



**ENVIRONMENT
PEOPLE LAW**

The rule of law for the protection of the environment

RECOGNITION by the COUNCIL of EUROPE of the RIGHT TO A SAFE AND HEALTHY ENVIRONMENT: MISSION possible



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This publication was compiled with the support of the European Union and the International Renaissance Foundation within the framework «European Renaissance of Ukraine» project. Its content is the exclusive responsibility of the authors and does not necessarily reflect the views of the European Union and the International Renaissance Foundation.



Recognition by the Council of Europe of the right to a safe and healthy environment: mission possible

Introduction. This policy paper is intended to highlight the importance of adopting by the Council of Europe of a binding decision on the recognition of the right to a safe and healthy environment, adopting the Protocol on the right to a safe and healthy environment to the Convention for the Protection of Human Rights and Fundamental Freedoms as a necessary prerequisite for sustainable and safe development. In the context of growing environmental threats and global challenges related to the preservation of the environment, an analysis of the grounds and prospects for the adoption of a binding decision on recognizing the right to a safe and healthy environment, the Protocol on the right to a safe and healthy environment to the Convention for the Protection of Human Rights and Fundamental Freedoms will help reveal the potential consequences of such decisions.

I. The right to a safe and healthy environment in jurisprudence of the European Court of Human Rights

The European Court of Human Rights (hereinafter referred to as the ECHR or the Court) is one of the institutions of the Council of Europe, established on January 21, 1959 to monitor the observance of human and citizen rights and freedoms enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms, ratified in 1953¹ (hereinafter referred to as the Convention). The Court is located in Strasbourg (France). At the conference of the Vienna Summit of Heads of States and Governments of the member states of the Council of Europe in October 1993, a decision was made to create a new European Court of Human Rights, which will replace the former two-stage system of protection of rights and freedoms. The Reformed Court as a body of the Council of Europe began its work on November 1, 1998².

As the leading judicial body in the Council of Europe system, the ECHR is called upon to protect human rights and freedoms in the light of the provisions of the Convention and the rights enshrined in it. As you know, the Convention, unfortunately, does not contain a separate enshrinement of the right to a safe and healthy environment. However, the systematic violation of the right to a safe and healthy environment, seriousness of the consequences of such violations, relevance and importance of

¹ Convention on the Protection of Human Rights and Fundamental Freedoms: https://zakon.rada.gov.ua/laws/show/995_004#Text

² The Supreme Council of Justice on the European Court of Human Rights: <https://hci.gov.ua/page/veuropevskyy-sud-z-prav-lyudyny>

protection of this human right predisposes the ECHR to consider cases in which, in fact, this right is protected.

Therefore, the issue of protection of environmental rights and the environment found its consolidation in the jurisprudence of the ECHR. Such consolidation took place, in particular, in cases in which a violation of the right to life (Article 2 of the Convention), the right to respect for private and family life (Article 8 of the Convention), the right to protection of property (Article 1 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms³), the right to a fair trial (Article 6 of the Convention), the right to an effective remedy (Article 13 of the Convention) and the right to freedom of expression (Article 10 of the Convention).

An example of the application of Article 2 of the Convention through the prism of protection of the right to a safe and healthy environment is the decision of the ECHR in the case of *Öneryıldız v. Turkey*⁴ (complaint No. 48939/99, decision of the Grand Chamber dated November 30, 2004). According to the circumstances of this case, the applicant's house was built without a permit next to a large garbage dump. In April 1993, a methane explosion occurred, which destroyed ten houses, including the applicant's house, and killed nine of his relatives. The ECHR found a violation of Article 2 of the Convention due to insufficient measures to prevent the death of the applicant's relatives and insufficient protection by the legislation in force in Turkey to ensure the right to life. The ECHR noted the lack of information by the authorities about the risks of living in this area and the need to use security measures. The ECHR concluded that Turkey's legal framework in the context of this case is imperfect, since a permit to open a landfill was issued, and the latter operated without a full-fledged control system. According to the ECHR, the wrong urban planning policy was the cause of this accident. In this case, the ECHR also established a causal link between the state's gross negligence and the collapse of the applicant's house to the extent sufficient to establish a breach of the state's positive obligation under Article 1 of Protocol 1 to do everything in its power to protect the applicant's property interest. This positive obligation required the national authorities to take the same practical measures as under Article 2 of the Convention to avoid destruction of the applicant's house. However, no such measures were taken.

In the light of application of Articles 6 and 13 of the Convention, it is worth mentioning the decision in the cases "*Bor v. Hungary*"⁵ and "*Di Sarno and others v. Italy*"⁶. In *Bor v.*

³ Protocol 1 to the Convention on the Protection of Human Rights and Fundamental Freedoms: https://zakon.rada.gov.ua/laws/show/994_535#Text

⁴ Case of *Öneryıldız v. Turkey*: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-67614%22%7D>

⁵ Case of *Bor v. Hungary*, 18.06.2013. <http://hudoc.echr.coe.int/eng?i=001-120959>

⁶ Case of *Di Sarno and Others v. Italy*, 10.01.2012. <http://hudoc.echr.coe.int/eng?i=001-108480>

Hungary case, the applicant complained about train noise and failure of the authorities to hold the railway liable for exceeding noise levels, in breach of Articles 6 and 8 of the Convention. The initial court action took place in 1992, and the trial ended in 2008. The European Court of Human Rights recognized that the duration of the process was too long, violating Article 6 of the Convention. In *Di Sarno and Others v. Italy*, the applicants complained of a violation of their rights during a period of emergency when, for 5 months, household waste accumulated on the streets of the Campania region, endangering their lives and health. The applicants alleged a violation of Articles 8 and 13 of the Convention due to the lack of effective remedies to obtain compensation for damages caused by the garbage problems.

As an example of the application of Article 10 of the Convention, we can consider the decision in the Case of *Verein gegen Tierfabriken v. Switzerland*⁷. According to the circumstances of this case, a non-governmental organization engaged in the protection of animals created a commercial for broadcasting on state television calling for the restriction of meat consumption and protection of animals. The local television company refused to show it, considering this clip to be political, and the Law of Switzerland on Radio and Television

⁷ Case of *Verein gegen Tierfabriken v. Switzerland*, 28.06.2001, <http://hudoc.echr.coe.int/eng?i=001-59535>

prohibits political advertising in order to prevent powerful financial groups from obtaining advantages in a political position through demonstration of political advertisements. The European Court of Human Rights found this restriction to be disproportionate and in violation of Article 10 of the Convention, as no pressing social need to ban political advertising in general had been proven, nor had it been proven that the applicant was a powerful financial group that wanted to achieve certain advantages, instead the organization only sought to participate in public debates on animal protection issues.

Article 8 of the Convention is characterized by perhaps the greatest development in terms of protection of the right to a safe environment. Thus, making decisions on the cases of *Lopez Ostra v. Spain*⁸, *Guerra v. Italy*⁹, *Fadeeva v. Russia*¹⁰, the European Court of Human Rights established a violation of Article 8 of the Convention, awarding appropriate compensation to the applicants and obliging countries to take the necessary measures to restore the right to respect for private and family life that was violated due to environmental pollution. Thus, the court laid the foundation for protection of environmental rights in the European Court of Human Rights. In the *Heathrow Airport* case¹¹ the court decided the dispute in favor of economic well-being, reconciling it with environmental interests. One of the judges, in a separate opinion, noted that environmental rights were not recognized in 1950, but the ECHR increasingly accepted that Article 8 included the right to a safe environment and protection from pollution and nuisance caused by harmful substances, smells, noise, etc. This indicates to the tendency of the ECHR to develop environmental rights in the same way as other ancillary rights under the Convention.

From this brief overview, we can see that the right to a safe and healthy environment often becomes the subject of consideration by the ECHR. However, the absence of a clear enshrinement of such a right in the Convention or additional protocols encourages applicants to protect their rights by using existing articles that enshrine other human rights. Such circumstances make it difficult for the applicants to justify their position and, ultimately, complicate the work of the Court.

II. Legal context of the Council of Europe and international obligations

1. Overview of the goals and instruments of the Council of Europe related to environmental human rights

In this block of the policy paper, it seems appropriate to consider in more detail the Statute of the Council of Europe, adopted in London on May 5, 1949 (hereinafter

⁸ The decision of the ECtHR in the case "*López Ostra v. Spain*": https://zakon.rada.gov.ua/laws/show/980_348#Text

⁹ The decision of the ECtHR in the case "*Guerra v. Italy*": <https://rm.coe.int/168044e84c>

¹⁰ The decision of the ECtHR in the case "*Fadeeva v. Russia*": <https://ips.ligazakon.net/document/SO3400>

¹¹ Case of *Hatton and Others v. the United Kingdom*, 8.07.2003, joint dissenting opinion of Judges Costa, Ress, Turmen, Zupancic and Steiner: <http://hudoc.echr.coe.int/eng?i=001-61188>

– Statute)¹². Thus, according to paragraph "a" of Article 1 of the Statute, the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress. In light of such an aim, it is difficult to imagine as of 2024 a more common asset for united Europe, and the whole world, than a safe and healthy environment.

At the same time, according to Article 15 of the Statute, the Committee of Ministers, as a body acting on behalf of the Council of Europe, considers, on the recommendation of the Consultative Assembly or on its own initiative, the measures that must be taken to achieve the aim of the Council of Europe, including the issue of concluding conventions or agreements and adoption by governments of common policies on specific issues. In accordance with Article 16 of the Statute, the Committee of Ministers makes binding decisions on all matters relating to the internal organisation and arrangements of the Council of Europe. That is, one of the tools for the purpose of consolidating and recognizing the right to a safe and healthy environment by the Council of Europe is consideration of this issue by the Committee of Ministers and adoption of an appropriate decision, which can act as an impetus for further development of this issue.

Likewise, before consideration of such issues by the Committee of Ministers, within the limits defined by Articles 22-35 of the Statute, recognition of the right to a safe and healthy environment may be submitted for discussion for the purpose of forming relevant conclusions by the Consultative Assembly of the Council of Europe.

The activity of the Parliamentary Assembly of the Council of Europe (hereinafter - the Assembly) is perhaps the main tool of recognizing the right to a safe and healthy environment. At the end of September 2021, the Parliamentary Assembly of the Council of Europe, referring to its Resolution 2396 (2021)¹³ "Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe", reiterated the need to recognize a new generation of human rights. In Recommendations 2211 (2021)¹⁴ the Assembly expressed extreme concern at the rate and extent of environmental degradation, biodiversity loss and the climate crisis, which directly affects people's health, dignity and lives. The Assembly stated that it was time for the Council of Europe to show ambition and a strategic vision for the future by facing this major critical challenge to human rights and ensuring their enhanced protection in an era of systemic environmental threats to present and future generations.

¹² Statute of the Council of Europe: https://zakon.rada.gov.ua/laws/show/994_001#Text

¹³ Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe: <https://pace.coe.int/en/files/29499/html>

¹⁴ Recommendation 2211 (2021) Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe: <https://pace.coe.int/en/files/29501/html>

In this regard, the Assembly recommended the Committee of Ministers to develop an additional protocol to the Convention on the right to a safe, clean, healthy and sustainable environment and proposed the text of such a protocol (hereinafter - Additional Protocol)¹⁵.

As noted in Recommendations 2211 (2021), the inclusion of this right in the Convention will establish a clear responsibility of member states, including Ukraine, in the area of maintaining a proper state of the environment, compatible with a dignified life and good health and the full enjoyment of other fundamental rights; it will also contribute to much more effective protection of a safe, clean, healthy and sustainable environment at the national level, including for future generations.

However, neither the specified protocol nor any other mandatory act on the recognition by the Council of Europe of the right to a safe, clean, healthy and sustainable environment has yet been adopted. This shows that, in particular, the above tools of the Council of Europe are not used to their full extent, and the process of recognizing the right to a safe and healthy environment should be resumed and brought to a logical conclusion in the form of adoption of the mentioned protocol.

2. Overview of some international conventions and agreements that regulate the issue of environmental protection in the context of human rights

In this part, we will consider the key international conventions and agreements that regulate the issue of environmental protection in the context of human rights. It should be noted right away that the member states of the Council of Europe are active participants in such agreements.

1. Convention on Biological Diversity¹⁶

This is an international agreement, adopted in Rio de Janeiro on June 5, 1992. In accordance with Article 1 of this agreement, objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

¹⁵ The proposed text for an additional protocol to the European Convention on Human Rights, concerning the right to a safe, clean, healthy and sustainable environment: <https://pace.coe.int/en/files/29501/html>

¹⁶ Convention on the Protection of Biological Diversity: https://zakon.rada.gov.ua/laws/show/995_030#Text

It recognizes the importance of conservation and sustainable use of biological diversity. It obliges participants to protect ecosystems, species and genetic resources, taking into account the interests of current and future generations. This convention demonstrates the connection between biodiversity conservation and human health.

2. The UN Framework Convention on Climate Change¹⁷

Adopted in 1992, the United Nations Framework Convention on Climate Change establishes general principles and actions for the implementation of international efforts in the fight against global warming. One of the central aspects of this convention is recognition of the fact that climate change is a threat to the planet and humanity.

3. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters¹⁸

Signed in 1998, the Aarhus Convention expands the public's rights to access to information, participation in decision-making and access to justice in environmental matters. It follows from its text that effective provision of human rights in the field of environment requires active public participation and transparency in functioning of state bodies and business entities.

The preamble to the Aarhus Convention recognizes that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations. The preamble also recognizes that in order to be able to assert this right and fulfill this duty, citizens must have access to information, the right to participate in the decision-making process and have access to justice in environmental matters, while recognizing that citizens may need help to exercise their rights.

4. The Paris Agreement¹⁹

Adopted in 2015, the Paris Agreement is a key international document to limit global warming. It sets targets for reducing greenhouse gas emissions and obliges countries to take national action to adapt to climate change.

The preamble to this agreement emphasizes the inextricable link between climate

¹⁷ UN Framework Convention on Climate Change: https://zakon.rada.gov.ua/laws/show/995_044#Text

¹⁸ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Matters Relating to the Environment: https://zakon.rada.gov.ua/laws/show/994_015#Text

¹⁹ Paris Agreement : https://zakon.rada.gov.ua/laws/show/995_161#Text

change action, climate change response and climate change impacts with equitable access to sustainable development and poverty eradication and the fundamental priority of safeguarding food security and ending hunger, and the particular vulnerabilities of food production systems to the adverse impacts of climate change.

These and other international acts play an important role in ensuring human rights in the context of environmental protection. They provide a framework for international efforts to combat environmental pollution and climate change, recognizing that these problems have a direct impact on people's lives and health. Joining such agreements, member states of the Council of Europe shows their readiness to recognize the human right to a safe and healthy environment at the regional level (Council of Europe level). Existing international legal regulation can and should lay the foundations for such recognition.

III. Experience of other international organizations and countries in recognizing and protecting the right to a safe environment

1. Approaches of other international bodies, institutions and organizations to the recognition and protection of the right to a safe environment

The UN General Assembly (hereinafter referred to as the UNGA) has already adopted a unanimous decision which recognized that the human right to a clean, healthy and sustainable environment is a right for all and not a privilege for certain individuals. This position of the UNGA is a powerful message that there is general, worldwide support for this right, which is already recognized in 156 countries at the national and regional levels.

Resolution A/76/L.75²⁰, adopted on July 28, 2022 (hereinafter referred to as the Resolution), the General Assembly: 1) recognized the right to a clean, healthy and sustainable environment as a human right, 2) noted that this right is related to other rights and existing international law, 3) confirmed that the promotion of this right requires the full implementation of multilateral environmental agreements based on the principles of international environmental law, 4) called on states, international organizations, enterprises and other interested parties to make political decisions, increase international cooperation, strengthen capacities and continue to share best practices in order to increase efforts to ensure a clean, healthy and sustainable environment for all.

The adoption of the Resolution was expected for a long time. The process leading to the adoption of the Resolution by the UN General Assembly started from the Stockholm

²⁰ Resolution A/76/L.75: <https://digitallibrary.un.org/record/3982508?ln=en>

Declaration of 1972.²¹

²¹ The Stockholm Declaration of 1972: https://ips.ligazakon.net/document/view/mu72006?ed=1972_06_16&an=55440

It was the Stockholm Declaration that opened the way for formation of international environmental law and national obligations in the field of environmental protection. Now more than 150 national jurisdictions have enshrined its principles in their national laws.

Another step towards the Resolution was adoption of Resolution 48/13 of the UN Human Rights Council²², which recognized the right to a clean, healthy and sustainable environment in October 2021.

Adoption of these resolutions makes an important achievement for protection of the human right to a healthy environment and interrelated and indivisible human rights that depend on it. Recognizing the right to a healthy environment gives all people a tool to hold their governments, major polluters and responsible parties accountable for environmental damage.

Moreover, recognition of such a right has already been carried out on other continents. According to Article 24 of the African Charter on Human and Peoples' Rights²³, every person is guaranteed the right to a satisfactory state of the environment, favorable for human development. 2004 Arab Charter on Human Rights²⁴ includes the right to a healthy environment as part of the right to an adequate standard of living that ensures well-being and a dignified life. ASEAN Human Rights Declaration, adopted by the Association of Southeast Asian Nations²⁵ includes "the right to a safe, clean and sustainable environment" as an element of the right to an adequate standard of living. Asia and Pacific Declaration on Population and Development, adopted in September 2013²⁶, recognizes that the international community is faced with multiple and interrelated crises, including "increasing challenges posed by natural disasters, conflicts, complex emergencies, climate change and the loss of biodiversity, all of which have increased vulnerabilities and inequalities and have adversely affected development gains".

Also, the European Parliament in its June 2021 resolution on the EU Biodiversity Strategy for 2030 believes that the right to a healthy environment should be recognized in the Charter of Fundamental Rights of the European Union and that the EU should

²² Resolution 48/13 of the UN Human Rights Council: https://digitallibrary.un.org/record/3945636/files/A_HRC_RES_48_13

²³ AFRICAN HUMAN RIGHTS LAW JOURNAL: <https://www.corteidh.or.cr/tablas/R21586.pdf>

²⁴ League of Arab States, Arab Charter on Human Rights, 22 May 2004 (entered into force 15 March 2008), *reprinted in* 12 Int'l Hum. Rts. Rep. 893 (2005), 38.

²⁵ ASEAN Human Rights Declaration, 18 November 2012, available

at <http://www.asean.org/news/asean-statement-communicues/item/asean-human-rightsdeclaration>

²⁶ Asian and Pacific Declaration on Population and development, 20 September 2013, available at http://www.unfpa.org/webdav/site/global/shared/documents/news/2013/APPC6_WP1ER3.pdf

take the initiative for the international recognition of such a right²⁷.

Therefore, implementation of such recognition at the level of the Council of Europe can be a very powerful step towards effective protection of the human right to a safe and clean environment within Europe and the whole world.

2. Experience of the member states of the Council of Europe in terms of recognition and protection of the right to a safe environment

It seems that the experience of the member states of the Council of Europe in terms of recognition and protection of the right to a safe environment should be considered on specific examples of the leading states that are members of the Council of Europe.

The first such example is recognition and protection of the stipulated right in Belgium. Since 1994, Article 23 of the Belgian Constitution²⁸ states that all citizens should be able to live in dignity and therefore have the right to a safe environment and health. From a human rights perspective, this was a significant step forward in integration of economic, social and cultural rights into the Belgian legal system. On the basis of this article, the Constitutional Court of Belgium ruled in 1996 that every person has the right to a minimum supply of drinking water²⁹. This legislation corresponds to the massive evolution of public opinion and civil society in Belgium, which have spoken strongly in favor of recognizing the right to water. Back in 2001-2002, the "Water Manifesto" or "Manifeste de l'eau" was drawn up³⁰, which calls for water to be considered a common property of humanity, with guaranteed access to water for current and future generations. The manifesto was signed by 120,000 citizens, as well as three regional governments and parliaments.

The most famous case regarding protection of the right to a safe and clean environment in Belgium is the case "VZW Klimaatzaak v. The Kingdom of Belgium"³¹. The case was initiated in April 2015 by the non-profit organization "VZW Klimaatzaak"³² against the federal government and the three regional governments responsible for climate policy. VZW Klimaatzaak argued that each of the defendant governments was in breach of their climate commitments and called on the governments to meet their obligations by reducing Belgium's greenhouse gas emissions by 40% by 2020 compared to 1990

²⁷ European Parliament resolution of 9 June 2021 on the EU Biodiversity Strategy for 2030: Bringing nature back into our lives (2020/2273(INI)): https://www.europarl.europa.eu/doceo/document/TA-9-2021-0277_EN.html

²⁸ Article 23 of the Belgian Constitution: <https://fra.europa.eu/en/law-reference/belgian-constitution>

²⁹ THE RIGHT TO WATER IN BELGIUM: <https://ielrc.org/content/f0802.pdf>

³⁰ "Manifesto de l'eau": <https://catalogue.bpi.fr/es/document/ark:/34201/nptf10000325045>

³¹ VZW Klimaatzaak t. het Koninkrijk België ea, Rechtbank van Eerste Aanleg Brussel, 2015: https://www.klimaatzaak.eu/documents/daagvaarding_nl.pdf

³² VZW Klimaatzaak: <https://www.klimaatzaak.eu/nl>

levels. In June 2021, the Court of First Instance of Brussels ruled that the defendant governments had failed to take the necessary measures to prevent the harmful effects of climate change, but refused to set specific targets for reducing greenhouse gas emissions on grounds of compliance with the principle of separation of powers. The Court found that the defendant- Governments jointly and separately failed to act with prudence and diligence in accordance with Article 23 of the Belgian Constitution, Article 1382 of the Belgian Civil Code and breached their obligations under Articles 2 and 8 of the Convention³³. The defendant governments did not appeal this decision.

So we see that Belgium, as a member state of the Council of Europe, not only recognizes and enshrines the human right to a safe and clean environment, but also protects this right.

Another example is Spain. Environmental law in Spain is governed mainly by the Constitution³⁴. The Spanish Constitution of 1978 included environmental protection in Part I on the fundamental rights and duties of the state. Article 45, which establishes the human right to a proper state of the environment, was included in Chapter 3 of this part on the principles of economic and social policy of the state. This article also provides for the duty of public authorities to preserve and restore the environment, as well as to impose criminal and administrative sanctions on those who violate the human right to enjoy a healthy environment.

Based on the regulations adopted in Spain³⁵, the authorities of each of Spain's 17 autonomous regions are vested with environmental powers. In addition, certain nature protection powers are assigned to municipalities, mainly in accordance with Law No. 7/1985³⁶ on local self-government.

Regarding the process of protecting such a right in Spain, the following is important. The Spanish Supreme Court recognized access to justice in environmental matters for environmental non-governmental organizations even before Spain ratified the Aarhus Convention³⁷. One example is the decision of the Supreme Court of Spain dated December 24, 2001 in case No. 347/1999, which recognized the legal capacity of non-governmental organizations in the case of a nuclear waste storage permit. Later,

³³ VZW Klimaatzaak v. Kingdom of Belgium & Others: <http://climatecasechart.com/non-us-case/vzw-klimaatzaak-v-kingdom-of-belgium-et-al/>

³⁴ Spanish Constitution: <https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf>

³⁵ Main environmental regulations, Spain: <https://www.lexology.com/library/detail.aspx?q=cde2e858-028b-4bc6-b7b7-77cb66607845>

³⁶ Law No. 7/1985 on local self-government: <http://www.acts.ie/print/en.act.1985.0007.1.html>

³⁷ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Matters Relating to the Environment: https://zakon.rada.gov.ua/laws/show/994_015#Text

the Supreme Court recognized, on the basis of the Aarhus Convention, wide access to justice in environmental cases for environmental non-governmental organizations, in a number of decisions, such as: the decision of 25 June 2008 (Cassation 905/2007) on the status of the organization GECEN in the case of violation of the statement on the environmental impact of Castellón Airport and the decision of May 25, 2010 (Cassation 2185/2006) regarding the position of the Association for the Protection of Sustainable and Ecological Development regarding the challenge of the decree of the Regional Government of Madrid regarding exploitation of a granite mine³⁸. Similar cases are considered and decided in Spain regarding individuals whose right to a safe and healthy environment has been violated.

Another country whose experience is worth considering is Switzerland. Constitution of Switzerland³⁹ contains two main articles that deal with the environment. Article 73 of the Constitution clearly mentions sustainable development: " The Confederation and the Cantons shall endeavour to achieve a balanced and sustainable relationship between nature and its capacity to renew itself and the demands placed on it by the population." In addition, Article 74 of the Swiss Constitution obliges Switzerland to "legislate on the protection of the population and its natural environment against damage or nuisance." There are also several articles that mention environmental protection in relation to road transport, air transport, energy, agriculture and gene technology.

Also, the preamble of the Swiss Constitution stipulates that Switzerland and the cantons assume responsibility for future generations, which includes responsibility for environmental protection.

Such a decision can be an example of legal protection of eco-activists and people who fight for environmental protection, defend their rights to a safe and clean environment in Switzerland. In January 2020, the Lausanne Police Court in Switzerland found that a protest by climate change activists at a Credit Suisse branch was "necessary and proportionate" to the bank's funding of fossil fuel projects and the ongoing dangers of climate change⁴⁰. Activists occupied a branch of a Swiss bank, played tennis, and demanded an end to fossil fuel projects. The court found that such intrusion was not illegal and overturned the previous fine imposed on the activist group. The court found that "due to the insufficient measures taken to date in Switzerland, whether economic or political, average warming rates will not decrease or even stabilize, they will increase." It came to the conclusion that "taking this into account, the court considers that an imminent danger has been established, the

³⁸ Legal order – sources of environmental law:

https://ejustice.europa.eu/300/EN/access_to_justice_in_environmental_matters?SPAIN&action=maximizeMS&clang=en&idSubpage=1&member=1

³⁹ The Swiss Constitution: <https://www.fedlex.admin.ch/eli/cc/1999/404/en>

⁴⁰ Decision of the Tribunal of Police of Lausanne, dated 13 January 2020, PE19.000742: <http://www.lawinside.ch/875/>

actions of eco-activists are proportional to these dangers"⁴¹.

In view of the above, we see that the leading member states of the Council of Europe have long recognized and actively protect the rights of their citizens to a safe, sustainable and healthy environment. These states already have the experience of properly enshrining such a right in normative legal acts, in particular, their Basic Laws - Constitutions, as well as the experience of establishing mechanisms for the implementation of justice in order to protect such a right and the rights and freedoms of citizens related to it. Such a base of national legal systems should become the basis for implementation of recognition of the right to a safe and healthy environment at the level of the Council of Europe and significantly simplify such recognition at the pan-European level.

IV. Processes and prospects of adoption of the Protocol on the right to a safe and healthy environment to the Convention for the Protection of Human Rights and Fundamental Freedoms

As mentioned above in this document, PACE proposed a text for an Additional Protocol covering both fundamental rights and general principles. General principles include transgenerational responsibility, justice, solidarity, pollution prevention, precautionary measures, non-regression, in dubio pro natura⁴², as well as prohibition of environmental and intergenerational discrimination. The draft Additional Protocol clearly recognizes the right of every person to a healthy environment, which is defined as the right of present and future generations to live in a non-degraded, viable and dignified environment that promotes human health, development and well-being. Based on the Aarhus Convention, the draft Additional Protocol enumerates procedural rights to access to environmental information, public participation in processes regarding projects affecting the environment, access to justice and effective legal remedies in environmental cases.

This draft and the accompanying resolution started the debate on recognition of the right to a healthy environment by the Council of Europe. As you know, the Steering Committee of the Council of Europe on Human Rights is already evaluating options for such recognition⁴³. The Steering Committee of the Council of Europe on Human Rights

⁴¹ Court Clears Environment Protesters Over Stunt at Swiss Bank: <https://www.usnews.com/news/business/articles/2020-01-13/court-clears-environment-protesters-over-stunt-at-swiss-bank>

⁴² "If in doubt - in favor of nature." A maxim which means that when there is doubt as to whether an activity that harms the environment should continue, the doubt should be resolved in favor of protecting the environment.

⁴³ Compilation of Replies Received from Member States on the Questionnaire with a View of the Preparation of a Study on the Need for and Feasibility of a

New Instrument on Human Rights and the Environment', CDDH-ENV (2022)09, 10 February

2022: <https://rm.coe.int/steering-committee-for-human-rightscomite-director-pour-les-droits-d/1680aae37d>

instructed the Drafting Group on Human Rights and Environment to consider the need and feasibility of an instrument or instruments on human rights and the environment⁴⁴. Representatives of the Drafting Group on Human Rights and Environment have collected data indicating that the majority of Council of Europe member states already recognize the right to a healthy environment in their national legal systems⁴⁵. It should be noted that all member states of the Council of Europe voted for recognition of this right by the UN General Assembly.

However, both in terms of form and content, the details of the recognition of the right to a safe and healthy environment by the Council of Europe have not yet been determined. The draft of the Additional Protocol received wide support from civil society, but there are other options that are currently being considered by the bodies of the Council of Europe.

Experts also consider⁴⁶ the option of including the right to a healthy and safe environment in the European Social Charter⁴⁷. This option would create legally binding obligations for states, but it would not give the ECHR the power to monitor their implementation. On the other hand, if this option of recognition of the right to a safe and healthy environment is chosen by the Council of Europe, this recognition will cover only 16 member states of the Council of Europe that have ratified the procedure of collective complaints to the European Committee of Social Rights, which functions in accordance with the provisions of the European Social Charter.

Another option is political recognition based on the 2022 Recommendation of the Committee of Ministers of the Council of Europe on Human Rights and Environmental Protection⁴⁸. These recommendations invite member states to "reflect" on the right to a healthy environment and "actively consider" its recognition at the national level. This document recommends that states assess their national laws and practices against the principles of international environmental law, anti-discrimination measures and human rights, particularly for vulnerable population. These recommendations do not create legally binding obligations for which States can be held responsible.

⁴⁴ Drafting Group on Human Rights and Environment, 6th Meeting Report, 8-10 February 2023, CDDH-ENV(2023)R6:<https://rm.coe.int/steering-committee-for-human-rights-comite-director-pour-les-droits-d/1680aa23bd>

⁴⁵ CDDH-ENV, 'Compilation of Replies Received from Member States on the Questionnaire with a View of the Preparation of a Study on the Need for and Feasibility of a New Instrument on Human Rights and the Environment', CDDH-ENV (2022)09, 10 February 2022,<https://rm.coe.int/steering-committee-forhuman-rights-comite-director-pour-les-droits-d/1680aae37d>

⁴⁶ Recognizing the Right to a Healthy Environment at the Council of Europe: Why Does it Matter?:<https://zenodo.org/records/10634738>

⁴⁷ European Social Charter (revised):https://zakon.rada.gov.ua/laws/show/994_062#Text

⁴⁸ Recommendation CM/Rec (2022) 20 of the Committee of Ministers to member States on human rights and the protection of the environment, 27 September 2022:<https://rm.coe.int/0900001680a83df1>

In view of the need to choose one of the ways of recognizing the right to a safe and healthy environment, the Reykjavik Declaration, adopted at the summit of the heads of state and government of the Council of Europe in May 2023, initiated the so-called "Reykjavik Process"⁴⁹. This process aims to strengthen the work of the Council of Europe in the field of human rights and the environment, it was launched to support the recognition of the right to a healthy environment in national legislation and to establish a new intergovernmental committee on the environment and human rights, the so-called "Reykjavik Committee"⁵⁰. However, the clear role of the "Reykjavik Committee" still seems uncertain.

Thus, processes regarding the adoption of the Additional Protocol, and therefore the recognition by the Council of Europe of the right to a safe and healthy environment, are underway. This way of recognizing this right seems to be the most optimal from the point of view of support of states and possibilities of potential protection of this right at the international level. Nevertheless, there are other options for recognizing such a right, which may be chosen and put into practice by the Council of Europe in the future.

Conclusions. The analyzed aspects indicate that the issue of recognizing the right to a safe and healthy environment by the Council In Europe, is long overdue, both from the point of view of the possibilities of protecting such a right within the scope of the activities of the European Court of Human Rights, as well as a request for environmental justice from the population of the member states of the Council of Europe.

As of 2024, there is experience of recognizing such a right and protecting it by other international bodies and institutions, member states of the Council of Europe. There are also a sufficient number of mechanisms and tools within the powers of the Council of Europe in order to qualitatively implement such a recognition. Moreover, a number of options by which such a right can be recognized have already been worked out and are being considered.

Such options include adoption of the Additional Protocol. In general, the recognition of the right to a safe and healthy environment by the Council of Europe is of great importance both for protection of human rights and for ensuring sustainable development and health of future generations. This is an important step in the direction of creating a strong legal and institutional foundation for conservation of natural resources and ensuring a habitable environment for all inhabitants of Europe and the

⁴⁹ Summit of Heads of State and Government of the Council of Europe, Reykjavik Declaration: United Around Our Values, 16–17 May 2023, Appendix V: The Council of Europe and the Environment, 6–7: <https://rm.coe.int/4th-summit-of-heads-of-state-and-government-of-the-council-of-europe/1680ab40c1>

⁵⁰ Reykjavik Committee: <https://reykjavik.is/en/committees>

world, which must be made in the shortest possible timeframe.