COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

CDDH-ENV(2023)10
(*English only*)
30/11/2023

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

_____

DRAFTING GROUP ON HUMAN RIGHTS AND ENVIRONMENT

(CDDH-ENV)

Summary of the exchange of views with external independent experts and representatives of the Parliamentary Assembly and the European Committee on Social Rights (13-15 September 2022)

(prepared by the Secretariat)

1. INTRODUCTION

The CDDH-ENV agreed at its 4th meeting (6–8 April 2022) to hold an exchange of views on the legal framework relating to human rights and the environment, the status and enforcement of existing standards, the best ways to fill any eventual gaps, and the possible impact of any additional instrument(s), including on the workload of the European Court of Human Rights and the European Committee of Social Rights.

At its 5th meeting (13–15 September 2022), the CDDH-ENV held the exchange of views with:

- Helen KELLER, Former Judge at the European Court of Human Rights, Chair for Public Law and European and Public International Law, University of Zürich
- Sébastien DUYCK, Senior Attorney, Center for International Environmental Law (CIEL), Campaign Manager Human Rights & Climate & Energy Program, Geneva
- John KNOX, Former UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Henry C. Lauerman Professor of International Law, Wake Forest University School of Law, USA
- Léa RAIBLE, Senior specialist, Lecturer in Public Law at the University of Glasgow
- Elisabeth LAMBERT, Director of Research at the National Centre for Scientific Research (CNRS), Faculty of Law, University of Strasbourg
- Simon MOUTQUIN, Rapporteur on "Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe" of the Committee on Social Affairs, Health and Sustainable Development of the Parliamentary Assembly (Belgium
- Giuseppe PALMISANO, Former President of the European Committee of Social Rights, Department of Law, Roma Tre University, Italy

2. SUMMARY OF DISCUSSIONS

Key points made by Professor Helen KELLER

- The European Convention on Human Rights (ECHR or the Convention) contains no provision for a substantive environmental right. While the European Court of Human Rights (ECtHR or the Court) has given effect to environmental protection indirectly through its interpretation of other rights, the scope of environmental protection is limited. This is because (i) the severity threshold restricts the applicability of Article 8 of the Convention; (ii) the Court, when the balancing exercise is conducted, ascribes environmental protection with less value than other public interests; and (iii) the Court's power to order meaningful environmental remedies is limited.
- The added value of a new right in an Additional Protocol would depend on the wording that is to say whether the right would be codified as (i) a right to a healthy environment; (ii) a right to a safe, clean, healthy and sustainable environment; or (iii) a right to a decent or ecologically viable environment. The use of different formulations could lead to various interpretations, with the first option potentially encompassing both human and collective well-being, the second emphasising distinct aspects of environmental protection, and the last calling for ecological preservation even without direct human benefits. The second option is seen as more preferable by the expert.
- In environmental cases, the core components of proof and evidentiary questions involve demonstrating the existence/risk of sufficiently serious environmental harm, establishing a causal connection between the actions or omissions of the respondent State and the environmental harm, and proof of the causal link between the environmental harm and the applicants' enjoyment of human rights. The questions, are, what environmental harms warrant consideration under

Convention rights, who bears the burden of proof, and what standard of proof should be applied. There is a need to rethink evidentiary rules in light of the complexity underlying environmental cases.

- The precautionary principle, as applied in *Tătar v. Romania*[1]*,* should play a more prominent role in environmental cases to overcome issues where direct causal links are difficult to establish. While the Court has applied the principle before, it only does so sporadically.
- The Additional Protocol should address the complexities concerning rules on administration of evidence in environmental cases, potentially by (a) defining burden of proof principles differently from the general rule, (b) lowering the standard of proof when there's scientific uncertainty but reasonable suspicion of serious or irreversible environmental harm exists, (c) providing clear guidelines for drawing causation presumptions, or (d) a combination of these approaches tailored to environmental cases.
- The value of NGOs in environmental justice is widely recognised, as they can improve access to justice, enhance evidence presentation, streamline procedures, and enable more meaningful remedies, but the Court has varying approaches to granting NGO standing based on whether procedural or substantive rights are invoked. Formal regulation of NGO standing should be considered in an Additional Protocol, with the need to clarify whether NGOs can bring claims as direct victims depending on the nature of the right to the environment (i.e. individual or collective right) and defining criteria for NGO standing, including qualifications, experience, and interest in the dispute.

Key points made by Sébastien DUYCK

- The UN General Assembly, with overwhelming support including by all Council of Europe member States, adopted resolution 76/300 recognising the right to a clean, healthy, and sustainable environment as a human right (GA Resolution).
- The interplay between international environmental law and the protection of human rights is crucial, as strengthening environmental democracy, recognising environmental rights, and enabling access to justice for individuals and civil society can contribute to a sustainable and socially just transition. The legal and institutional framework established by the Council of Europe increasingly trails behind national and international development related to environmental rights as the environmental agreements adopted under the auspices of the Council of Europe have done little to bridge the gap between promotion of rights and democracy and good environmental governance.
- The alarming increase in threats and violence against environmental human rights defenders worldwide, along with the importance of protecting them, has led to the establishment of the first Special Rapporteur on environmental defenders under the Aarhus Convention, emphasising the need for recognition, political attention, and support for those advocating for the environment and human rights.
- The increasing recognition of the relevance of human rights in international environmental frameworks, exemplified by the incorporation of human rights considerations into climate agreements like the Paris Agreement, indicates a growing understanding of the importance of human rights in environmental policy-making, paving the way for further integration of human rights into environmental standards and agreements worldwide.

[1] *Tătar v. Romania*, no. 67021/01, judgment of 27 January 2009, § 120.

- Better recognising the linkages between human rights and the environment within the Council of Europe would help ensure a level playing field across European states, where varying levels of recognition and enforcement of the right to a clean, healthy and sustainable environment could lead to a concerning gap in protection and compliance.
- Europe's diminishing role in human rights leadership weakens its moral authority. While the Court has made progress in defining state obligations regarding environmental rights, adopting a legal instrument to clarify European consensus on environmental rights would provide support to the Court and to the European Committee on Social Rights (ECSR) to continue to interpret the Convention and the European Social Charter (ESC) as living instruments, reduce legal uncertainty, and send a reassuring political message to the people of Europe, offering an opportunity for greater unity across the continent.

Key points made by John KNOX

- As a result of the GA Resolution, the only remaining international human rights system that does not recognise the right to a healthy environment is the Council of Europe.
- The relationship between human rights and the environment is interdependent: (a) the full enjoyment of many human rights, including the rights to life and health, depends on an environment that is healthy for human beings; and (b) the exercise of human rights, including the rights of freedom of expression and peaceful association, and the rights to information, participation in governance, and access to justice, is necessary for individuals and communities to be able to advocate for and achieve satisfactory levels of environmental protection.
- The evolution of the relationship of human rights and the environment has primarily taken three paths:
    - First, recognition the human right to a healthy environment, which various regional and international instruments have embraced, including the 1998 Aarhus Convention and the recent GA Resolution as well as about 100 states in some form in their constitutions, including most of the member states of the Council of Europe.
    - Second, multilateral environmental agreements (MEAs) have implicitly reflected and supported human rights norms, most notably the Aarhus Convention and the Escazú Agreement which both relate to access to environmental information, public participation in decision-making, and remedies for environmental harm. The Paris Agreement as a notable exception explicitly mentioning human rights obligations.
    - Third, existing human rights, such as the right to life and health, have been applied to environmental issues, a process often referred to as "greening" human rights. This approach has resulted in coherent norms across regional human rights systems. Both the ECHR and the ECSR have played pivotal roles in the "greening" of human rights. The ECHR has built an extensive environmental jurisprudence, primarily based on Article 2 (right to life) and Article 8 (right to private and family life). It has emphasized the need for states to establish regulatory frameworks to deter threats to the right to life from hazardous activities and environmental disasters, and to provide access to remedies when harm occurs. Similarly, the ECSR has highlighted the right to health in the ESC's Article 11, requiring states to protect against environmental harm, especially air pollution, by educating the public, setting emission standards, monitoring air quality, and enforcing environmental norms. Both bodies underscore the intersection of human rights and environmental protection. Other regional bodies have recognised states' obligations to

prevent environmental harm, provide information, and facilitate public participation while considering the rights of indigenous and tribal communities.

- Additionally, United Nations human rights treaty bodies have consistently applied human rights to environmental issues, interpreting a range of rights to entail obligations for environmental protection, such as ensuring access to safe water and sanitation, preventing exposure to harmful environmental conditions, and addressing environmental degradation and climate change as threats to the right to life.
- In 2018, Framework Principles on Human Rights and the Environment were presented, summarising states' environmental human rights obligations, encompassing procedural aspects like freedom of expression and access to information, as well as substantive standards with a focus on non-discrimination, monitoring, global cooperation, and safeguarding vulnerable groups.
- Recognition of the right to a healthy environment in Europe would have several significant benefits: it would clarify that the right to a healthy environment is on the same level as other fundamental human rights, encourage states to enact stronger environmental laws, clarify the status of environmental defenders as human rights defenders, integrate existing environmental human rights jurisprudence, and address gaps, as highlighted by the *Kyrtatos*[2] case, in the European legal framework.
- It is important not to undermine the existing body of environmental human rights norms developed by the Court and to avoid restricting the right to a healthy environment solely to economic, social, or cultural rights. Instead, this right should encompass civil and political rights. The Court has been a leader in linking human rights and the environment for the past quarter-century, and its influence has extended to other tribunals and the UN human rights system. Strengthening the Court's capacity to apply human rights law to environmental issues is crucial in the face of growing environmental crises.

Key points made by Léa RAIBLE

- For any instrument in the field of human rights and the environment two areas will have to be considered: (i) the unfolding climate crisis; and (ii) the question of extraterritoriality. Many environmental issues, and anthropogenic climate change in particular, involve actions and omissions by more than one state or transboundary harm, or both. International human rights law as it stands struggles with both of these factors: it builds on the assumption that it is usually not a problem to identify a particular state which is violating a particular right of a particular individual in a specific way. But this is not the case when it comes to many environmental harms, and most importantly it is not true regarding climate change. *Duarte Agostinho and Others v Portugal and Others*[3] is a good example in this regard: the case is brought by Portuguese youth but aimed at 33 states.
- Recognising that human rights primarily pertain to individual claims against territorial states, the global nature of environmental harm, especially in the context of climate change, necessitates addressing extraterritorial human rights obligations, wherein powerful nations with significant emissions might be liable for violations affecting individuals outside their borders. However, the current framework, as regulated by Article 1 of the ECHR, poses challenges as it requires the individual to be in a territory under a state's effective control or authority and control, potentially

[2] *Kyrtatos v Greece*, application no. 41666/98, judgment of 22 May 2003.
[3] *Duarte Agostinho and Others v. Portugal and 32 Others*, application no. 39371/20.

leaving those harmed by environmental issues geographically distant from the source outside the scope of jurisdiction.

- Recent case law developments such as *Carter v Russia*[4] or *Georgia v Russia (II)*[5] can be instructive on the Convention's extraterritorial scope also concerning human rights and climate change, however, these cases indicate that addressing this issue remains complex and uncertain, potentially leaving an accountability gap between major emitters and remote victims.
- One approach to address extraterritoriality in an Additional Protocol to the ECHR is to amend Article 1 of the ECHR, allowing jurisdiction to be established based on control over the source of harm, potentially expanding extraterritorial jurisdiction. This, however, would be a significant departure from current practice and would be more onerous on states ratifying such an instrument. A solution to this extended jurisdictional burden would be to include limits on compensation or the number of claims for a single impact, shifting the focus away from individual redress. Alternatively, the limits on extraterritoriality could be kept as they are, accepting that this would diminish a Protocol's use in combating the causes and effects of climate change.
- An additional standalone Convention on Environmental Threats to Human Life – even if it is not a human rights instrument – besides an Additional Protocol to the ECHR, is to be welcomed. To make it useful to human rights protection, this standalone convention could reference international environmental law principles in a way that makes them amenable to be referred to in ECtHR jurisprudence thereby preserving the legitimacy of the Court because it would not have to establish such links independently.

Key points made by Elizabeth LAMBERT

- The Council of Europe should leverage its existing efforts, such as the Bern Convention, to protect ecosystems and their connections with human life, while prioritising the adoption of binding measures for immediate, concrete results instead of relying on voluntary actions, and ensuring these instruments include a complaints system and a monitoring mechanism. The overarching question is how additional instruments can secure the effectiveness of ecological human rights, ensuring a dignified life on a habitable Earth for current and future generations.
- The absence of recognition of an autonomous and explicit right to a healthy environment is a major obstacle to the consideration of environmental violations within the framework of the ECHR. This absence has resulted in jurisprudence where – except in extreme situations – it is virtually impossible for the Court to accept the link between environmental damage and the violation of an ECHR right.
- The right to a healthy environment is now well identified as an autonomous right, it implies, inter alia, a safe climate, clean air, safe water and adequate sanitation, healthy and sustainable food, non-toxic environments in which to live, work, study and play, as well as healthy biodiversity and ecosystems. It is specific and complex due to several interdependent aspects: (i) the environment is a non-exclusive resource, differentiating it from property or life, making it both a human right and one that transcends human interests; (ii) it encompasses both individual and collective rights, accessible to present and future generations, including vulnerable populations, environmentally displaced individuals, and environmental defenders; (iii) the role of associations in defending environmental causes, without the need to prove victim status is important, moreover, (iv) preventive measures should be emphasised in this context, acknowledging also (v) the technical complexity of environmental cases, and (vi) prioritizing restoration over

[4] *Carter v. Russia*, application no. 20914/07, judgment of 21 September 2021.
[5] *Georgia v. Russia* (II) application no. 38263/08, Grand Chamber judgment of 21 January 2021.

monetary compensation. The recognition of an explicit autonomous right to a healthy and sustainable environment, at the European level (in addition to the national level) is a necessity, but its recognition must take into account the aforementioned specificities of this right.

- The protection of nature (and not just the environment) being a legitimate aim of general interest, must appear as a limit to certain rights, in particular to the right to property. It is fundamental to explicitly recognise the procedural aspects of ecological human rights like citizen participation and access to justice for environmental matters, acknowledging the vulnerability of specific groups. In addition, integrating environmental law principles, promoting sustainable resource use and equitable access, supporting scientific knowledge development, and adapting liability mechanisms to include private actors are crucial.
- As ecological human rights have specificities and significant complexities, a specific instrument, with a complaints system and a monitoring mechanism, dedicated to it would be required. The most appropriate formula would be a new coherent instrument which recognises all ecological human rights and refers in part to the competence of the ECtHR. The proposed approach avoids revisiting past conflicts concerning an Additional Protocol to the ECHR and maintains the integrity of the Convention.

Key points made by Simon MOUTQUIN

- The protection of a clean, healthy and sustainable environment is essential to the enjoyment of all human rights as was stated in PACE Recommendation 2211 (2021) “Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe”.
- Several proposals have been made to realise the right to a healthy environment, including additional protocols to the ECHR, the European Social Charter, a new standalone convention, and an update on the recommendation to companies. These proposals are seen as complementary rather than opposing each other, despite their advantages and disadvantages in terms of efficiency, clarity and application deadlines.
- The adoption of an additional protocol to the ECHR is considered a crucial step to improve access to environmental justice, and it is believed that such a protocol would press States to enhance environmental protection. An additional protocol to the ECHR is the best short-term solution to support more ambitious action by the Council of Europe in the field of environmental human rights.
- There are, however, debates surrounding the idea of the Additional Protocol:

    - First, there is a challenge of encompassing the collective dimension of the right to a healthy environment. While the ECHR traditionally protects individual rights, environmental rights often have a collective nature. There is therefore a strong argument for allowing NGO standing and even *action popularis*.

    - Second, there is a concern that it might lead to an influx of new applications thereby overburdening the Court. However, it's essential to note that, as it is envisaged by the PACE Recommendation, the Additional Protocol would limit class actions to NGOs protecting Nature, thus minimising the potential volume of cases. Moreover, proponents argue that this initiative could incentivise member States to implement more ambitious environmental measures to avoid the ECHR being overburdened, ultimately promoting better protection of environmental human rights.

- Lastly, there is a debate surrounding the financial implications of the ECHR finding violations of the right to a healthy environment by States. Critics raise concerns about the substantial expenses States would incur in the form of compensation. However, environmental organisations often seek non-monetary remedies, such as ecological compensation measures or symbolic compensation, aimed at restoring degraded ecosystems rather than seeking substantial financial compensation. This underscores the prioritisation of environmental protection over monetary remedies in environmental human rights cases.

- The call for recognising the right to a healthy environment within the Council of Europe, as well as for an additional protocol to the ECHR, has been longstanding, and there's a strong emphasis on the need for alignment with climate reality, youth and public sentiments, and the imperative of addressing environmental human rights to strengthen and legitimise the Council's role in protecting democracy and human rights.

Key points made by Giuseppe PALMISANO

- Over time, the close connection between environmental protection and social rights has become increasingly apparent, with the degradation of the environment significantly affecting various social rights, such as the right to health and the right to safe and healthy working conditions.
- As climate change and environmental deterioration continue to worsen, numerous other social rights protected by the ESC, including the right to work and earn a decent living, as well as the rights of children and older persons to social protection, are inevitably being compromised. Furthermore, the right to adequate housing is already facing dramatic consequences due to natural disasters partly caused by climate change.
- While the ESC does not explicitly include provisions related to the environment, it has interpreted Article 11, which enshrines the right to protection of health, as encompassing the right to a healthy environment. This interpretation emphasizes that states must take action to mitigate health risks resulting from environmental threats like pollution, nuclear hazards, asbestos exposure, and issues with drinking water.
- The ECSR has played a significant role in clarifying the nexus between environmental protection and social rights, particularly in the context of the right to protection of health. Accordingly, States are obligated to create comprehensive environmental legislation, prevent local air pollution, contribute to global pollution reduction efforts, and ensure the proper application of environmental standards.
- To bolster environmental protection within the ESC, it is proposed that an Additional Protocol, explicitly recognising the right to a healthy or decent environment be added. The European Social Charter – as opposed to the Convention which focuses essentially on civil and political rights and is characterised by individual applications – is ideally suited for addressing collective and solidarity rights, including environmental protection. It offers mechanisms for monitoring state compliance in the form of a reporting procedure and the collective complaints procedure, which are well-suited for assessing compliance with obligations related to collective human interests and shared damages resulting from environmental issues. In addition, it allows non-governmental organisations and social partners to raise claims before the ECSR, even without being individual victims of violations.
- In considering the content of an Additional Protocol, it may include the use of a broader term such as the "right to a decent environment". The significance in safeguarding human dignity and societal well-being for future generations could also be highlighted. Additionally, potential

components of this provision could encompass the recognition of this right in national legal systems, the implementation of coordinated environmental preservation measures, the enforcement of environmental standards for businesses, the facilitation of public access to environmental information, the promotion of environmental education, and the facilitation of international cooperation for environmental protection.

Discussion

- On the question of the potential implications of an Additional Protocol to the Convention on other cases examined by the Court, Helen Keller highlighted the similarity between environmental cases and Article 3 cases, underlining the challenge individuals face in substantiating environmental claims where evidence is often held by state authorities or large corporations. In her view, the Court should be guided by this similarity. In response to the question of the need for a human rights approach considering the already existing international environmental law (IEL) framework, it was noted by Helen Keller that international environmental law lacks a court system, while international human rights law provides robust institutions for addressing environmental degradation affecting human rights. John Knox added that IEL primarily focuses on transboundary harm, leaving many cases involving issues like air and water pollution that don't cross borders unregulated. The precautionary principle and the importance of third-party interventions in environmental cases were also highlighted as potential tools to enhance decision-making.

- Responding to the question of the impact of expanded NGO standing on other areas of the Convention system and the feasibility of copying the ESC system of *locus standi* to lodge a collective complaint, Helen Keller explained that caution is needed to avoid linking NGO standing at the national level to Convention level, as this could potentially provide states with a means to obstruct NGO involvement, despite the recognised need for improvement of the Court's restrictive stance on NGO standing. Concerning the impact on the Court's workload, Helen Keller emphasised that cases are coming irrespectively, and noted that prison conditions and environmental issues require similar attention to implementation. Helen Keller also acknowledged the limitations of a human rights approach as it often intervenes when it's nearly too late and advocated for a dual strategy of promoting early, sustainable international protection alongside the assurance that human rights can be upheld when affected. The importance of scientific expertise in environmental cases was underscored, with a focus on the need for judges to bridge the gap in understanding between legal and scientific experts.

- When discussing explicit protection for environmental defenders, both Sébastien Duyck and Helen Keller highlighted the need to strike a balance between their protection and limitations to fulfill their roles as environmental "watchdogs," drawing parallels with protections afforded to journalists. Sébastien Duyck also pointed out the growing recognition of intergenerational justice in national constitutions and international environmental instruments. He also mentioned the need for institutions to acknowledge this concept.

- John Knox, in the context of addressing the language "clean, healthy, and sustainable" environment, emphasised the temporal nature of environmental protection in a sustainable context. He discussed how sustainable development aligns with environmental protection, highlighting that economic considerations should not compromise a healthy environment. When asked about the risk of categorising the right as solely civil and political or economic and social, Knox emphasized that it has links to both areas, making it a unique right. He also expressed that the right to a healthy environment would broaden the range of harms that could be brought

before the Court, offering more comprehensive protection and emphasised that the recognition of this right would not necessarily lead to excessive litigation but rather encourage states to take environmental protection seriously within their national laws.

- John Knox also discussed the obligations associated with the right, stating that it involves both minimum standards and progressive realisation. He highlighted that states have an immediate obligation to provide minimal environmental protection while also striving to improve environmental standards over time. He also stressed that the Court should not be given power to regulate environmental policies but should continue to hear cases within its existing scope. On the issue of states' responsibility for anticipation and prevention of environmental harm, he explained that the Court's jurisprudence already addresses it by imposing positive obligations to anticipate and prevent such harm.

- On extraterritorial jurisdiction and foreseeability, Léa Raible proposed a nuanced approach, suggesting that a jurisdictional link should be established based on the opportunity to regulate, essentially emphasising the States' control over a particular situation. Foreseeability, in her view, should be linked to the content of the obligation itself, rather than serving as a precondition for its establishment. On establishing extraterritorial jurisdiction when there is "significant control", she clarified that this term implies having control over the source of harm. The challenge lies in defining the threshold for "significant control," which would need to be context-specific. The discussion also touched on complex scenarios involving multiple states sharing control and responsibility. Raible argued against the notion that cases necessarily need to be brought against all member states simply due to shared responsibility. She argued that just because there are several sources of harm, or the control is shared does not mean the control cannot be significant. She advocated for a case-by-case approach, considering the nature of control and harm in each situation.

- On the question of challenges posed by the lack of recognition of a right to a healthy environment in the Convention system, Elisabeth Lambert explained that to have a case admitted, victims not only need to prove harm caused by environmental factors but also demonstrate a connection to existing Convention rights. This leads to a situation where economic interests often overshadow environmental protection due to the principle of subsidiarity and the margin of appreciation afforded to States. Concerning the Court's approach to general measures Lambert noted that the Court has been cautious, however, it already issues pilot judgments and the Committee of Ministers monitors execution effectively therefore this should not be an issue in the context of the right to a healthy environment. On the question whether to have an Additional Protocol or a standalone convention, Lambert proposed that both are viable options and could work in tandem or independently. On the collective elements of the right, she suggested considering environmental rights as "diffuse" rather than strictly collective, which may provide a more accurate representation.

- Concerning private actors' responsibilities, Lambert stressed the importance of addressing corporate responsibility. While there are OECD guidelines, she advocated for more binding mechanisms at the European level, including penalties. Lambert also mentioned the possibility of recognising ecocide and establishing criminal responsibility for corporations.

- Giuseppe Palmisano clarified that changes addressing environmental concerns to both the ECHR and the European Social Charter would be valuable, emphasising that they are not mutually exclusive. On the limited number of decision issues by the Committee concerning Article 11 of the Charter, he explained that it can be attributed to factors such as the relatively low adoption of the collective complaints procedure by States (16) and the selective acceptance

of Charter provisions. Concerning limits to the Committee's ability to react to violations of Charter rights in lieu of an explicit right to healthy environment, he explained that specific provisions identifying the right would clearly help the Committee by providing more tools to protect the environment.

- On the effectiveness of the collective complaints procedure and the examination of State reporting, Giuseppe Palmisano noted that the collective complaints procedure has proven effective, not just because of the legal value of the ECSR decisions but due to the follow-up mechanisms enforced by the Committee of Ministers. On the issue of extraterritorial jurisdiction, he noted that addressing this would require changes in the systems of the ECHR and the ESC and would necessitate political buy-in from States. He suggested that any protocol or instrument would need to define the limits and extent of extraterritorial application.