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Protection of the Right to a Healthy Environment Through the Case Law of the European Court of Human Rights: Current Trends

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Abstract: The right to a healthy environment is part of the third generation of human rights, consisting of the so-called "solidarity rights." Although it is not expressly regulated in the European Convention on Human Rights or in the additional protocols, this right is nevertheless characterized by a remarkable evolution in terms of recognition and protection through case law. However, the lack of a legal text has been, and continues to be, a challenge for the European judge. Starting from these aspects, this paper examines how the European Court of Human Rights (ECHR) has developed its case law to address this legislative gap. To achieve this objective, the paper first highlights the landmark judgments given by the Court in this matter. It then explores jurisprudential trends—especially in light of the Court's decision in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*. Finally, the paper advocates strengthening the protection of the right to a healthy environment by intensifying cooperation between the European human rights system and international environmental law.

Keywords: Right to a Healthy Environment, European Court of Human Rights, Case Law, International Environmental Law, Cause Verein KlimaSeniorinnen Schweiz and Others v. Switzerland

Introduction

If in the past the quality of the environment was an irrelevant issue, now it has become a global concern. The right to a healthy environment is a fundamental right and can no longer be considered as an "umbrella" or a number of existing rights. The right to the environment is a "composite right", an aspect that is due to the fact that the ecosystem is so interconnected that often any damage brought in one part of it can cause damage in other parts (Chalabi, 2023, p. 11).

As part of the third generation of human rights, made up of the so-called "solidarity rights", the subjective right to a healthy environment is characterised by a special path, with successes and failures, in terms of its recognition and legal guarantee. This right is not expressly regulated in the text of the European Convention on Human Rights or in the additional protocols.

The lack of such regulation at the European level, however, did not constitute a major impediment to its recognition by case law. Over time, the European Court of Human Rights (ECHR, "Strasbourg Court" or "Court") has carried out a remarkable jurisprudential construction of the right to a healthy environment, appreciated as one of the strongest jurisdictional guarantees, sufficiently stable and relevant to allow the identification of the peculiarities of its protection, its scope, but also its limits (Nivard, 2020, p. 11).

In view of the extensive case law of the Strasbourg Court in this area, we do not propose here an exhaustive presentation of it. The present paper aims first to highlight the main features of the jurisprudential construction of the right to a healthy environment by referring to the most relevant cases, and then to highlight the current state of evolution of this construction and draw up the limits of the protection offered by the European Court in the matter. Finally, it advocates the need to expressly regulate the right to a healthy environment through a possible Additional Protocol to the European Convention on Human Rights on the right to a safe, clean, healthy and sustainable environment.

The current state of recognition of the right to a healthy environment at international, regional and national levels

From a global and regional perspective, the need to recognize a new fundamental human right, namely the right to a healthy and balanced environment, was gradually born and developed.

At the international level, for the first time, the link between environmental protection and human rights was affirmed by the "Declaration on the environment" adopted at the first United Nations (UN) World Conference on the Environment held in Stockholm in 1972. By art. 1 of this document only stated that "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations (...)" (United Nations, 1972), without expressly recognizing the subjective right of man to a healthy environment.

The right to a healthy environment was not expressly regulated even in the documents developed at the second United Nations Conference on Environment and Development held in Rio de Janeiro in 1992. However, the Rio Declaration is a step forward as it provided for a number of rights categorised as procedural rights deriving from the right to the environment: the right to access environmental information, public participation in decision-making and access to environmental justice (Chelaru & Duminică, 2017, p. 9).

A real success in the international recognition of the human right to a healthy environment as a stand-alone right took place relatively recently and is represented by the UN General Assembly resolution on the recognition of a new human right to a clean, healthy and sustainable environment, adopted in July 2022 (UN General Assembly, 2022). It was overwhelmingly supported by Member States and came after the UN Human Rights Council published a similar resolution a year ago (UNHRC, 2021). Even though these documents are not legally binding on the 193 Member States of the United Nations, they still represent a cornerstone in the evolution of this right.

At the regional level, the first human rights treaty to provide for the right to the environment was the "African Charter on Human and Peoples' Rights" adopted in Nairobi, Kenya in 1981 which established by the provisions of art. 24 that "all peoples have the right to a generally satisfactory environment conducive to their development" (Organization of African Unity, 1981). Although it is only regional in nature, this document is important in terms of the evolution of the regulations in the field, especially since it comes from a cooperation structure belonging to underdeveloped or developing countries (Marinescu, 2008, 393). Later, it was followed by the Additional Protocol of the "American Convention on Human Rights on Economic, Social and Cultural Rights", adopted in San Salvador in 1988 which recognized by art. 11 individual right "to live in a healthy environment and benefiting from essential public services" (Organization of American States, 1988).

As regards Europe, the European Convention on Human Rights, adopted in 1950 in Rome, does not expressly regulate the right to a healthy environment (Council of Europe, 1950). This lack of regulation is justified by the fact that this legal instrument was drawn up at a time when environmental problems were not yet realized. However, the additional protocols concluded over time, by which other fundamental rights were included in the Convention, did not do so either. In turn, the European Social Charter does not recognize it either. Also, the Charter of Fundamental Rights of the European Union is limited only to mentioning in art. 37 of the Charter that "Union policies must provide for a high level of protection of the environment and improvement of its quality, to be ensured in accordance with the principle of sustainable development" (European Union, 2012).

This situation did not, however, prevent the European Court of Human Rights from establishing by case law a system of protection such as to correct this loophole in the text of the Convention. "The ECHR's adjudicatory machinery has proved willing and able to engage

with environment-based claims and continues to accommodate a steady and ongoing flow of such applications in a plethora of case law. However, lack of treaty coverage poses certain challenges, not least of which is the associated absence of standards whereby to evaluate and dispose of environment-based claims" (Morrow, 2019, p. 41).

In September 2022, the Council of Europe has taken a step forward towards the express regulation of the right to a healthy environment by adopting the Recommendation on human rights and the protection of the environment calling on Member States to actively consider the recognition of the right to the environment at national level. "A formal procedure which could lead to the adoption of such a right under a binding legal instrument" was thus established (Kobylarz, 2025, p. 24).

The Recommendation of the Council of Europe comes, on the one hand, in the context of the recognition of the right to a healthy environment through the resolution of the UN General Assembly in 2022 and, on the other hand, in the context of increasing legislative consecration, in various forms, at national level. Currently, this right has been elevated to constitutional rank in at least 110 countries. In total, it was shown that more than 80% of UN Member States (156 out of 193) legally recognize the right to the environment (Chalabi, 2023, pp. 5-6).

The particularities of the ECHR jurisprudential construction on the right to a healthy environment

The European Court of Human Rights began in 1990 to carry out an extensive interpretation of certain articles (art. 2 on the right to life; art. 8 of the Convention on the right to respect for private and family life; art. 10 on the right to free speech; art. 6 on the right to a fair trial and so on) of the European Convention on Human Rights, gradually including environmental issues in their content.

The consecration of the right to a healthy environment was thus achieved through European jurisprudence indirectly, *par ricochet* way, by praetorian way, which is why a violation of the right to a healthy environment cannot be invoked as such before the Court since it is not guaranteed *in terminis* by the Convention. However, it can be defended through other rights, the most frequent legal basis invoked being art. 8 on the right to privacy.

The European Court of Human Rights has stated that environmental damage by certain harmful activities can affect a person's quality of life and thereby affect his or her private life. Thus, it established that the right to a healthy environment is a component of the right to privacy provided for in Article 8 of the Convention and is protected by it (Bîrsan, 2005, p. 622; De Salvia, p. 165).

In the case *Powell and Rayner v. United Kingdom* (1990), the Court held that excessive noise levels generated by the operation of an airport near the applicants' homes may affect the physical condition of the individual and therefore prejudice his or her private life. It also argued that aircraft noise has diminished the quality of privacy and comfort of the home and showed that the noise pollution produced by airplanes, very high in terms of level and frequencies, can affect in a considerable manner the value of real estate or even turn them into unsold goods.

Another cause illustrating the beginning of the penetration of the right to a healthy environment in the field of action of the Convention on the path of extensive interpretation of art. 8 was *López Ostra v. Spain* (1994). In dealing with that case, the Court noted that serious environmental damage can affect a person's well-being and deprive them of the use of their home, damaging their private and family life without, however, seriously endangering the health of the person concerned and that a fair balance between the interests of the person and society must be taken into account in all situations. The Court concluded in the case that the State had failed to maintain a fair balance between the interest of the welfare of the

community requiring the establishment of a treatment plant and the interests of natural persons consisting in their right to respect for their residence and their family and private life.

In subsequent years, European judges extended the scope of Article 8 to environmental risks on the assumption that "the dangerous effects of an activity to which the individuals concerned are likely to be exposed have been determined as part of an environmental impact assessment procedure in such a way as to establish a sufficiently close link with private and family life" (*Taşkin and others v. Türkiye,* 2004, §113).

The Court reiterated several times over time in its rulings that "violations of the right to respect for home and privacy are not limited only to concrete violations, such as unauthorized entry into a person's home, but may also include noise, emissions, odours or other similar forms of interference. A serious interference can lead to a violation of a person's right to respect for their home, if it prevents them from enjoying the amenities of their home. Although there is no express right provided in the Convention regarding a clean and quiet environment, nevertheless a violation of Article 8 in a situation where a person is directly and severely affected by noise or other pollution" (*Hatton and others v. United Kingdom* (GC), 2003, §96; *Oluić v. Croatia*, 2010, §45; *Kapa and others v. Poland*, 2021, §149).

Moreover, the Court emphasized through its case law that "a home will usually be a place, a physically defined area, where private and family life goes on. The individual has a right to respect for his home, meaning not just the right to the actual physical area, but also to the quiet enjoyment of that area" (*Oluić v. Croatia*, 2010, §44; *Kapa and others v. Poland,* §148, 2021).

Current trends in the case law of the European Court of Human Rights on environmental issues

Even if we are in the presence of a rich and dynamic jurisprudence, it was nevertheless found that for a long period of time the European Court of human rights has condemned only procedural violations or other non-compliance with national environmental legislation, without, however, delving very deeply into the substance of the human right to a healthy environment (Lavrysen, 2024, p. 53).

This situation seems to be changing at present. An analysis of recent case law allows us to state that great strides are being made in achieving the goal of stronger background protection in environmental issues. Judgments in cases *Cordella and others v. Italy* (2019), *Pavlov and others v. Russia* (2022) and *Verein KlimaSeniorinnen Schweiz and others v. Switzerland* (2024) are proof of this new trend in addressing environmental quality issues.

We note that the judgments given in cases *Cordella and others v. Italy* and *Pavlov and others v. Russia* (2022) is characterized by a more rigorous control regarding the substantive justification of actions or inactions taken by the State in the field of environmental protection. The Court thus stated that "Art. 8 not only requires the State to refrain from arbitrary interference, but this negative commitment can be complemented by positive obligations inherent in effective respect for privacy. (...) Regardless of whether the issue is approached from the point of view of the positive obligation of the State to adopt reasonable and appropriate measures to protect the rights of the person, pursuant to Article 8 first subparagraph, or from the point of view of the interference of a public authority, which must be justified under the second subparagraph, the applicable principles are quite similar. In both cases, consideration must be given to the equitable balance to be achieved between the competing interests of the individual and society as a whole, with the State in any case enjoying a certain margin of appreciation." (*Cordella and others v. Italy*, 2019, §158; *Pavlov and others v. Russia*, 2022, §75). The Court also concluded that "states have, first of all, a positive obligation, especially in the case of a dangerous activity, to implement regulations adapted to the specifics of that activity and, in particular, the level of risk that could result from it. These regulations must regulate the authorisation, operation, safety and control of the

activity in question and require any person affected by it to adopt practical measures aimed at ensuring the effective protection of citizens whose lives may be exposed to the dangers inherent in the area in question" (*Cordella and others v. Italy*, 2019, §159).

However, a truly landmark moment for the jurisprudential protection of the right to a healthy environment is the judgment delivered on 9 April 2024 in the case *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*. It is a historic ruling on climate change and its impact on the rights guaranteed by the Convention.

The Court of Strasbourg condemned, by this judgment, the Swiss State for violation of human rights because it had not taken the necessary measures to combat global warming. The court found a violation of Article 8 (right to private and family life), a violation of Article 6 (1) (access to justice) of the European Convention on Human Rights and ruled that the applicants had the status of victims. We are in the presence of a landmark ruling for future climate disputes, being the first time that a human rights Court has recognized the link between the protection of human rights and the obligation of states to mitigate global warming.

The Court was referred by four women and a Swiss Association, Verein KlimaSeniorinnen Schweiz, whose members are all elderly women concerned about the negative effects of global warming on their living conditions and health. In the main, the applicants showed that the respondent State had failed to fulfil its positive obligations to effectively protect their lives and respect their private and family life. In settling the case, it was found that the right to effective protection by State authorities against the serious negative effects of climate change on life, health, well-being and quality of life falls within the scope of Article 8 of the European Convention on Human Rights. While recognising that national authorities have discretion in the implementation of legislation and measures, the Court nevertheless held that the Swiss State had failed to fulfil its obligations under the Convention. Its actions were not sufficient to guarantee "the effective protection of persons under its jurisdiction from the negative effects of climate change on their lives and health" (*Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, 2024).

The analysis of this judgment reveals a number of essential elements for the future of climate disputes and the protection of the right to a healthy environment. A number of rules have been established regarding the applications that may be admissible in the matter both for the substantive resolution of these cases, but also in the procedural aspect, giving a clear signal that the ECHR will accept the complaints made before it by associations fighting for the protection of fundamental rights in the context of climate change (Duminică, 2025, pp. 92-93).

A first aspect arising from the judgment under review is that countries must "adopt and effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible future effects of climate change" (*Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, 2024, §545). The concept of "burden-sharing between generations" was introduced, emphasizing that the legal obligations of States under the convention extend not only to living people, but also to future generations, who could bear an increasingly heavy burden of the consequences of current failures in combating climate change (*Verein KlimaSeniorinnen Schweiz and others v Switzerland*, 2024, §419-420).

Another point worth remembering is the difference made by the Court between climate ambition - the level of protection against the negative effects of climate change to which people are entitled – and the means of ensuring that protection, concluding that while ambition can be reviewed, the choice of means cannot. The judges also showed how a state can prove that it is complying, specifically by setting a timetable and targets for achieving carbon neutrality, as well as intermediate targets for reducing greenhouse gas emissions. All these measures need to be implemented in a timely, appropriate and consistent manner, and

governments need to prove that they have met the targets and carry out an update of these targets on a regular basis (Duminică, 2025, p. 93).

The Court also highlighted the difference between climate change cases and "classic" environmental cases and established specific criteria for assessing, in this particular context, the victim status of natural persons, as well as for determining the procedural quality of associations to refer climate change cases to the Court (ECHR, Guide on Article 8, 2024, 52).

Regarding victim status in the context of complaints concerning harm or risk of harm resulting from alleged failures by the State to combat climate change, the Court finds that an applicant needs to show that he or she was personally and directly affected by the impugned failures. „This would require the Court to establish the following circumstances concerning the applicant's situation: (a) the applicant must be subject to a high intensity of exposure to the adverse effects of climate change, that is, the level and severity of (the risk of) adverse consequences of governmental action or inaction affecting the applicant must be significant; and (b) there must be a pressing need to ensure the applicant's individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm" (*Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, 2024, §487). The Court's assessment will also include, but will not necessarily be limited to, considerations relating to: the nature and scope of the applicant's Convention complaint, the actuality/remoteness and/or probability of the adverse effects of climate change in time, the specific impact on the applicant's life, health or well-being, the magnitude and duration of the harmful effects, the scope of the risk (localised or general), and the nature of the applicant's vulnerability (*Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, 2024, §488).

The Court established that in order to be recognized as having *locus standi* to lodge an application, the association in question must be: „(a) lawfully established in the jurisdiction concerned or have standing to act there; (b) able to demonstrate that it pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members or other affected individuals within the jurisdiction concerned, whether limited to or including collective action for the protection of those rights against the threats arising from climate change; and (c) able to demonstrate that it can be regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention" (*Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, 2024, §502).

Last but not least, by virtue of Article 8, the judges reiterated that States have an obligation to ensure citizens' access to information on climate regulations and measures taken (or lack thereof) and facilitate public participation in decision-making.

Limits of jurisprudential protection of the right to a healthy and balanced environment

Although we are in the presence of a rich and constantly evolving jurisprudence, it nevertheless presents a number of limits. These limits cover two main aspects: substantive and procedural.

The protection of the right to a healthy environment is restricted primarily by the lack of express regulation in the text of the Convention of the right to a healthy environment. Consequently, we are in the presence of protection par ricochet, that is, by the extensive interpretation of rights expressly provided for by the convention. Thus, it is not sufficient to invoke environmental degradation in an application to the Court, but it is necessary to demonstrate that it constitutes a breach of privacy, of residence or even a threat to a person's life (Nivard, 2020, 14). In this regard, the Court stated that "neither Article 8 nor any other provision of the Convention specifically guarantees the general protection of the environment as such" (*Kyrtatos v. Greece*, 2003, §52). The crucial element allowing to determine whether environmental damage constitutes infringement of one of the rights provided for in par. 1 of

art. 8 is the existence of a nefarious effect on a person's private or family life, and not the mere general degradation of a person (Bîrsan, 2005, p. 625; Duşcă, 2021, p. 41).

Another limitation is that the infringement must reach a certain threshold of gravity to allow the Convention to be enforceable. The determination of this threshold takes into account the impact on the physical and mental health and well-being of applicants, an impact which must be considered in relation to the overall environmental situation. The damage suffered by the applicants must be of a certain magnitude, sufficiently large "in comparison with the ecological risks inherent in life in any modern city" (*Fadeyeva v. Russia*, 2005, §69).

With regard to the obligations of States to protect that right, whether a case is considered from the perspective of the positive obligation of the State to take reasonable and appropriate measures to protect the rights of applicants or from the perspective of interference by a public authority, the applicable principles are quite similar. In both cases, account must be taken of the just balance that must be maintained between the competing interests of the individual and society as a whole; similarly, in both cases, the State has a certain margin of discretion in determining the measures to be taken to ensure compliance with the Convention (ECHR, Environmental guide, 2024, p. 48). Thus, it becomes particularly difficult for the Court to identify the measures that the State should have taken without violating national political power and the principle of subsidiarity.

From a procedural perspective, a number of limitations have also been identified. First, the individual nature of the application requires the applicant to demonstrate their status as a victim, and it is necessary that the applicant be personally affected. An action in the name of a general interest or in the exclusive interest of human rights which is such as to restrict the guarantee of the right to a healthy environment is not admissible. At the same time, the violation of the right to the environment is difficult to prove and the effects of the European Court's sentencing judgments appear inadequate in terms of protecting the right to a healthy environment (Nivard, 2020, pp. 15-16).

Although the current case-law of the Court reflects a reduction of these limitations and a strengthening of the protection of the right to a healthy environment, a number of regulatory limits are still maintained which could be mitigated by the express recognition of the right to a healthy environment. These normative limits have recently been stated in the literature and are as follows: "exclusion from the Court's jurisdiction of environmental harm that does not directly, imminently and severely affect the enjoyment of proxy rights; exclusion of imminent environmental harm from interim measures procedure; exclusion of associations from relying on substantive proxy rights except for cases regarding climate change mitigation; exclusion of domestic environmental public interest litigation from "fair hearing" and "access to a court" guarantees; lack of "active transparency" obligation in Article 10 (freedom of expression) and self-standing procedural right to "environmental information" in Article 8 (right to private life); absence of a mandate for general measures to redress or prevent environmental harm" (Kobylarz, 2025, pp. 23-43).

Conclusions

Currently, the Strasbourg system of human rights protection provides a fairly high level of protection of the right to a healthy environment through the evolutionary interpretation of existing rights.

The European Court has built up a well-structured body of case law over time that has recently culminated in the judgment in the case *Verein KlimaSeniorinnen Schweiz and others v. Switzerland* by which, for the first time, the link between the protection of human rights and the obligation of States to mitigate global warming was recognized. This ruling could, however, be politically speculated not to continue the process of regulating the right to a healthy environment through a "binding legal instrument", arguing that such regulation would be redundant.

However, with biodiversity loss, climate change and increased pollution posing real and far-reaching threats to both present and future generations, case-law protection is not sufficient to comprehensively guarantee the human right to a healthy environment. Therefore, the need for mandatory recognition of this right remains as current. The express consecration by an Additional Protocol to the European Convention of Rights would enable national law systems to respond effectively to ecological problems and would provide real support for the Council of Europe in achieving its objective of strengthening the protection of human rights in the face of these planetary ecological crises.

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