

European Court of Human Rights, climate and the environment

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The views expressed in this presentation are those of the speaker and do not represent the official position of the European Court of Human Rights or the Council of Europe.





López Ostra v. Spain, 1994
Pavlov & Others v. Russia, 2023
Di Sarno & Others v. Italy, 2012

Kapa & Others v. Poland, 2021

Hatton & Others v. UK [GC], 2003
Moreno Gómez v. Spain, 2004

Verein KlimaSeniorinnen Schweiz
et al. v. Switzerland [GC], 2024

RIGHT TO RESPECT FOR PRIVATE & FAMILY LIFE & FOR HOME



Brincat & Others v. Malta, 2014
 Howald Moor et al. v. Switzerland, 2014
 Roche v. UK [GC], 2005 McGinley
 & Egan v. UK, 1998

Budayeva v. Russia, 2008
 Kolyadenko v. Russia, 2012

Öneryıldız v. Turkey [GC], 2004

Özel & Others v. Turkey, 2015

RIGHT TO LIFE



Öneryıldız v. Turkey [GC], 2004
Budayeva v. Russia, 2008
Kolyadenko v. Russia, 2012

Depalle v. France [GC], 2010
Hamer v. Belgium, 2007
Z.A.N.T.E. — Marathonisi A.E. v. Greece, 2007

O'Sullivan Ltd. v. Ireland, 2018

Herrmann v. Germany [GC], 2012
Schneider v. Luxemburg, 2007
Chassagnou & Others v. France [GC], 1999

RIGHT TO PROPERTY



Burestop 55 v. France, 2021
 Cangi v. Turkey, 2019
 Tătar v. Romania, 2009
 Giacomelli v. Italy, 2006
 Guerra & Others v. Italy [GC], 1998
 Yusufeli İlçesini Güzelleştirme
 Yaşatma Kültür Varlıklarını Koruma
 Derneği v. Turkey (dec.), 2021

Bryan & Others v. Russia, 2023
 Chernega & Others v. Ukraine, 2019
 Animal Defenders International v.
 UK [GC], 2013

Verein KlimaSeniorinnen Schweiz v.
 Switzerland [GC], 2024
 Burestop 55 v. France, 2021
 Taşkın & Others v. Turkey, 2004
 Gorraiz Lizarraga & Others v. Spain, 2004
 Balmer-Schafroth & Others v.
 Switzerland, 1997

Friend & Others v. UK (dec.), 2009
 Hashman & Harrup v. UK [GC], 1999
 Bladet Tromsø & Stensaas v. Norway
 [GC], 1999

RIGHTS TO FREEDOM OF EXPRESSION & ASSEMBLY, LIBERTY, FAIR TRIAL



Duarte Agostinho
& Others v. Portugal
and 32 other
member States
9/4/2024



Verein
KlimaSeniorinnen
& Others v.
Switzerland
9/4/2024



Carême v. France
9/4/2024



Greenpeace
Nordic & Others v.
Norway



Müller v. Austria



Soubeste 7 Others
v. Austria and 11
other member
States



Engels & Others v.
Germany

and more
...

SEPARATION OF POWERS - THE ROLE OF THE COURT

Judicial intervention cannot replace the action that must be carried out by the legislative and executive powers. However, **democracy cannot be reduced to the will of the majority of the electorate and elected representatives, ignoring the demands of the rule of law.** The role of the domestic courts and the ECtHR is, therefore, complementary to these democratic processes.

The question is no longer whether human rights courts should address the issue of environmental harms to the enjoyment of human rights, but how they should do so.

LEGAL STANDING TO BRING AN APPLICATION TO THE ECtHR

1. New "especially high" standard for natural persons (*victim status*):

(a) the plaintiff must be subject to a high intensity of exposure to the adverse effects of climate change; and

(b) there must be a compelling need to ensure the individual protection of the plaintiff, due to the absence or insufficiency of reasonable measures to reduce damage.

2. NGOs as a “collective resource vehicle aimed at defending the rights and interests of individuals against the threats of climate change.” It is not necessary that the people represented by the association be considered direct or potential victims! (*locus standi*)

Associations must:

(a) be legally established in the jurisdiction in question or have the capacity to act therein;

(b) pursue a specific purpose in accordance with its statutory objectives in defense of rights human rights of its members or other affected persons within the jurisdiction in question; and

(c) be considered 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.

NEW RIGHTS

1. RIGHT TO LIFE

A serious risk of a significant decrease in a person's life expectancy due to climate change should trigger the applicability of Article 2.

2. RIGHT TO PRIVATE & FAMILY LIFE & HOME

Article 8 covers the right of individuals to effective protection by state authorities against the serious adverse effects of climate change on their life, health, well-being and quality of life.

NEW POSITIVE OBLIGATIONS FOR MEMBER STATES

1. The State must commit to global GHG reduction objectives to achieve carbon neutrality (reduced margin of appreciation).
2. The State has a wide margin of appreciation regarding the choice of measures to achieve the objectives, including operational options and policies adopted to meet international objectives and commitments.
 - (a) adopt general measures that specify a target timeline for achieving carbon neutrality and the remaining global carbon budget, or another equivalent method of quantifying future GHG emissions, consistent with national and/or global mitigation commitments of climate change;
 - (b) establish intermediate GHG emissions reduction targets and trajectories capable of achieving overall national GHG reduction targets within the timeframes assumed in national policies;
 - (c) adequately meet, or be in the process of meeting, the relevant GHG reduction objectives;
 - (d) keep GHG reduction targets up to date with due diligence and based on the best available evidence; and
 - (e) act in a timely, appropriate and consistent manner in developing and implementing relevant legislation and measures.

Mitigation must be complemented with adaptation.

The State must apply procedural guarantees

- make information available to the public allowing them to evaluate the risk to which they are exposed; and
- There must be procedures that allow the opinions of affected people and the public to be taken into account in the decision-making process.

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INTERGENERATIONAL BURDEN SHARING

1. In the context of climate change, intergenerational burden-sharing assumes particular importance both in regard to the different generations of those currently living and in regard to future generations.

While the legal obligations arising for States under the Convention extend to those individuals currently alive who, at a given time, fall within the jurisdiction of a given Contracting Party, it is clear that future generations are likely to bear an increasingly severe burden of the consequences of present failures and omissions to combat climate change and that, at the same time, they have no possibility of participating in the relevant current decision-making processes.

Having regard to the prospect of aggravating consequences arising for future generations, the **intergenerational perspective underscores the risk inherent in the relevant political decision-making processes, namely that short-term interests and concerns may come to prevail over, and at the expense of, pressing needs for sustainable policy-making, rendering that risk particularly serious and adding justification for the possibility of judicial review.**

2. In view of the considerations of intergenerational burden-sharing related to the impacts and risks of climate change, the members of society who stand to be most affected by the impact of climate change can be considered to be at a distinct **representational disadvantage**. The need to ensure, on the one hand, effective protection of the Convention rights, and, on the other hand, that the criteria for victim status do not slip into de facto admission of *actio popularis* is particularly acute in the present context.

In this regard, although the lack of State action, or insufficient action, to combat climate change does entail a situation with general effect, the Court does not consider that the case-law concerning “potential” victims under which victim status could be claimed by a “**class of people**” who have “a legitimate personal interest” in seeing the impugned situation being brought to an end, could be applied here. In the context of climate change, this could cover virtually anybody and would therefore not work as a limiting criterion. Everyone is concerned by the actual and future risks, in varying ways and to varying degrees, and may claim to have a legitimate personal interest in seeing those risks disappear.

3. Where intergenerational burden-sharing assumes particular importance, **collective action through associations** or other interest groups may be one of the only means through which the voice of those at a distinct representational disadvantage can be heard and through which they can seek to influence the relevant decision-making processes.

The special feature of climate change as a common concern of humankind and the necessity of promoting intergenerational burden-sharing, speak in favour of recognising the standing of associations before the Court in climate-change cases. In view of the urgency of combating the adverse effects of climate change and the severity of its consequences, including the grave risk of their irreversibility, States should take adequate action notably through suitable **general measures to secure not only the Convention rights of individuals who are currently affected by climate change, but also those individuals within their jurisdiction whose enjoyment of Convention rights may be severely and irreversibly affected in the future in the absence of timely action.** The Court therefore considers it appropriate in this specific context to acknowledge the importance of making allowance for recourse to legal action by associations for the purpose of seeking the protection of the human rights of those affected, as well as those at risk of being affected, by the adverse effects of climate change, instead of exclusively relying on proceedings brought by each individual on his or her own behalf.

In this connection, when devising the test for the standing of associations in climate-change litigation under the Convention, the Court finds it pertinent to have regard to the **Aarhus Convention**.

#EnvironmentRightNow: a PACE initiative

THE RIGHT TO A HEALTHY ENVIRONMENT

A series of PACE adopted texts are demanding a paradigm shift in international and national law, as well as government policies, to ensure that a healthy environment is recognised as a basic human right.



In an unprecedented all-day debate on 29th September, PACE members discussed a host of far-reaching proposals to “anchor” such a right in law, policy, practice and the public consciousness.

“As global leaders gather in October in Glasgow, it is clear the world is facing a growing climate emergency, with dramatic effects on human health and wellbeing,” according to PACE President Rik Daems, who has made this issue the main priority of his Presidency. “A healthy environment is essential for all of us – but it must become a legally-enforceable right if

ADOPTED TEXTS AND REPORTS

- Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe
- More participatory democracy to tackle climate change
- Addressing issues of criminal and civil liability in the context of climate change
- The climate crisis and the rule of law
- Combating inequalities in the right to a safe, healthy and clean environment
- Climate and migration
- Research policies and environment protection

UPGRADING PAN-EUROPEAN LEGAL STANDARDS

A high-level event organised as part of the parliamentary debate contributed towards making a paradigm shift from considering environment as a policy to environment as a human right.

Participants included António Guterres, Secretary-General of the United Nations; Marija Pejčinović Burić, Secretary General of the Council of Europe; János Áder, President of Hungary; Roberto Fico, Speaker of the Italian Chamber of Deputies; Eduardo Pinheiro, Secretary of State for Mobility, Portugal; Tim Eicke, Judge, European Court of Human Rights; and Anuna de

JOIN THE INITIATIVE

On 29 September, the PACE President launched in Strasbourg a ‘hashtag’ initiative to press for urgent action to make environment a human right.

#EnvironmentRightNow

Through the #EnvironmentRightNow initiative, Rik Daems wished that the message of “Let’s make environment a human right now” could expand beyond the parliamentary world to mobilise a maximum number of people.

VIDEO OF THE #INITIATIVE

#EnvironmentRightNow

ENVIRONMENT IS A HUMAN RIGHT



We recognise and support the vital role of civil society and other stakeholders, including national human rights institutions, regional institutions for the protection and promotion of human rights, youth, indigenous peoples, religious leaders and communities, as well as cities, regions and other sub-national authorities and local communities, in the protection of the environment.

We consider that strengthened Council of Europe action in this field will contribute to progress towards the United Nations 2030 Agenda for Sustainable Development Goals.

Together we commit to:

- strengthening our work at the Council of Europe on the human rights aspects of the environment based on the political recognition of the right to a clean, healthy and sustainable environment as a human right, in line with United Nations General Assembly Resolution 76/300 “The human right to a clean, healthy and sustainable environment”, and by pursuing the implementation of Committee of Ministers Recommendation CM/Rec(2022)20 on human rights and the protection of the environment;
- reflecting on the nature, content and implications of the right to a clean, healthy and sustainable environment and, on that basis, actively considering recognising at the national level this right as a human right that is important for the enjoyment of human rights and is related to other rights and existing international law;
- encouraging the Council of Europe Development Bank to focus on the social dimensions of climate change and environmental degradation, and to help member States achieve a fair and inclusive transition that leaves no one behind by funding projects in its key sectors of activity, in line with its strategic framework;
- concluding as soon as possible the Council of Europe’s ongoing work on a convention superseding and replacing the Convention on the Protection of the Environment through Criminal Law and on the consideration of the need for and feasibility of a new instrument or instruments in the field of human rights and the environment;
- initiating the “Reykjavik process” of strengthening the work of the Council of Europe in this field, with the aim of making the environment a visible priority for the Organisation. The process will focus and streamline the Organisation’s activities, with a view to promoting co-operation among member States. We will identify the challenges raised by the triple planetary crisis of pollution, climate change and loss of biodiversity for human rights and contribute to the development of common responses thereto, while facilitating the participation of youth in these discussions. We will do this by enhancing and co-ordinating the existing Council of Europe activities related to the environment and we encourage the establishment of a new intergovernmental committee on environment and human rights (“Reykjavik Committee”).

The Environment and Human Rights



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