

ENNHRI calls on Council of Europe Member States to adopt a binding instrument on the right to a healthy environment

ENNHRI statement ahead of the 100th meeting of the Council of Europe Steering Committee for Human Rights

ENNHRI calls on the Council of Europe Member States to adopt a binding instrument recognising the right to a healthy environment at the European level. The domestic experience shows that such recognition brings substantive benefits, while its judicial enforcement neither creates unmanageable tasks for the courts, nor unduly restricts the policy discretion of states. Important gaps in the normative protection persist even after the *KlimaSeniorinnen* judgment, as the European Court of Human Rights did not recognise a right to a healthy environment, therefore, the need for a binding recognition of the right remains as acute as ever. ENNHRI urges states to opt for a binding instrument, coupled with an effective oversight mechanism to ensure adequate access to justice for individuals and communities. ENNHRI's view is that these requirements would be fulfilled to the fullest if states adopt a binding protocol to the European Convention on Human Rights.

1. Introduction

The European Network of National Human Rights Institutions (ENNHRI) represents more than 40 independent National Human Rights Institutions (NHRIs), established by constitution or law to protect and promote human rights in accordance with the [United Nations Paris Principles](#) and the [Council of Europe Committee of Ministers Recommendation 2021/1](#). Under the umbrella of ENNHRI, all European NHRIs come together to address the most pressing human rights challenges.

With this statement, ENNHRI provides information on what the implications could be, at the national level, of the recognition and enforcement of the right to a healthy environment, to support Council of Europe Member States in making their decisions on the need for a binding instrument recognising this right in Europe. Adopting such an instrument would ensure that the right is recognized in all Council of Europe Member States and harmonize the minimum standards of the right across the Council of Europe region.

Recognizing the right to a healthy environment is an evolution – not a revolution – of the existing legal order because its realization is a precondition for the enjoyment of every other human right. As examples from national practice illustrate, the recognition of the right brings substantial benefits to societies (**Section 2**). At the same time, its application and judicial enforcement neither cause unmanageable tasks for the judiciary nor jeopardize the policy discretion of States in setting their environmental and other policies (**Section 3**). Based on national experiences, ENNHRI calls on the Member States of the Council of Europe to decide to adopt a binding instrument recognising a standalone right to a healthy environment in Europe (**Section 4**).

2. Need for, and benefits of, recognising a standalone right to a healthy environment

One of the most pressing and serious threats to the ability of present and future generations to effectively enjoy all human rights is the triple planetary crisis of climate change, biodiversity loss, and pollution. With the growing public awareness that a healthy environment is a prerequisite for human survival, well-being, and the full enjoyment of all rights, recognising the right to a healthy environment as an enforceable human right at the Council of Europe level would be a timely and important step.

Such a step would follow the recognition of the right at the UN level.¹ The African and Inter-American human rights systems have also recognised such a standalone right, as have 31 Member States of the Council of Europe in their domestic laws.² In jurisdictions where the right is currently not guaranteed, such as in Ireland, there is strong popular support for its recognition.³

At the Council of Europe, high-level political commitment to human rights-based protection of the environment for the benefit of present and future generations has already been confirmed by the Member States in the [Reykjavik Declaration](#). The European Court of Human Rights in its historic judgment in the case *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*⁴ ruled

¹ UN General Assembly Resolution [76/300](#), adopted on 28.7.2022, and UN Human Rights Council Resolution [48/13](#) adopted on 8.11.2021.

² Parliamentary Assembly of Council of Europe, *Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe*, Recommendation 2211 (2021) 29.9.2021.

³ In 2023, a Citizens' Assembly, comprised of a representative sample of 99 members of the public and an independent Chairperson, recommended that the state should introduce a proposal to amend the Irish Constitution to recognise substantive environmental rights (including a right to a clean, healthy and safe environment and a right to a stable and healthy climate) and procedural environmental rights. See *Report of the Citizens' Assembly on Biodiversity Loss*, March 2023, at page 16, available [here](#).

⁴ European Court of Human Rights, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (GC), Application no. 53600/20, 9 April 2024.

the state's primary duty is to adopt, and effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change. The Court stated that Article 8 of the ECHR (Right to respect for private and family life) must be seen as encompassing a right for individuals to effective protection by state authorities from serious adverse effects of climate change on their life, health, well-being, and quality of life.⁵ The Court also explicitly referred to a UN document about the growing recognition of the right to a healthy environment at the international, regional, and domestic levels among the relevant international materials that informed the Court's inquiry.⁶ However, the Court in the *KlimaSeniorinnen* judgment did not recognize a right to a healthy environment, therefore, the need for a binding recognition of the right remains as acute as ever. In light of the above, the future relevance of the Council of Europe as a key protector of human rights globally will be greatly enhanced if its 675 million citizens are guaranteed the right to live in a clean, healthy, and sustainable environment.

Existing international and national practices clearly show that providing an explicit legal basis for this right brings significant benefits to citizens of the Council of Europe Member States.

First, it would address the *protection gap* concerning individuals that exists under existing human rights law. Currently, applicants have to provide evidence that environmental harm adversely impacts, or threatens to impact, their enjoyment of other human rights. This places high evidentiary requirements on applicants in environmental matters because such impacts are often difficult to prove at an individual level with a sufficient degree of scientific certainty.⁷ While the *KlimaSeniorinnen* judgment has addressed this gap to some extent for NGOs and associations, there are still barriers to protection for individuals which could be addressed by a binding instrument on the right to a healthy environment.

Second, a standalone right at the European level would further enable domestic legal systems to *give an effective response to the triple planetary crisis*. It could (i) provide a basis for adopting national environmental legislation, (ii) be a source of specific obligations, and (iii) secure an environmentally conscious application of other existing obligations. For instance, in **Norway**, the Constitutional right to a healthy environment serves as a guideline for legislative and administrative decisions, where other laws are interpreted in light of the overall objective of

⁵ See para. 519 of the *KlimaSeniorinnen v. Switzerland* [judgment](#) of the European Court of Human Rights.

⁶ See para. 154 of the *KlimaSeniorinnen v. Switzerland* [judgment](#), citing Resolution 37/8, the Human Rights Council acknowledging that "more than 100 States [had] recognized some form of a right to a healthy environment in, inter alia, international agreements, their constitutions, legislations or policies".

⁷ See for example ECtHR, 27 January 2009, *Tătar v. Romania*, App. No. 67021/01, paras. 104-106.

protecting the right to a healthy environment.⁸ The right also obliges the authorities to ensure that potential effects of suggested interferences in the natural environment are identified and assessed before deciding on whether to accept it.⁹

Third, the recognition of a binding right at the Council of Europe level would allow the European Court of Human Rights or another oversight mechanism to *deter and sanction environmental damage* in a more effective way, thereby addressing human rights violations emerging from further, potentially irreversible effects from climate change.

Fourth, the recognition would provide *a clear legal basis* for judges and plaintiffs to enforce better protection for human rights and the environment. This could *codify* existing environmental case law from the European Court of Human Rights and *build upon* and *harmonize* the longstanding and successful experience with the recognition and enforcement of the right at the domestic level in several countries.

Fifth, it would recognise the *role and responsibilities of business* in realising the right to a clean and healthy environment and addressing climate change, as articulated by the UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment,¹⁰ and the UN Working Group on the issue of human rights and transnational corporations and other business enterprises.¹¹ It would articulate consequences when businesses fail to meet their responsibilities and avenues to remedy for victims.

Sixth, it would recognise the *critical contribution that NHRIs can have* in offering human rights-based climate action, as outlined in resolutions of the UN General Assembly¹² and at the UN Human Rights Council,¹³ including through raising awareness, monitoring and reporting, third-party interventions to national and European courts¹⁴, and in assisting victims.

⁸ Greenpeace Nordic et al. v. Norway, HR-2020-2472-P (Plenary of the Supreme Court of Norway), 22.12.2020 para 138.

⁹ HR-2020-2472-P para 182-184.

¹⁰ UN, [Business, planetary boundaries, and the right to a clean, healthy and sustainable environment - Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment](#), David R. Boyd, UN Doc. A/HRC/55/43, 2 January 2024.

¹¹ UN Working Group on the issue of human rights and transnational corporations and other business enterprises, [Information Note on Climate Change and the Guiding Principles on Business and Human Rights](#), June 2023

¹² UN General Assembly, [Resolution adopted by the General Assembly on 19 December 2023. National Human Rights Institutions](#), UN Doc. A/RES/78/204, 22 December 2023.

¹³ UN Human Rights Council, [Resolution adopted by the Human Rights Council on 7 October 2022 on National Human Rights Institutions](#), UN Doc. A/HRC/RES/51/31.

¹⁴ For instance, ENNHRI [third-party interventions](#) before the European Courts of Human Rights in the climate cases.

For instance, in **France**, the right to a healthy environment is enshrined in the Charter for the Environment (Charte de l'Environnement) which is part of the constitutionality bloc – constitutional rights with binding value. According to the Charter's first article, "Everyone has the right to live in a balanced environment that respects health." In a decision of September 20, 2022, the French Council of State considers that this right constitutes a fundamental freedom that could be protected by the administrative judge as part of an emergency procedure.¹⁵

In **Belgium**, the right to a healthy environment was introduced in the Constitution in 1994 with a view to providing a direction to governmental policies in this area. It imposes obligations on the state to put in place a legislative and regulatory framework, which guarantees the enjoyment of such a right. The object of this right thus relates to the statutory protection ensured by the regulatory framework, rather than the actual state of the environment. It encompasses both a substantive dimension (i.e. the substantive quality standards) and a procedural dimension (e.g. the mechanisms in place to enforce substantive environmental law, to allow for public participation, and for the prior assessment of environmental risks).

In **Hungary**, the right to a healthy environment has been enshrined in the constitution since 1989 and ensures holistic, cross-sectoral protection for the environment. It obliges the legislature not to step back from already provided levels of statutory protection¹⁶ and also obliges state authorities not to override environmental protection goals in their discretionary administrative decisions.¹⁷ The courts treat the principles of prevention and precaution as inherent part of the right.

Croatia has had the constitutional right to a healthy life since 1990. The state ensures citizens' right to a healthy environment, while citizens, state, public, and economic bodies and associations are obliged, as part of their powers and activities, to devote special care to the protection of human health, nature, and the human environment.

In **Slovakia**, the constitutional right to a healthy environment enjoys the protection of supreme legal force. It imposes an obligation on everyone to protect and improve the environment and a prohibition to endanger or damage the environment beyond the limits prescribed by law. The right to a healthy environment was interpreted by the Supreme Court as a permanent collective interest which, especially in relation to citizens, is a direct obligation of the state.¹⁸

¹⁵ Conseil d'État, 2ème - 7ème chambres réunies, 20/09/2022, 451129.

¹⁶ Decision No. 28/1994 (V.20.) AB, Hungarian Constitutional Court, Decision No. 16/2015. (VI. 5.) AB, Hungarian Constitutional Court.

¹⁷ Decision No. 3223/2017. (IX.25.) AB, Hungarian Constitutional Court, para. 29.

¹⁸ Decision No. 55Žp/41/2009, Supreme Court of the Slovak Republic.

In **Austria**, “comprehensive environmental protection” has been constitutionally enshrined and defined as a national goal since 1984.¹⁹ It commits the federal government, federal provinces, and municipalities to the principle of sustainability in the utilisation of national resources in order to ensure the best possible quality of life for future generations.

The Constitution of **Azerbaijan** recognizes the right to live in a healthy environment, including granting everyone access to information about the ecological situation and getting compensation for damage to their health and property due to the adverse ecological consequences. The state is obligated to preserve ecological balance and protect biodiversity.²⁰

In **Georgia**, environmental protection has been recognized in the Constitution since 1995.²¹ Article 29 guarantees the right to live in a healthy environment and enjoy the natural environment and public space. The Constitution also enshrines two procedural rights; the right to receive full information about the state of the environment in a timely manner and the right to participate in the adoption of decisions related to the environment, which shall be secured by law.

The **Portuguese** Constitution has since 1976 established the right to a healthy environment. In its negative dimension, it consists of the right to refrain, on the part of the state and third parties, from environmentally harmful actions. In its positive dimension, it consists of the right to a performance by the state, aimed at protecting the environment and preventing its degradation, namely, by repressing harmful behaviour. However, no landmark ruling has yet been issued on any emblematic environmental issue or the rights of future generations by the Portuguese Constitutional Court.

In **Romania**, the right to a healthy environment is enshrined in the Constitution and it is directed both to the state and legal entities.²² As such, the state shall acknowledge the right to a healthy, well-preserved and balanced environment, and it shall provide the legislative framework to

¹⁹ [Constitutional Act on sustainability, animal protection, comprehensive environmental protection, on water and food security as well as research](#); Federal Law Gazette I No. 111/2023 as amended.

²⁰ Article 39, [the Constitution of Azerbaijan](#), 1995.

²¹ Article 29, the Constitution of Georgia, 1995.

²² In addition to Article 35 of the Romanian Constitution, there are other legislative norms that highlight the complexity of this right, including: Environmental Protection Law No. 137/1995, Law No. 458/2002 on the quality of drinking water, Law No. 211/2011 on the waste regime, Government Emergency Ordinance No. 57/2019 on the Administrative Code, the right to a healthy environment at work, Article 422 (1) „Public authorities and institutions have the obligation to provide civil servants with normal working conditions and hygiene, such as to protect their health and physical and mental integrity.”

exercise such a right.²³ The Romanian Constitution also provides that natural and legal entities are bound to protect and improve the environment.

In the **Lithuanian** Constitution the right to a healthy environment is expressed through the state's obligation to protect the environment from harmful influences²⁴ and the state's duty to take care of the protection of the natural environment, wildlife and plants, individual objects of nature, and areas of particular value, and to supervise the sustainable use of natural resources, as well as their restoration and increase²⁵. The Constitutional Court of the Republic of Lithuania considers that the right of a person to a healthy environment is a necessary condition for both a dignified life and the exercise of many other constitutional rights²⁶ and it constitutes a public interest²⁷.

3. The domestic experience of NHRIs with the functioning of the right to a healthy environment: judicial case-law and practice

Arguments against the recognition of the right to a healthy environment typically relate to:

- 1) the inherent ambiguities surrounding the content of the right,
- 2) the possibility of opening the floodgate of litigation, and
- 3) the possibility for judicial organs to encroach on states' discretion in setting their environmental and environmentally relevant policies.

But domestic experience and national judicial case law, brought by NHRIs from across the Council of Europe region, clearly suggest that the enforcement of this right places a reasonable obligation on duty bearers and is a manageable task for the courts.

3.1 The content of the right is sufficiently clear

Human rights are often formulated in general terms because they are intended to apply over time and in different societies. Through enforcement in courts and other oversight bodies, the content of human rights is further defined and adapted to changing societal conditions. In an environmental context, international experts have already offered several definitions for the scope of the right to a healthy environment. Like the UN Special Rapporteur for Human Rights and the

²³ Article 35, Romanian Constitution, Official Journal no. 767/2003.

²⁴ Part 3 of Article 53, Constitution of the Republic of Lithuania, Official Gazette, 1992-11-30, No. 33-1014.

²⁵ Article 54, Constitution of the Republic of Lithuania.

²⁶ The Constitutional Court's ruling of 2 September 2009.

²⁷ The Constitutional Court's ruling of 13 May 2005.

Environment,²⁸ national laws and domestic courts have also defined the scope and normative content of the right in a clear and unambiguous way. As observed by the **Irish High Court**: “Once concretised into specific duties and obligations, its enforcement is entirely practicable.”²⁹

In **Belgium**, the right to a healthy environment does not enjoy direct effect, i.e. it does not give rise to subjective rights that individuals can invoke to demand a higher level of environmental protection. Instead, it requires a constitution-compliant and thus environmentally friendly interpretation of existing legislation by ordinary courts. The right gives rise to a so-called standstill (or non-regression) obligation, as is evident from the case law of the Constitutional Court and the Council of State.³⁰ This guards against significant regressions of the existing legislative and regulatory protection levels. In case a significant regression does take place, it must be reasonably justified by reasons related to the public interest.

Somewhat similarly, a non-regression obligation also applies under **Hungarian** constitutional law. The Hungarian Constitutional Court deems the right applicable if environmental standards are watered down by the state to make them less effective,³¹ which puts natural assets at risk of irreversible harm.³² The Court relies on objective benchmarks to ascertain the existence of such a risk, such as the position of scientific expert organisations or soft law documents concerning the environmental protective measures deemed necessary.³³

Under the case law of the Supreme Court of the **Slovak** Republic, the environment means everything on Earth that surrounds us, in particular air, water, rocks, soil, and living organisms.³⁴

In **France**, the Constitutional Council ruled that it follows from Article 1 of the Charter for the Environment, that when “adopting measures likely to have a serious and lasting effect on a balanced environment that shows due respect for health, the legislator must ensure that the choices made to meet current needs do not compromise the ability of future generations and

²⁸ Report of John H. Knox UN Special Rapporteur for Human Rights and the Environment identifying several framework principles on human rights and the environment, see: *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, A/HRC/37/59, 24.1.2018.

²⁹ *Friends of the Irish Environment v. Fingal County Council* [2017] IEHC 695.

³⁰ See also: Revision of Title II of the Constitution by inserting an article 24bis on economic and social rights, developments, Parl. St., Senate, Extraordinary session, 1991-1992, n° 100-2/3, p.13.

³¹ 28/1994. (V.20.) AB Decision.

³² 16/2015 (VI.5.) AB Decision.

³³ 14/2020 (VII.9.) AB Decision, 13/2018 (IX. 4.) AB Decision.

³⁴ Decision No. 5Sžp/41/2009, Supreme Court of the Slovak Republic.

other peoples to meet their own needs, while preserving their freedom of choice in this respect.”³⁵

In **Austria**, the national goal of “comprehensive environmental protection” does not give rise to an individual fundamental right to a healthy environment. National goals are legally binding; they oblige state bodies to act in a particular way. Therefore, they must be considered when new laws are enacted and when courts and administrative bodies are interpreting existing laws. As part of the Constitution, national goals define the framework for political actions. However, they do not give rise to subjective rights, which can be asserted by individuals.

The Constitutional Court of **Georgia** declared that the right entails positive and negative obligations for the state. It is obliged to minimize as much as possible the negative environmental consequences of economic, infrastructural, and other projects, and must protect the environment from damage by private individuals.³⁶

In **Lithuania**, the Constitutional Court has formulated very concrete obligations to the legislator in order to guarantee the right to a healthy environment. The duty to protect the environment “gives rise to the obligation of the state to establish such a legal regulation and to act in such a way that the natural environment and its individual objects would be protected [...]. For this purpose, a particular system of state institutions must be created and must function properly, and necessary funds must be provided for in the state budget in order to protect the natural environment and its individual objects, and to ensure the rational use of natural resources as well as their restoration and increase”³⁷. It also stated that “the legislature must prohibit any actions that inflict damage on the natural environment and its objects and must establish legal responsibility for such actions.”³⁸

3.2 The right has not led to an excessive increase in environmental or climate litigation

Courts in States that recognise the right to a healthy environment are not overwhelmed with rights-based environmental complaints. Plaintiffs must satisfy applicable rules on standing to bring their claims concerning the violation of the right to environment to courts. Should the right to a healthy environment be recognised in a protocol giving jurisdiction to the European Court of Human Rights to enforce the right, the same will likely be true for complaints brought before it.

³⁵ Décision n° 2023-1066, QPC, 27.10.2023.

³⁶ The Constitutional Court of Georgia, Decision No. 2/1/524, 10/04/2013, II.6.

³⁷ The Constitutional Court’s ruling of 13 May 2005.

³⁸ Ibid.

For instance, in **Hungary**, there is no *actio popularis*, and a handful of environmental cases reach the Constitutional Court annually. In **Norway**, the right to a healthy environment was first included in the Constitution in 1992. Nevertheless, only 0.4 percent of all civil cases concerned the environment between 1996-2005, whereas cases concerning environmental law constituted less than 1 percent of the cases between 2008 and 2018.³⁹ In **Belgium**, since it was introduced in the Constitution in 1994, the Constitutional Court examined compliance of legislation with the right to a healthy environment in around 50 cases, finding a violation in 10 of them. In the **Slovak Republic**, the Constitutional Court has received 108 applications concerning the right to a healthy environment since 1993,⁴⁰ including cases on procedural rights to information and participation. Considering that the Constitutional Court receives over 2,000 applications annually,⁴¹ the cases referring to the right comprise just a fraction of the workload. While the **Czech law** also does not recognize *actio popularis*, a recent shift in the case law of the Constitutional Court has enabled environmental NGOs or municipalities to assert the right to a favourable environment.

3.3 The codification of the right would still leave decision-makers with a margin of appreciation to design their environmental policy choices

Practice shows that domestic courts do not intend to take the place of policymakers, but they step in where policymakers have failed to duly consider the need to protect the right to a healthy environment. Domestic courts have carefully defined the applicable legal tests marking the depth and intensity of their judicial review, respecting the state's discretion to design avenues for environmental protection.

In **Hungary**, for instance, the right only protects against backsliding on environmental protection standards that were designed and set voluntarily by the legislature.⁴² Moreover, a step back from the level of statutory protection is only lawful if it is strictly necessary and proportionate to another constitutional right. Similarly, in **Belgium**, there must be reasonable justification based on reasons related to the public interest for significant regressions in the statutory protection. This analysis allows for the balancing of the relevant interests at stake. In the **Slovak** Constitutional Court, the limits of fundamental rights and freedoms may be specified only by law, thus they remain at the discretion of the legislature. The same principle concerning the restriction of human rights applies in **Lithuania**. Moreover, the Lithuanian Constitutional Court holds the position that while regulating economic activity, the state may establish the specific conditions and procedures

³⁹ Fauchald, "Environmental Justice in Courts – a Case Study from Norway" *Nordisk miljørettslig tidsskrift*, (2010) s. 54; NOU 2020:11, *Den tredje statsmakt – Domstolene i endring*, p. 66.

⁴⁰ Number of applications referring to Article 44 of the Constitution. Data available [here](#).

⁴¹ Annual Report of the Supreme Court of the Slovak Republic (2022), available [here](#).

⁴² 28/1994. (V. 20.) AB Decision.

of, and means of control over economic activity, as well as certain limitations or prohibitions on the economic activity related to the use of certain natural resources⁴³, but it doesn't specify particular measures to achieve those objectives. In **Norway**, courts can only set aside a legislative decision from the Parliament where the latter has "grossly neglected" its duties under the right to a healthy environment, meaning that the threshold for the judicial review of the Parliament is very high. The courts show deference toward elected bodies with respect to balancing different interests and broader priorities, while also protecting the rule of law by ensuring that courts can set limits on the political majority when it comes to protecting constitutionalised values.⁴⁴

In the Convention system, there are mechanisms to strike a balance between the need to protect human rights and to give decision-makers leeway to balance different interests. This includes established interpretative principles like the European consensus and margin of appreciation. Moreover, the existing environmental case law of the European Court of Human Rights already demonstrates a readiness to apply human rights standards in such a way as to avoid imposing an impossible or disproportionate burden on state authorities.⁴⁵ Rather, it allows the state to decide the choice of means to protect against environmental harm.⁴⁶

4. An effective instrument must be binding and have an effective enforcement mechanism

To conclude, ENNHRI submits that the Member States of the Council of Europe should decide to adopt a *binding instrument* recognising the right to a healthy environment. This is needed to:

- Make the political commitment made in Reykjavik a reality and enhance the protection of individuals and communities from climate change following the KlimaSeniorinnen judgment of the European Court of Human Rights;
- Strengthen the protection of human rights and the environment for 675 million citizens in the Council of Europe;
- Ensure that the Council of Europe maintains its leading role in developing global human rights standards.

⁴³ The Lithuanian Constitutional Court's ruling of 16 December 2015.

⁴⁴ HR-2020-2472-P para 142 and 141. However, the Supreme Court did elaborate further on how thoroughly administrative decision the Parliament had not been involved in should be reviewed.

⁴⁵ See for example ECtHR (Grand Chamber), 30 November 2004, *Öneriyildiz v. Turkey*, App. No. 48939/99, para. 107.

⁴⁶ See for example ECtHR, 9 June 2005, *Fadeyeva v. Russia*, App. No. 55723/00, para. 96.

It is ENNHRI's view that such an instrument would need to, at a minimum, provide an effective oversight mechanism and ensure meaningful access to justice for possible victims. A key to effective enforcement of the right would be ensuring the standing rights of affected or likely-to-be affected individuals and of NGOs promoting environmental protection. Such a binding instrument would complement the *procedural* rights under the system of the Aarhus Convention by providing effective access to justice mechanism for the individuals and groups whose *substantive* right to a healthy environment has been violated. Such instrument should take as minimum the thresholds set out by the European Court of Human Rights in its case law, especially in the *KlimaSeniorinnen* judgment, and do not allow any regression from the Court's case law. **ENNHRI's view is that these requirements would be fulfilled to the fullest if states adopt a binding protocol to the European Convention on Human Rights.** ENNHRI submits that an Additional Protocol to the European Convention on Human Rights would establish the strongest and the most effective legal protection of the right to a healthy environment.⁴⁷

1. Binding Protocol to the European Convention on Human Rights

An **Additional Protocol to the ECHR** is preferred for several reasons. Firstly, victims of violations could access the existing complaints procedure before the European Court of Human Rights, which renders legally binding judgments, thereby allowing judges to sanction damage inflicted upon nature more effectively.⁴⁸ Secondly, it would allow the European Court of Human Rights to further develop the human rights protection it has already provided in its previous environmental case law by judicially enforcing the newly recognised right.

2. Additional Protocol to the European Social Charter

In the alternative, an **Additional Protocol to the European Social Charter** could provide some protection of the right to a healthy environment. While this form of recognition would submit States to a monitoring process and provide NGOs with access to a collective complaints' mechanism, it would not provide access to justice for *individuals* affected by environmental damage. This form of protection could also complement the **Additional Protocol to the ECHR**.

⁴⁷ ENNHRI calls on the Council of Europe to adopt a binding instrument on the right to a healthy environment, 19.11.2021, available [here](#).

⁴⁸ This should be established without prejudice to the level of environmental protection afforded under already existing human rights obligations, as interpreted dynamically by the European Court of Human Rights.

3. Standalone Convention on Human Rights and the Environment

A standalone **Convention on Human Rights and the Environment** might also be an alternative avenue for recognising a binding right to a healthy environment. The strength of this instrument would be to elaborate on the normative safeguards flowing from the right. This could clarify the scope of protection in important respects, such as those provided for environmental defenders and vulnerable groups. ENNHRI underlines that any binding instrument recognising the right to a healthy environment adopted by the Council of Europe should be necessarily coupled with an effective and binding oversight mechanism, which ensures adequate access to justice for affected individuals and communities. Overall, **ENNHRI underlines that it only considers the standalone Convention as an option if an Additional Protocol to the ECHR is not adopted.**

ENNHRI's work on climate change and human rights

Climate change poses one of the gravest challenges to the effective protection of the rights enshrined under the European Convention for Human Rights. To respond to this challenge, ENNHRI has established a Working Group on Climate Crisis and Human Rights; [published a position paper on Climate Change and Human Rights in the European Context](#); submitted [third-party interventions](#) to the ECtHR in a series of landmark climate cases⁴⁹ and takes an active part in the work of the Council of Europe CDDH Drafting Group on Human Rights and Environment ([CDDH-ENV](#)) as an observer. [Read more](#) on ENNHRI's work on climate change and human rights.

⁴⁹ ENNHRI has so far [intervened](#) in the ECtHR's cases of [Greenpeace Nordic and others v. Norway](#), [Duarte Agostinho and Others v. Portugal and Others](#), [Verein KlimaSeniorinnen Schweiz and others v. Switzerland](#), and [Carême v. France](#).