in relation to 1990 levels. Since this is the first civil case related to climate changes, it was introduced on the basis of a constitutional interpretation of the above-mentioned article 2043 of the Italian Civil Code as well as of article 2051 of the same law (as “custodian” of his territory).

The litigation is now pending, but this confirm what said before about the justiciability of the right to a safe and healthy environment and its access to the justice.

MINISTRY OF JUSTICE

The environmental integrity is safeguarded by the jurisprudence of the Court of Cassation and Constitutional Court with reference to the principles of the European Court of Human Rights as well.

It should be recalled, among the most recent rulings, the decision adopted by the Joint Chambers of the **Supreme Court of Cassation**, via judgement No. 8092 on 23rd April 2020 according to which, with regard to the question under examination, '*pursuant to Art. 310 of the Legislative Decree No. 152 of 2006, the disputes arising from the appeal, by owners of an interest in the environmental safeguard pursuant to Art. 309 above, of the administrative measures adopted by the Ministry of the Environment for environmental precaution, prevention and conservation shall be devolved to the exclusive jurisdiction of the administrative judge without prejudice to the jurisdiction of the ordinary judge on actions taken for* ***damage compensation*** *or injunctions by persons who have suffered from damage to their health or property as a result of an event which has caused environmental damage according to Art. 313, par. 7 of the same Legislative Decree*.' Moreover, the **Supreme Court of Cassation** has made clear that '*the possibility that the harmful activity is carried out in accordance with authorizations issued by the Public Administration does not affect the allocation of the jurisdiction (since those measures cannot have the effect of weakening the fundamental rights of third parties) but only on the powers of the ordinary judge who, in the event that the harmful activity results from a material conduct that does not conform to the administrative measures that make its exercise possible, will provide to sanction the activity, by prohibiting it or taking it back to compliance, that has been found to be harmful because it does not comply with administrative regulations, whereas, in the event that ... … such compliance is found, the judge will have to disapply the adopted decision and impose the cessation or adjustment of the activity in such a way as to eliminate the harmful consequences.'*

As already seen, the features limiting the entitlement of a person to claim or establish a right to a healthy environment or risk as such in front of an administrative court, given the prevalence of the *power* of the State in this regard, do not apply if the possible damage is '*iure proprio'* (Translator's note: it is damage suffered personally by the victim or victim's family members and relatives).

In this regard, for a long time already, the **Ordinary Judiciary (as opposed to the Administrative Judiciary)** has been qualifying the **widespread interest in** the health of the environment as a **sum of the rights to health** of each person by legitimising, therefore, the persons concerned to take a civil action to obtain **compensation for damages on specific health nature** suffered as a consequence of the more general **environmental damage (Court of Cassation, Single Chamber, Judgement No. 1463 of 9th March 1979, referring to the "** ***owners and usufructuaries of agricultural estates located in the area being the object of the proceedings, which is intended to obtain a prior technical assessment of the environmental conditions of that area, to ensure proof of the damage that may result from the installation of a nuclear power plant"***).

As a regulatory source of the power of the ordinary legal action, of compensatory or restorative nature, granted to those ones who assume to have been personally damaged by the conducts held by others, first, to the detriment of the environment, **Art. 844 of the civil code on intolerable inputs** and, after, **Art. 2043 of the civil code** on Aquilian offence have been considered.

Furthermore, the jurisprudence has gradually abandoned the requirements provided under Art. 844 of the Civil Code that used to act in the perspective of the ownership which was inappropriate to the issue of the right to health and environmental damage, and considered feasible to resort to the **urgent measure provided under Art. 700 of the Civil Procedure Code within the framework of the action of non-contractual offence provided under Art. 2043 of the Civil Code, to be meant, in that case, as an interim and urgent measure to cover the imminent risk of a serious and irreparable damage (III Chamber of the Court of Venice, 19th February 2008, No. 441).**

However, in this regard, the Court of Cassation set clear limits for the single legal actions aimed at obtaining urgent and interim measures. As a matter of fact, regarding the input of electromagnetic waves, the principle of caution -enshrined in the EU legal system as the cornerstone of the policy on the environment- is ensured by the State legislator itself by means of the provisions of the Law No. 36 of 2001 and Prime Ministerial Decree of 8th July 2003 setting out the requirements relative to the exposure limits, attention values, and quality objectives that cannot be modified, even in a restrictive way, by the regulation of the Regions (Constitutional Court, Judgement No. 307 of 2003), and failure to do so precludes the possibility of resorting to the preventive judicial guarantee of the right to health that can only be taken into consideration in the event of an ascertained danger of its impairment, to be deemed supposedly excluded when the limits imposed by the regulation on the subject matter have been abode (Third Chamber of the Court of Cassation, Ordinance No. 11105 of 10th June 2020 - Rv. 658079 - 01)) .

With regard to the environment considered as an asset to be safeguarded, according to the III Civil Chamber of the Court of Cassation, 10th October 2008, No. 25010, safeguard is wide just for the intrinsic features of the right to the environment since <<The impairment of the environment (in the circumstance produced by the proven alteration and destruction of vegetation and excavated soil, as well as by the induced diversion of water flowing) transcends the mere patrimonial prejudice caused to the single asset that has been part of it since the public good (which includes territorial planning, wealth of natural resource, landscape as an aesthetic and cultural value, and as a condition of healthy life in all its components) must be considered as a whole for the value of use by the community as a determining element of the quality of life of the human being, as a person and in their social aggregation>>. And again, according to the Criminal Chamber of the Court of Cassation, 14th April 1991, the constitutional status of the right to health means that it must be safeguarded and interpreted as widely as possible. Therefore, in a judgement balancing the interests, the right to a healthy environment and, therefore, ultimately, the right to health must always prevail over the conflicting industrial interests.

Ultimately, according to the Court of Cassation, the environmental damage that affects the person as a violation of a subjective right, from a conceptual point of view, is a *vulnus* to the right that a human being has both as *a person* and part of a community, to the correct and harmonious development of the personality in a healthy environment, with emphasis to the offence to the human being in its individual and social dimension.

On the topic, the **Council of State**, as a body at the top of the administrative jurisdiction, has given its opinion by stating that the citizen is the owner of a subjective right to a healthy environment, as a reflection of the right to health, constitutionally safeguarded, pursuant to Art. 2 and 32 of the Constitution. In this regard, the **V Chamber of the Council of State, 18th August 2010 , No. 5819** stated that <<*In order to establish the legitimacy of taking a legal action, it is sufficient the* vicinitas*, that is, the fact that the applicants live close to the site chosen for the new plant construction site (which is an undisputed circumstance), since they do not have to bear the heavy burden of proof of the effectiveness of damage being suffered, evidence that, not being able to prescind from the effective construction of the plant, it would end up emptying of meaning the constitutional principle of the right provided under Art. 24 of the Constitution, making it possible only if the right to health and /or healthy environment were already permanently and irremediably impaired or exposed to danger* >>.

Therefore, the jurisprudence, both administrative and ordinary, defines this right as a **complex system of conditions and interrelations between animate and inanimate beings, which ensures the perpetuation of the human life and tends to coincide with the right to life and physical integrity**. As already pointed out above, it consists of an absolute, inalienable, untransmissible, imprescriptible, and inviolable right that falls within the list of the original rights and arises from birth of individuals.

In any case, its impairment has its origin in a wilful and negligent conduct leading to an impairment of the environment – being also unnecessary the "violation of provisions or measures adopted in conformity with the law", according to the requirements of the aforementioned "*lex specialis*"-, destined to persist until its author maintains, on the basis of a free determination, always reversible, the conditions of environmental impairment so that the term of limitation of the right to pay due compensation as a safeguard of this subjective right only starts from the cessation of that conduct, whether it is voluntary or dependent on the loss of availability of the property causing the damage or damaged person (cf. III Chamber of the Court of Cassation, Judgement No. 3259 of 19th February 2016; I Chamber, Judgement No. 14935 of 20th July 2016).

With reference to **environmental damage that can be compensated**, the aforementioned Legislative Decree No. 152 of 3rd April 2006, under Art. 300, defines it as "*any significant and measurable deterioration, direct or indirect, of a natural resource or utility ensured by the latter*". Furthermore, as far as environmental damage is concerned, it should be remembered the Legislative Decree No. 4 of 16th January 2008 containing important provisions of principle, such as that one under Art. 3 *quater* of the Code on the Environment that set out the principle of the **sustainable development according to which the meeting of the needs of current generations cannot compromise the quality of life and possibilities of future** generations. This concept traces back to the notion of damage which is not necessarily of patrimonial nature and the courts will have to rule on inevitably.

Furthermore, as far as this issue is concerned, since time, the **Court of Cassation** has held that the so-called **non-material damage**, in this peculiar field, may also be compensated in the absence of biological or patrimonial damage if it affects goods of constitutional relevance. In this way, important antecedents on the matter are reversed. Therefore, in case of impairment of the environment as a result of a negligent disaster (Art. 449 of the Criminal Code), the subjective non-material damage complained by individuals who, being in a particular situation with that environment (meaning that they live and / or work there), feel that they have really suffered from a **psychological upsets** (sufferings and anxieties) **of a transitory nature due to the exposure to pollutants and ensuing limitations of a normal course of their life**, they can be compensated independently even in the absence of impairment of a psychophysical nature (biological damage) or other circumstances that have caused patrimonial damage, being a multi-offending crime that entails, besides the offence against environment and public safety, the offence against the person as well, become the object of a prejudice in their individual sphere (Joint Chambers of the Court of Cassation, Judgement No. 2515 of 21st February 2002; III Chamber of the Court of Cassation, Judgement No. 16231 of 29th October 2003).

It has already been mentioned that, from the measure of compensation point of view, in 2004, the European Legislator adopted, by means of the Directive No. 2004/35/EC, a regulation, in general terms, under which compensation has an ancillary position with respect to the repair in specific terms. However, it should be admitted that, by means of Art. 18 of Law No. 349/1986 already, in Italy, implementation has been given to the EU «the polluter pays» principle according to which the pollution costs must be borne by the liable person by introducing, as a special form of safeguard, the obligation of paying compensation for damages caused to the environment as a result of any activity carried out in violation of a provision of law.

Therefore, at European level, the regulatory framework is deeply influenced by the Directive No. 2004/35/EC on environmental liability on prevention and repair of environmental damage which, by setting out the regulation on environmental damage, - states the prevention and repair of such damage as much as possible; - confirms «the polluter pays» principle set out by the Treaty establishing the E.C. (No. 1 and No. 2 of the recital). The II Annex to the Directive No. 2004/35/EC relative to the «repair of the environmental damage» states that such repair shall be carried out by restoring the damaged environment to its original conditions by means of primary repair measures which shall consist of «**any remedial measure that reports the damaged natural resources and /or services to or towards the original conditions**». If the primary repair does not result in a restoration of the environment to its original condition only, the complementary and compensatory repair shall be undertaken.

The Legislative Decree No. 152 of 3rd April 2006 (known as Consolidated Act on Environment) transposed this Directive and adopted this perspective, thus strengthening the previous direction taken by the domestic legal system. Subsequently, the provisions on environmental damage in the so-called «Code on the Environment» underwent significant amendments following the Decree Law No. 135/2009 and «European Law of 2013» (Law No. 97/2013), measures aimed at remedying to E.U. infringement procedures.

Pursuant to Art. 300 of the Legislative Decree No. 152/2006: "**Any significant and measurable deterioration, direct or indirect, of a natural resource or utility ensured by the latter is environmental damage**". According to the **III Penal Chamber of the Court of Cassation**, Judgement No. 9837 of 19th November 1996, "*Environmental damage is not only the impairment of the environment … but also, at the same time, a prejudice to the human being in its individual and social dimension*." And indeed, by means of the judgement No. 126 of 1st June 2016, the **Constitutional Court** proposed a regulatory and jurisprudential exegesis that reconstructs the provisions on environmental damage in the perspective – imposed by the EU Directives – that considers **«compensation» in an ancillary position compared to «repair»**. It is also pointed out here that the Law No. 349/1986, besides establishing the Ministry of the Environment, marks the birth of the precept of environmental damage in our legal system, adopting the principle of the EU "the polluter pays" principle and introduces the environmental tort.

Therefore, the connection of environmental damage to human being's absolute subjective rights has been kept regarding the right to a full and satisfactory damage repair.

The guidelines adopted by the Italian legal system and its Courts seem in line with the views of the II Chamber of the European Court of Human Rights, Judgement No. 30765 of 10th January 2012, that stated <<*The European Convention on Human Rights does not guarantee any general safeguard of the environment as such or prevention from its degradation. However, there are some cases in which the endangerment or deterioration of the environment make Article 8 of the Convention enforceable due to the detrimental effect on private or family sphere of people, harming individual and family well-being and right to a healthy environment*>>.

From the legal system point of view, **the case of the ILVA steel mill** judged by the I Chamber of the European Court of Human Rights, Judgement No. 54414 of 24th January 2019 **shall be considered as a special one**. In Taranto, there has been a prolonged pollution over time, which had endangered not only the applicants' health, but also that one of the whole Taranto citizenships, despite the existence of scientific studies on damage caused by pollution. According to the ECHR, on this issue, the State has not provided information on the measures to restore and reclaim the affected territory, or guaranteed a judicial safeguard and, in fact, by means of the ILVA-saving decrees, granted the administrative and penal immunity to the new purchasers as well. Therefore, the European Court of Human Rights has condemned Italy for the violation of Article 8 of the Convention on Human Rights ensuring the right to the respect for private life and Article 13 on effective judicial safeguard, for pollution caused by ILVA and, in the case in point, failure to take measures capable of safeguarding the appellants' right to live in a healthy environment.

Indeed, it should be noted that, on the matter, the **Constitutional Court had already intervened, by means of the Judgement No. 58 on 23rd March 2018**, establishing the unconstitutional nature of that emergency legislation which had dissolved a measure ordering the penal seizure of the plants, besides prohibition of continuing the industrial activity, given that the legislator had ended up giving too much priority to the interest in the manufacturing activity, completely disregarding the requirements of inviolable constitutional rights connected to the safeguard of health and life (Articles 2 and 32 of the Constitution) the right to work in a safe and non-dangerous environment (Articles 4 and 35 of the Constitution) are inseparably connected to; according to the Constitutional Court, the continuation of manufacturing activities of companies subjected to seizure is legal provided that all goods and rights constitutionally safeguarded, including the right to a healthy environment and work, are properly taken into consideration and balanced.

From the penal issue point of view, it is interesting the structure outlined by the legal system in relation to the *rational* of measures called "*ablatorie*'' (Translator's note: having the capacity of sacrificing a private interest for reasons of public interest) (confiscation of assets) resulting from the perpetration of crimes against the environment, provided only for the case of commission of crimes and not contraventions as a form of restitution and not only sanction. On this issue, reference is made to the Judgement No. 15965 issued by the III Civil Chamber of the Court of Cassation on 11th February 2020 (filed on 27th May 2020) which considered, moreover, manifestly groundless the question of constitutional legitimacy of the fourth paragraph of Art. 452 *undecies* of the Criminal Code in contrast with Article 3 of the Constitution in the part in which it provides, only for the offences provided under the I paragraph of the same provision and not for the environmental contraventions provided under the Legislative Decree No. 152 of 3rd April 2006, that, in case of safety measure, remediation and restoration to the state of the places, the confiscation of the objects that are the product or profit of the crimes cannot be ordered. In the motivation, the Court specified that, regarding the environmental contravention, enforcement is given to confiscation as provided under Art. 260 *ter*, par. 4 of the same Legislative Decree, which has an eminently punitive nature, whereas the measure called '*ablatoria'* provided under the provisions of the Criminal Code on crimes under examination has a compensatory and repairing function, as well as punitive.

This paper was drafted by Irene Sandulli (parts 2 and 3), Marco Nassi (abstracts parts 1, 2and 3) and Francesca Fiecconi (parts 1, 2 and 3), the latter as Coordinator as well.

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LATVIA / LETTONIE

See, case law examples in the answers provided to Q.1 and 2 above.

MALTA / MALTE

To date, there has been no specific case on the right to a healthy environment, as interpreted in the ECHR articles. In other words, to our knowledge, there has been no attempt to allege a violation of any of the ECHR articles, such as Article 2 or 8, vis-à-vis environment and climate change issues.

NETHERLANDS / PAYS-BAS

Because article 21 of the Constitution is non-justiciable, no national jurisprudence exists on the article itself.

NORWAY / NORVÈGE

The Supreme Court clarified the legal content and effect of Article 112 of the Norwegian Constitution in paragraphs 78-145 of the judgement 22 December 2020 mentioned above. The case was raised by four environmental organisations against the Norwegian State represented by the Ministry of Petroleum and Energy. The case concerned a claim to have a decision of 10 June

2016 to award 10 petroleum 'production licences' in the Barents Sea South and South-East declared invalid due to its future effects on the marine environment and global warming.

The summary and conclusion on this issue can be found in paragraphs 138-145 of the judgement. The main thrust of it is expressed in paragraph 144, which should be translated as follows:

«*In other words, Article 112 of the Constitution is not merely a declaration of principle, but a provision with a certain legal content. However, one can only to a limited extent build directly on the constitutional provision in a case before the court.»*

[In the English translation which has been made of the judgement, the translation of the last sentence of paragraph 144 is incorrect, in that it refers to "*a* constitutional provision" instead of "*the* constitutional provision". Since this error changes the very essence of the sentence, our answer refers to what would undoubtably be a correct translation of this sentence.]

The considerations that lead to the conclusion in paragraph 144 and the legal content and effects are set out in the other paragraphs as follows:

« (138) Article 112 subsection 1 of the Constitution is undoubtedly important for the interpretation of statutory provisions and for administrative discretion. Moreover, subsection 1 is a guideline for the Storting's legislative power and other measures from the authorities under Article 112 subsection 3.

(139) The wording does not clarify which other legal relevance Article 112 has for decisions made or endorsed by the Storting. However, it is obvious from background and preparatory works that the authorities as a starting point decide which measures to implement under subsection 3. Article 112 may nonetheless be asserted directly in court when it concerns an environmental issue that the legislature has not considered. [-]

(140) It is repeatedly expressed in the preparatory works to Article 112 that it was intended to have legal significance – that it was to function as a guideline for the legislature, that it would be lex superior and give clear duties in subsection 1 second sentence and subsection 3, see subsection 1 first sentence. [-] In my view, this implies that the Storting to some degree agreed to be bound, but was generally reluctant to renounce its political leeway.

(141) On the one hand, obvious rule-of-law considerations suggest that the courts must be able to set limits on the political majority when it comes to protecting constitutionalised values. On the other hand, decisions involving basic environmental issues often require a political balancing of interests and broader priorities. Democracy considerations also suggest that such decisions should be made by popularly elected bodies, and not by the courts.

(142) Against this background, Article 112 of the Constitution must, when the Storting has considered a case, be interpreted as a safety valve. In order for the courts to set aside a legislative decision, the latter must have grossly neglected its duties under Article 112 subsection 3. The same must apply for other Storting decisions and decisions to which the Storting has consented. Consequently, the threshold is very high.

(143) Against the background of the parties' contentions before the Supreme Court, I mention that these duties may involve both positive and negative measures. The purpose of the constitutional provision would largely be lost if the provision does not also involve a duty to abstain from making decisions violating Article 112 subsection 3.

(144) [See comment above].

(145) For an administrative decision in which the Storting has not been involved, Article 112 of the Constitution will have relevance as an interpretative factor and as a factor in the exercise of

discretion. Apart from this, the case gives no cause to elaborate further on how thoroughly such decisions should be reviewed.»

Summary of the judgement and the full judgement in English translation can be found here.

POLAND / POLOGNE

As can be concluded from an analysis of the statistical data available from the website of the Ministry of Justice, the civil cases brought before court between 2017 and 30 June 2022 and classified in court registries under the category C (contentious proceedings), item 013 – cases concerning the protection of the natural environment of humans, included 433 cases filed, 791 settled, and 1,413 pending before regional courts as the courts of first instance, and 3,312 cases filed, 2,744 settled, and 8,574 pending before district courts.

As regards the cases concerning economic activity, only the data derived from the available statistical reports on economic activity cases can be provided, pertaining to the protection of the natural environment of humans and classified under item 613. According to the reports for the first half of 2022:

- 3 cases were filed with district courts and classified in the registries under the category GC (contentious proceedings in cases concerning economic activity), item 613, with 3 cases settled, including 1 case in which the action was upheld;
- 16 cases categorised as GC, item 613, were filed with regional courts as the courts of first instance, with 29 cases settled (some of them pending from the preceding period), including 13 cases in which the action was upheld;
- 22 cases categorised as AGa (appeals in cases concerning economic activity), item 613, were filed with courts of appeal, with 29 cases settled (some of them pending from the preceding period), including 15 cases in which the appeal was dismissed.

As regards criminal cases, the number of adults sentenced with non-appealable judgments to a fine, a community sentence, imprisonment, or a combination of the latter two types of penalties for offences against the environment penalised by Chapter XXII of the Criminal Code in 2018-2020 (according to the information compiled into statistical tables based on the electronic database of the National Criminal Register) is the following:

- 2018 – 45 sentenced persons altogether, including 17 persons sentenced to a fine only, 4 persons with a community sentence, and 24 persons sentenced to imprisonment;
- 2019 – 76 sentenced persons altogether, including 36 persons sentenced to a fine only, 2 persons with a community sentence, 37 persons sentenced to imprisonment, and 1 person with a community sentence combined with imprisonment;
- 2020 – 81 sentenced persons altogether, including 24 persons sentenced to a fine only, 6 persons with a community sentence, and 51 persons sentenced to imprisonment.

PORTUGAL

(Considera-se que esta resposta deve ser providenciada pelo Ministério da Justiça atenta a matéria de sua competência).

SLOVAK REPUBLIC / RÉPUBLIQUE SLOVAQUE

The case law of national courts primarily concerns administrative proceedings from various areas regulated by the above-mentioned laws.

Parties to the administrative procedure can directly rely on international environmental agreements. The Constitutional Court has explicitly stated that it is also reviewing the compliance of national laws with the Aarhus Convention (see below). The Aarhus Convention is therefore explicitly recognized as a binding human rights law concerning access to justice in environmental matters. There are several decisions of the Supreme Court (see below) and lower courts in which courts interpreted provisions of national law in accordance with the Aarhus Convention in order to achieve the objectives of the Aarhus Convention – e.g. access to environmental information or access to justice of the members of public (e.g. non-governmental organizations). Based on these court decisions, the public authorities subsequently applied the Aarhus Convention in administrative proceedings, interpreted the national law in conformity with the Aarhus Convention and EU law and granted the rights arising from the Aarhus Convention to non-governmental organizations.

Examples of case-law:

The amendment to the Act concerning the acceleration of the construction of motorways (Act No. 669/2007 Coll.), adopted in 2017, excluded the power of the administrative court to grant the suspensive effect of administrative actions against a zoning decision for construction of motorways and building permits for the construction of motorways. The Constitutional Court, by its decision of PL. ÚS 18/2017-152 of 4 November 2020, decided that this law is in conflict with Art. 9 § 4 of the Aarhus Convention, which enshrines the right of the public for an administrative court to order an "injunctive relief" following an administrative action against a project authorization decision. The Constitutional Court stated in the decision: *"Part of the right to judicial protection in environmental matters is (also) the possibility of the administrative court to effectively verify the compliance of the zoning decision for highway construction or building permit for highway construction with the conclusions of the environmental impact assessment process. Here, too, the Constitutional Court notes that the possible suspensory effect of an administrative action does not occur ex lege, but only by a decision of the administrative court based on a judicious assessment. (...) The Constitutional Court has therefore ruled that the provision of (...) the law (...) in relation to a zoning decision for the construction of a motorway and a building permit for the construction of a motorway is not in accordance with Article 9 § 4 of the Aarhus Convention"*.

The Supreme Court stated in its judgment No. 3 Sži 22/2014, of 9 June 2015: *"The Supreme Court of the Slovak Republic points out that in the case under review the applicability of the provisions of the Aarhus Convention to the present case cannot be ruled out, as the Slovak Republic has recognized its precedence over laws*."

According to the ruling of the Court of Justice of the EU in *Križan case* (C-416/10) national courts must interpret the procedural rules concerning the integrated permitting of operations with a significant impact on the environment under the Integrated Pollution Prevention and Control Act (IPPC) in accordance with the Aarhus Convention and EU law. According to the CJEU ruling, a national court is obliged, of its own motion, to make a request for a preliminary ruling to the Court of Justice of the European Union even though it is ruling on a referral back to it after its first decision was set aside by the Constitutional court and even though a national rule obliges it to resolve the dispute by following the legal opinion of that latter court. According to the CJEU ruling, national authorities are obliged to interpret procedural law in such a way that the public concerned have access to an urban planning decision procedure from the beginning of the authorization procedure for the installation. According to the CJEU ruling, the competent national authorities are not entitled to refuse the public concerned access to such a decision by relying on the protection of the confidentiality of commercial or industrial information. According to the CJEU ruling, procedural law must be interpreted as meaning that members of the public concerned must be able to ask the court to order interim measures such as temporarily to suspend the application of a permit, pending the final decision of the administrative court.

For more information see the 5th Aarhus Convention National Implementation Report[54].

SLOVENIA / SLOVÉNIE

Over the past years Constitutional Court of the Republic of Slovenia has delivered some important rulings in this regard. Below are some examples with relevant parts of the rulings.

For example in its opinion from 5 December 2002[55] the Constitutional Court noted: "*27. According to the first paragraph of Article 72 of the Constitution, everyone has the right to a healthy living environment. The second paragraph of Article 72 obliges the State to take care of a healthy living environment and, in particular, obliges it to determine the conditions and ways of carrying out economic and other activities for this purpose. According to the settled case law of the Constitutional Court, these provisions oblige the State to adopt such standards or frameworks of permitted interventions in the space, so that people's health is not endangered (see also decision no. U-I-24/96 of 9 December 1999, OdlUS VIII , 279 and decision No. U-I-315/97 of 16 March 2000, Official Journal of the Republic of Slovenia, No. 31/2000 and OdlUS IX, 57).*"

In the case U-I-80/04 from 24 November 2005 the Constitutional Court stated: *"5. The Constitutional Court has repeatedly emphasized that the right to a healthy environment from Article 72 of the Constitution is protected by standards that apply to interventions in space, and by standards or norms which ensure that there are no such impacts on the environment that would be so excessive as to endanger human health…."*

Decision of the Constitutional Court No. U-I-182/16, dated 23 September 2021*: " 23. The Constitution ensures the protection of the environment in several provisions. The basis for normative protection of the environment lies in the general provisions of the Constitution. Namely from the first paragraph of Article 5 derives the duty of the state to provide for the preservation of natural wealth and to create opportunities for the harmonious development of society and culture. This duty is operationalized in several provisions of chapter on economic and social relations. Mainly in Articles 70 to 73 of the Constitution. In addition, Articles 67, 69 and 74 of the Constitution are also important for environmental protection. The fact that the protection of the environment is regulated in several provisions of the Constitution does not mean that the Constitution does not provide for at least the same level of protection of the environment as binding international legal acts or EU law. The possibility that the level of environmental protection guaranteed by the Constitution would be lower from the required level of protection according to international legal acts, is prevented by Articles 8 and paragraph 5 of Article 15 of the Constitution, or in the case of requirements originating from EU law, Article 3a of the Constitution….At the same time, it is also important to emphasize that that the right to a healthy living environment from Article 72 of the Constitution, which is in substance most closely related to the protection of the environment as such, enjoys the same protection as the rights listed in chapter on human rights although it is placed in the chapter on economic and social relations.*

24. Protection of the environment is thus one of the fundamental, constitutionally protected values. Legislative, as well as executive and judicial powers have duty of ensuring a high level of environmental protection according to the Constitution. The Constitution enables different approaches to environmental protection, which can be implement at the legislative level. However, the requirement of a healthy human environment needs to be understood in a broader context of the positive duties of the state regarding nature conservation and protection of the environment as such. Therefore it is not just about human well-being. Bond between the protection of the

[54] https://www.minzp.sk/files/dokumenty/medzinarodne-dohovory/aarhusky-dohovor/piata-narodna-implementacna-sprava-verzia-anglickom-jazyku.pdf

[55] Published in Official Journal 117/2002 from 28 December 2002.

environment and a healthy environment for humans is of course tight. The well-being of the individual is inevitably linked to the protection of the environment. This goes for the present generation as well as for future generations. With the activities affecting the environment there is a constant collision of interests of individuals, authorities and the environment itself, except that the latter cannot represent its interest alone. Therefore, the requirement of the first sentence of the second paragraph of Article 72 of the Constitution is of fundamental importance as it imposes to protection of a healthy living environment to the state. It also follows from international commitments that information about activities affecting the environment need to be made available to the public so that it can participate in certain procedures where decisions affecting the environment are adopted. This commitment derives, among others, from Aarhus convention, as also explained below in the assessment of contested provisions.

25. The first paragraph of Article 72 of the Constitution cannot be interpreted without the second paragraph of the same article, which obliges the state to take care of a healthy living environment and thus imposes many positive obligations to the state. Also the European Court of Human Rights (hereafter ECtHR) within the framework of positive obligations of the state requires preventive action and prior assessment of activities affecting the environment. Foremost EU rules require a high level of environmental protection and its consideration in all policies, therefore in procedures of adopting rules in all areas under the competence of the EU in accordance with the principle of integrity. In order to ensure long-term protection of the environment, it is therefore necessary to follow the concept of sustainable development, which should also ensure a healthy environment and preserved nature for future generations; thus coexistence of humanity with the environment and nature. This is also one of the most important tasks for humanity as there are sufficiently convincing scientific arguments that for the past 70 years or so technological development has had a negative impact on the environment and nature. The legislator must therefore pursue the goal of a high level of environmental protection also for future generations and regulate basis of a high level of environmental protection, which are mostly incorporated into the Slovenian legal order from international acts and EU rules…"

SWEDEN / SUÈDE

Not applicable, please see reply under question 1.

SWITZERLAND / SUISSE

Comme indiqué dans la réponse à la question 1, il n'existe pas un droit explicite à un environnement propre, sain et durable au niveau fédéral.

La jurisprudence n'a jusqu'à présent que peu concrétisé le droit à un environnement sain garanti par l'article 19 Cst.-GE (CSDH, Droit à un environnement sain - La future reconnaissance par les Nations Unies d'un droit à un environnement sain et ses conséquences pour la Suisse, 14 février 2021, p. 89 [en allemand]):

- La Cour de Justice de la République et Canton de Genève, Chambre constitutionnelle, s'est référé à l'art. 19 Cst.-GE dans un arrêt du 27 août 2020 (ACST/25/2020) concernant des limitations à la circulation des véhicules automobiles et des cycles (introduction d'une vignette environnementale). La Cour a considéré que « [l]e dispositif contesté poursuit un intérêt public de protection de la santé, en particulier des personnes à risque (enfants, femmes enceintes, personnes souffrant de problèmes cardiaques et respiratoires). Il relève d'une tâche publique d'État qui est un corollaire au droit fondamental à un environnement sain que le Constituant genevois a reconnu à toute personne habitant ce canton (art. 19 Cst-GE). (...) En adoptant le dispositif de circulation différenciée, le législateur genevois a ainsi cherché à concilier le droit fondamental à un environnement sain que le Constituant genevois a reconnu à toute personne habitant ce canton, notamment s'agissant des personnes les plus vulnérables, et la liberté économique des professionnels des transports et des autres usagers de la route. » (consid. 15).

- Dans l'arrêt du TF 2C_420/2021 du 7 octobre 2021, le recourant soutient entre autres qu'un renvoi en Haïti l'exposerait à un risque d'atteinte à son droit de vivre dans un environnement sain (art. 19 Cst.-GE). Le TF a écarté ce grief parce que le recourant n'a pas répondu aux exigences de motivation (consid. 1.2 et 8.1).

TÜRKIYE

UNITED KINGDOM / ROYAUME-UNI

For the reasons explained in the answer to question 1, this question is not applicable to the UK. UNGA resolution 76/300 recognises the right to a clean, healthy and sustainable environment as a political matter. This resolution was adopted on 28 July 2022, and the UK voted in favour with an explanation of vote, setting out that there is as yet no international consensus on the legal basis of the right.