

**Third party intervention
by the Council of Europe Commissioner for Human Rights**

under Article 36, paragraph 3, of the European Convention on Human Rights

Application No. 39371/20

Cláudia DUARTE AGOSTINHO and others v. Portugal and 32 other States

Introduction

1. On 1 February 2021, the Council of Europe Commissioner for Human Rights (hereinafter: ‘the Commissioner’) informed the European Court of Human Rights (hereinafter: ‘the Court’) of her decision to intervene as a third party in the Court’s proceedings, in accordance with Article 36, paragraph 3, of the European Convention on Human Rights (hereinafter: ‘the Convention’), and to submit written observations concerning the case of *Cláudia Duarte Agostinho and others v. Portugal and 32 other States* (application no. 39371/20). This case concerns the negative impact of greenhouse gases on the health and living conditions of the applicants, as manifested, among other things, by heat peaks and forest fires. The applicants allege that the States are not complying with their positive obligations under Articles 2 (right to life) and 8 (right to respect for private and family life) of the Convention, read in the light of their commitments under the 2015 Paris Climate Agreement, and further claim that there has been a violation of Article 14 (non-discrimination) taken in conjunction with Articles 2 and/or 8, arguing that global warming particularly affects their generation.
2. According to her mandate, the Commissioner promotes the effective observance of human rights; assists member states in the implementation of Council of Europe human rights instruments, particularly the Convention; identifies possible shortcomings in laws and practices concerning human rights; and provides advice and information regarding the protection of human rights across the region.¹
3. The protection and promotion of human rights related to the environment are of utmost importance to the Commissioner. This intervention is based on the Commissioner’s thematic work on environment and human rights, and builds on work done in this area by the Council of Europe and other international organisations.
4. Section I presents the link between environment and human rights, the human rights impact of climate change, and how elements of the right to a healthy environment are already encompassed by the Convention. Section II outlines states’ obligations with regard to environment and human rights, including those emanating from international environmental law and treaties regarding children’s rights. Section III focuses on access to justice for human rights violations resulting from climate change and the need to adapt the protection afforded by the Convention to the challenges posed by this phenomenon.

I. Observations on the link between environment and human rights

Growing understanding of the link

5. The link between the environment and human rights has become a central pillar of today’s human rights discourse. It is now more than ever clear that environment and human rights are interdependent: living in an environment that is unhealthy or otherwise negatively affected by human intervention, including by climate change, may result in violations of human rights. Conversely, respect for human rights is vital for the effective protection of the environment.
6. Environmental degradation may not only affect the substantive human rights intuitively linked to it, such as the right to life, to private and family life, to peaceful enjoyment of the home, or freedom from inhuman or degrading treatment. It may also, indirectly, have an impact on the enjoyment of other rights and freedoms such as freedom of association and expression, the right to an effective remedy, or the right to education. Further, the effects of environmental degradation impact certain social groups more than others, highlighting the extent to which human dignity and equality – including full respect for the principle of non-discrimination -- also depend on a clean and healthy environment.
7. Moreover, as the Commissioner highlighted in a speech last year,² human rights are not just the victim of environmental degradation. They are also the key to rolling it back, in more than one way.

¹ [Resolution \(99\)50](#) on the Council of Europe Commissioner for Human Rights, adopted by the Committee of Ministers on 7 May 1999.

² Commissioner for Human Rights, Keynote [speech](#) at the high-level conference on “Environmental Protection and Human Rights”, February 2020.

It would be impossible to protect the environment without relying on human rights such as the freedoms of expression, association or assembly, the right to an effective remedy, or the right to education – to name just a few of the so-called ‘enabling’ rights.

8. The Commissioner has been devoting increasing attention to this link over the past few years. She strongly believes that enough time has been wasted relegating environmental considerations to a separate sphere mistakenly insulated from international human rights law, and that there is now an urgent need to get more serious about addressing the concrete direct and indirect effects on human rights of various types of environmental degradation. The Commissioner has therefore examined human rights violations caused by environmental degradation in her country work, published thematic publications and organised consultations addressing specific aspects of the topic.³
9. Other Council of Europe bodies have also focused on the link between environment and human rights, with growing awareness across the organisation’s various entities of the need to tackle this issue more proactively.⁴ Most notably, the Court has already ruled on almost 300 environment-related cases, touching on a wide variety of issues including pollution, access to information, and natural disasters, resulting in a steady development of case-law fostering the interconnection between protection of the environment and human rights.
10. Other regional human rights courts have recognised the existence of a relationship between protection of the environment and the realisation of other human rights,⁵ as have a number of national courts in Council of Europe member states.⁶ At UN level, the UN Committee on Human Rights recognised in 2016 that environmental degradation constitutes a serious threat to the ability of present and future generations to enjoy the right to life.⁷
11. The increasing role of human rights law and related fora in holding authorities accountable on environmental issues was also noted during a round-table with environmental human rights defenders hosted by the Commissioner in December 2020.⁸ While concerns about the length of time for adjudication persist, it is important and encouraging to see that environmental defenders can find avenues for protection in human rights institutions.

Climate change and human rights

12. Climate change, a particularly severe cause – and outcome – of environmental degradation attributable to human activity, has garnered the attention of human rights bodies due to its severe cross-boundary effects on our ability to lead safe, healthy and dignified lives. In addition to the rights outlined in paragraph 6 above, climate change also has a pronounced impact on a variety of social and economic rights such as the right to health, food, water and sanitation, adequate housing, as well as a range of cultural rights.⁹ Referring to climate change, the UN High Commissioner for Human Rights has stated that “the world has never seen a threat to human rights of this scope”.¹⁰
13. Human rights bodies have consistently affirmed the linkage between climate change and human rights. At UN level, the Human Rights Council adopted several resolutions expressing concern that climate change poses an immediate and far-reaching threat to the full enjoyment of human rights for people around the world.¹¹ In September 2019, five different UN human rights treaty bodies

³ For example, her Human Rights Comment “[Living in a clean environment: a neglected human rights concern for all of us](#)”, June 2019, or her [report](#) on a round-table with environmental human rights defenders, “Environmental Rights Activism and Advocacy in Europe: Issues, Threats, Opportunities”, 31 March 2021.

⁴ See for example: “Human Rights for the Planet” [conference](#), October 2020; high-level [conference](#) on “Environmental Protection and Human Rights”, February 2020; [Joint Declaration](#) on human rights and the environment by the outgoing and incoming Presidencies of the Committee of Ministers, 15 May 2020; Resolutions 2210(2018), 2286(2019), 2307(2019) of the Parliamentary Assembly of the Council of Europe; [Intervention](#) by Giuseppe Palmisano, President of the European Committee of Social Rights, high-level conference “Environmental Protection and Human Rights”, 27 February 2020.

⁵ Inter-American Court of Human Rights, [Advisory Opinion](#) OC-23/17 of 15 November 2017.

⁶ E.g., Administrative Court of Paris, *Notre Affaire à Tous and Others v. France*, 3 February 2021; Supreme Court of the Netherlands, *Urgenda Foundation v. the Netherlands*, 20 December 2019; German Federal Constitutional Court, [1 BvR 2656/18](#), [1 BvR 96/20](#), [1 BvR 78/20](#), [1 BvR 288/20](#), [1 BvR 96/20](#), [1 BvR 78/20](#), 24 March 2021.

⁷ [Views adopted by the Human Rights Committee](#) concerning communication no. 2728/2016, 24 October 2019. Also, the UN Human Rights Council has mandated a Special Rapporteur for Human Rights and the Environment since 2012.

⁸ “[Environmental Rights Activism...](#)”, op. cit., in paras 15-18.

⁹ “Human rights and climate change”, Human Rights Council [resolution](#) 18/22, 17 October 2011.

¹⁰ [Opening statement](#) by the UN High Commissioner for Human Rights, Michelle Bachelet, 9 September 2019.

¹¹ See for example Human Rights Council resolution 7/23; Human Rights Council resolution 18/22.

observed that “adverse impacts on human rights are already occurring at 1°C of warming and every additional increase in temperatures will further undermine the realization of rights.”¹² As a further testament to the extent to which climate change is impacting our human rights across the board, several UN Special Procedures prepared dedicated reports on the effect of climate change in domains such as cultural rights, children's rights, and extreme poverty.¹³

14. Another sign of the integration of environmental issues – and climate change in particular – with rights-based approaches is the growing role in this area of National Human Rights Institutions. A recent report by the Norwegian National Human Rights Institution called climate change “the greatest threat to the realization of human rights, ever”.¹⁴ At their annual conference on 4 December 2020, the Global Alliance of National Human Rights Institutions adopted a statement in which they pledged to contribute to climate action in line with human rights obligations, and expressing concern that “the policy measures taken to combat, mitigate, and adapt to climate change may not be sufficient to reduce negative impacts on human rights”.¹⁵ The Commissioner fully shares these concerns, and welcomes a more prominent role by National Human Rights Institutions in helping to prevent human rights violations as a result of climate change.

Right to a healthy environment

15. The Commissioner has previously argued, and maintains her steady support, for the recognition by all Council of Europe member states of the right to a healthy environment at UN level.¹⁶ The evidence is clear: where the right exists, it contributes to effective and equitable action in protection of both people and planet.¹⁷ Recognising the right at the international level would amplify these gains through influence on the development of domestic law and through the application of such rights in international courts.
16. Already 42 of the 47 member states of the Council of Europe formally recognise the right to a healthy environment in some form, whether in their national constitutions, through an international treaty they are a party to, or via national legislation. Twenty-nine of them have it enshrined in their national constitution. The presidency of the Committee of Ministers has called for consideration to be given to introducing a Council of Europe instrument in this field,¹⁸ and the Parliamentary Assembly of the Council of Europe has issued three recommendations proposing that the right to a healthy and viable environment be added to the Convention.¹⁹ The European Committee of Social Rights has also discussed including such a right in the European Social Charter.²⁰ In addition, just in the last few months, more than sixty UN member states issued a statement expressing a commitment to engage in dialogue with all the parties in order to move towards global recognition of this right,²¹ and 15 UN entities jointly supported such a push.²²
17. But even in the current state of affairs, with no explicit right to a healthy environment under the Convention, the Commissioner considers that the crucial notion of the Convention as a “living instrument”, combined with the Court’s own existing case-law, provide a solid legal framework to protect and address the plight of those who are suffering because of environmental degradation and climate change.

¹² [Joint Statement](#) on Climate Change and Human Rights, Committee on the Elimination of all Forms of Discrimination against Women, Committee on Economic, Social and Cultural Rights, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, Committee on the Rights of the Child, and Committee on the Rights of Persons with Disabilities, September 2019.

¹³ [Report](#) on climate change, culture and cultural rights, August 2020; [Report](#) on climate change, extreme poverty and human rights, July 2019; [Analytical Study](#) on the relationship between climate change and the rights of the child, OHCHR, May 2017.

¹⁴ “[Climate and human rights](#)”, Norwegian National Human Rights Institution, 16 October 2020.

¹⁵ [GANHRI Statement](#), 4 December 2020; see also the report by the German Institute for Human Rights, “[Climate Change and Human Rights](#)”, 2020.

¹⁶ Commissioner for Human Rights of the Council of Europe, “Living in a clean environment: a neglected human rights concern for all of us”, [Human Rights Comment](#), 4 June 2019.

¹⁷ See D. Boyd, J. Knox, M. Limon, “[#TheTimelsNow](#): The case for universal recognition of the right to a safe, clean, healthy and sustainable environment”, report, Universal Rights Group, February 2021.

¹⁸ [Joint Declaration](#) on human rights and the environment by the outgoing (Georgia) and incoming (Greece and Germany) Presidencies of the Committee of Ministers, 15 May 2020.

¹⁹ [Recommendation 1885](#)(2009), [Recommendation 1883](#)(2009), [Recommendation 1862](#)(2009).

²⁰ “European Committee of Social Rights [position paper](#) on follow-up to the report and proposals of the Steering Committee for Human Rights”, 21 October 2020, p. 8.

²¹ Costa Rica Mission to the UN, Geneva - [joint statement](#), 9 March 2021.

²² [Joint statement](#) of United Nations entities on the right to healthy environment, 8 March 2021.

18. Indeed, the Court’s case-law, notably under Articles 2, 3 and 8 of the Convention,²³ along with the established links between environment and human rights described above, suggest that the Convention already encompasses many elements of a right to a healthy environment. In protecting the right to life, prohibiting inhuman or degrading treatment, ensuring the right to respect for private and family life and prohibiting discrimination in the enjoyment of these rights, the Convention is protecting against the adverse effects of severe environmental degradation.
19. In the Commissioner’s view, the increasing number of climate change-related applications provide the Court with a unique opportunity to continue to forge the legal path towards a more complete implementation of the Convention, to expand and give more meaning to its existing case-law on the environment, and to offer real-life protection to individuals affected by environmental degradation and climate change.

II. States’ obligations with regard to environment and human rights

20. The Court has clearly established²⁴ that various types of environmental degradation can result in violations of human rights, and found that states are under an obligation to not only investigate such violations and compensate individual victims, but also to prevent such violations from occurring in the first place.²⁵
21. At the UN level, states’ obligations regarding environmental harm, and climate change in particular, are also well established. Five different UN human rights treaty bodies observed that “failure to take measures to prevent foreseeable human rights harm caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States’ human rights obligations.” To comply with those obligations, states “must adopt and implement policies aimed at reducing emissions.”²⁶
22. In this connection, the Commissioner considers that the increasingly manifest negative impact of climate change on human rights and the gravity of this impact place a special onus on states to take concrete preventive measures at national and local level, grounded in the human rights standards of the Council of Europe, rather than follow a piecemeal approach that merely reacts to individual complaints.²⁷
23. The Commissioner, moreover, considers that states’ obligations to protect citizens from the effects of climate change may also arise insofar as it threatens individuals’ health and well-being. In her recent [Issue Paper](#) entitled “Protecting the right to health through inclusive and resilient health care for all”, she observed that human health is intimately linked to the state of the natural environment. In order to mitigate risks, states should support strong emergency health preparedness and response systems, identify and fight climate change as a driver of emerging health threats, and strengthen capacities at all levels with a view to mitigating the impacts of the climate emergency on health.
24. The Commissioner is further of the opinion that states’ existing obligations under the Convention should be read in the light of two bodies of international law which are of particular relevance to the present case: international environmental law and international law on the rights of the child. Such an approach is consistent with the Court’s recognition of the importance of international treaties as elements to consider when interpreting rights and freedoms in the Convention.²⁸

²³ Among others: *López Ostra v. Spain*, application no. 16798/90, judgment of 9 December 1994; *Giacomelli v. Italy*, application no. 59909/00, judgment of 2 November 2006; *Yordanov v. Bulgaria*, application no. 3401/09, judgment of 6 September 2018.

²⁴ [Factsheet](#): Environment and the European Convention on Human Rights, April 2021.

²⁵ See for example *Cordella and Others v. Italy*, application nos. 54414/13 and 54264/15, judgment of 24 January 2019, para. 159; *Giacomelli v. Italy*, above, para. 83; *Fadeyeva v. Russia*, application no. 55723/00, judgment of 9 June 2005, para. 124.

²⁶ “[Joint Statement](#) on Climate Change and Human Rights”, above.

²⁷ Commissioner for Human Rights of the Council of Europe, “Living in a clean environment: a neglected human rights concern for all of us”, [Human Rights Comment](#), 4 June 2019.

²⁸ See for example *Ahunbay and Others v. Turkey*, application no. 6080/06, decision of 29 January 2019, para. 21.

Obligations in the light of environmental law

25. When states took on commitments deriving from the Stockholm Declaration (1972), the Rio Declaration and the United Nations Framework Convention on Climate Change (UNFCCC) (1992), they undertook to protect the environment so as to ensure the well-being of peoples. By concluding the Paris Agreement (2015), 194 countries recognised climate change as an urgent threat to humanity. They agreed that when taking action to address climate change, they must respect, promote and consider their respective human rights obligations.
26. The technical commitments that states signed up to deserve particular attention. Recognising the need to respond to climate change, the parties to the Paris Agreement resolved to hold the increase in the global average temperature to well below 2°C above pre-industrial levels. Similarly, the main objective of the UNFCCC is to stabilise greenhouse gas concentrations at a level that would prevent dangerous interference with the climate system. These commitments are reinforced by international standards, such as the 2018 Framework Principles on Human Rights and the Environment, which highlight the obligation of states to enforce their own environmental standards against public and private actors.²⁹
27. While none of these agreements are considered human rights treaties, they nevertheless bear relevance to human rights. The Commissioner considers that they should play a significant role in guiding the understanding and defining the scope of states' obligations with regard to preventing human rights violations caused by environmental degradation. It is clear – even from reading the texts of these agreements, let alone observing the repercussions in our communities – that the impact of these obligations go well beyond environmental considerations, and determine our societies' capacity to uphold some of our most basic human rights.
28. It is undeniable that a clear normative consensus has emerged among European states on the need to take concrete measures to prevent the adverse effects of climate change. The Commissioner is of the view that the Paris Agreement and other key international environmental law instruments should be regarded as globally recognised yardsticks by which the signatory states' performance in fulfilling their human rights obligations in the area of environment and human rights, outlined in the previous section, should be assessed.³⁰
29. Furthermore, international environmental law sets out important enabling rights and guarantees that allow concerned individuals to receive information about environmental issues and risks, participate in decision-making processes, and have access to effective justice. Many of these rights, which are most comprehensively enshrined in the 1998 [Aarhus Convention](#) ("Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters", ECE/CEP/43) and the above-mentioned Framework Principles on Human Rights and the Environment, have also been affirmed in the case-law of the Court.³¹
30. In the Commissioner's view, member states' respect for such procedural enabling rights and guarantees is another aspect for consideration in assessing their level of compliance with human rights obligations in matters concerning the environment. During the aforementioned round-table with environmental human rights defenders,³² the Commissioner was disappointed to hear that in many parts of Europe such rights are not being respected and that the lack of information for communities affected by environmentally-damaging projects continues to be a major problem in many Council of Europe member states. The Commissioner further regrets that six member states have not yet ratified the Aarhus Convention.³³

²⁹ "[Framework Principles on Human Rights and the 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, 24 January 2018.

³⁰ In this respect, see also: German Federal Constitutional Court, [1 BvR 2656/18](#), [1 BvR 96/20](#), [1 BvR 78/20](#), [1 BvR 288/20](#), [1 BvR 96/20](#), [1 BvR 78/20](#), 24 March 2021.

³¹ See for example *Taşkın and Others v. Turkey*, application no. 46117/99, judgment of 10 November 2004, para. 99; *Di Sarno v. Italy*, application no. 30765/08, judgment of 10 January 2012, para. 107.

³² "[Environmental Rights Activism...](#)", op. cit., 31 March 2021.

³³ Andorra, Liechtenstein, Monaco, the Russian Federation, San Marino and Turkey. See also, Commissioner for Human Rights of the Council of Europe, "[Access to official documents is crucial – let's make it a reality](#)", Human Rights Comment, 1 December 2020.

Obligations in the light of international children's rights law

31. Environmental harm affects children to a disproportionate extent, and the international community has long acknowledged this.³⁴ Children are more at risk from various types of environmental harm because their bodies are still developing. Therefore, they have weaker immune systems and smaller respiratory airways, need more nutrition than adults, and – concurrently – are more likely to spend more time in natural areas potentially affected. According to the World Health Organisation, more than one quarter of deaths among children under the age of 5 could be prevented through the reduction of environmental risks.³⁵ To put it in concrete terms, in a given year, that amounts to about one and half million preventable deaths.
32. Specifically, “there may be no greater, growing threat facing the world’s children — and their children — than climate change”, as stated by the Executive Director of UNICEF.³⁶ Climate change contributes to water scarcity and food insecurity, air pollution and various types of diseases, all of which have disproportionately severe effects on children.³⁷ More frequent and violent natural disasters, such as forest fires or floods, increase the likelihood of displacement for children, thereby potentially leading to family separation, interruption of education and child trafficking.³⁸
33. Further, climate change will continue to have multiple and increasing effects on biodiversity and the natural balance of our ecosystem for years to come, thereby impacting the youngest amongst us more. In this respect, a recent German Constitutional Court ruling underscored the need to avoid overburdening future generations with regard to emissions-related contingency measures.³⁹ The need to take account of these predictable hazards is particularly relevant given the Court’s past rulings on risks of future violations.⁴⁰
34. States should work especially hard, therefore, to protect children, as a category particularly at risk.⁴¹ In this respect, the obligations found in the Convention on the Rights of the Child (CRC) are of particular relevance. The CRC commits states to treating the best interests of the child as a primary consideration,⁴² and to ensuring to the maximum extent possible the survival and development of the child.⁴³ It also provides for the right of children to enjoy the highest attainable standard of health, mandating states to take measures to “combat disease and malnutrition [...] taking into consideration the dangers and risks of environmental pollution”.⁴⁴ Further, the views of the child should be given due weight, and children should be afforded the opportunity to be heard in any judicial and administrative proceedings affecting them.⁴⁵

III. Providing protection by ensuring access to justice

35. The Commissioner considers that access to justice for individuals who have already suffered the adverse consequences of climate change is of the utmost importance and a vital way for these persons to make themselves heard. In this regard, it is useful to recall that the Aarhus Convention stipulates that individuals should have access to administrative or judicial procedures to challenge acts and omissions which contravene environmental law,⁴⁶ a principle that the Parliamentary Assembly has also called on member states to safeguard.⁴⁷
36. The UN Special Rapporteur on Human Rights and the Environment stressed in particular that, pursuant to international human rights law, states have procedural obligations to “enable affordable

³⁴ E.g. Human Rights Council resolutions 32/33 and 35/20; 1990 [World Declaration](#) on the Survival, Protection and Development of Children; [General comment No. 15](#) of the Committee on the Rights of the Child (2013).

³⁵ [Don't pollute my future!](#) The impact of the environment on children's health, WHO, 2017.

³⁶ [Unless we act now](#): The impact of climate change on children, UNICEF, November 2015.

³⁷ [Analytical study](#) on the relationship between climate change and the full and effective enjoyment of the rights of the child (A/HRC/35/13), OHCHR, 4 May 2017.

³⁸ [Unless we act now](#): The impact of climate change on children, UNICEF, November 2015.

³⁹ German Federal Constitutional Court, [1 BvR 2656/18](#), [1 BvR 96/20](#), [1 BvR 78/20](#), [1 BvR 288/20](#), [1 BvR 96/20](#), [1 BvR 78/20](#), 24 March 2021.

⁴⁰ *Aly Bernard and others and Greenpeace - Luxembourg v. Luxembourg*, application no. 29197/95, decision of 29 June 1999.

⁴¹ See also [resolution](#) 2286(2019) of the Parliamentary Assembly of the Council of Europe.

⁴² Convention on the Rights of the Child, Article 3.

⁴³ *Ibid*, Article 6.

⁴⁴ *Ibid*, Article 24.

⁴⁵ *Ibid*, Article 12.

⁴⁶ Article 9 of the Aarhus Convention.

⁴⁷ Recommendation 1614(2003), para 9.3.

and timely access to justice and effective remedies for all, [and] to hold states and businesses accountable for fulfilling their climate change obligations”.⁴⁸

37. In this regard, the Commissioner wishes to underline once more that human rights are not just the victim of environmental degradation: they are also the key to rolling it back. The right to a remedy is central to a human rights approach to combating climate change. Victims of human rights violations caused by climate change face a number of barriers to accessing justice, however.

Barriers to access to justice

38. First, it may be difficult for individuals to prove specific harm resulting from environmental degradation. As the Court emphasised in an environmental case relating to the consequences of the construction of a dam, “the term ‘victim’ in Article 34 must also be interpreted in an evolutive manner in the light of conditions in contemporary society.”⁴⁹ It added that “any other, excessively formalistic, interpretation of that concept would make protection of the rights guaranteed by the Convention ineffectual and illusory.”⁵⁰ This interpretation paves the way for allowing those whose rights are violated as a result of climate change to act as plaintiffs in proceedings before international human rights bodies.

39. Second, the transboundary nature of climate-related human rights violations makes it difficult to trace them to particular individual entities or states. The Commissioner has cautioned before against disregarding the consequences of the pollution produced on our continent for the human rights of people living elsewhere.⁵¹ The same applies with regard to the Court’s area of jurisdiction: given the global, cross-border nature of climate change, state parties cannot allow emissions of greenhouse gases to continue without regard for the consequences that this has for the rights of inhabitants of other member states. This sentiment, and particularly the need to include exports of fossil fuels in states’ contributions to emissions, has been echoed by environmental human rights defenders in discussions with the Commissioner.⁵²

40. The Court has also indicated that, in some circumstances, there might be a duty for Contracting States to act jointly in order to protect the rights and freedoms they have undertaken to secure.⁵³ The Commissioner considers that this same approach can be helpful in preventing and addressing violations caused by states’ failure to limit the destructiveness of climate change as well.

41. The Commissioner notes that there are precedents for holding states responsible for their emission levels in an international, cross-border context, especially when combined with breaches of international treaties. For example, the European Committee of Social Rights has found that states are required to implement appropriate pollution-controlling strategies to contribute to efforts towards reducing global emissions.⁵⁴

42. Third, and principally because of the transboundary nature of the violations, victims of climate change do not always have domestic remedies available, or remedies which are effective and adequate. If people turn to the Court, it is precisely because they are unable to obtain justice at home. Indeed, access to justice for these persons remains a central concern because without appropriate redress, there will be a large gap in human rights protection in present-day Europe.

43. The Commissioner is of the opinion that the extraordinary nature of climate change, and the resulting human rights challenges, create a need to adapt the protection offered by the Convention. In particular, a state’s failure to take concrete measures to prevent the adverse effects of climate change raises an issue under several rights guaranteed by the Convention. As described above, such positive obligations on the state can indeed be inferred from international law. It is therefore important that victims of climate change be able to access regional or international human rights

⁴⁸ UN Special Rapporteur on Human Rights and the 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”, Doc A/74/161, para. 64.

⁴⁹ *Gorraiz Lizarraga and others v. Spain*, application no. 62543/00, judgment of 27 April 2004, para. 38.

⁵⁰ *Ibid.*

⁵¹ Commissioner keynote [speech](#) at the high-level conference on “Environmental Protection and Human Rights”, February 2020.

⁵² [Environmental Rights Activism and Advocacy in Europe: Issues, Threats, Opportunities](#), March 2021.

⁵³ *Güzelyurtlu and Others v. Cyprus and Turkey*, application no. 36925/07, judgment of 29 January 2019, para. 232; *Romeo Castaño v. Belgium*, application no. 8351/17, judgment of 9 July 2019, para. 81.

⁵⁴ European Committee of Social Rights, *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, decision of 6 December 2006, para 203; as well as [Conclusions XV-2 \(2001\)](#), Italy, Article 11§3.

bodies in order to effectively access the protection of their rights that these bodies are called upon to provide.

44. Adapting to the seriousness and specific characteristics of climate change is in line with the Court's case-law regarding adaptability. The Convention, as recognised by the Court, is "first and foremost a system for the protection of human rights", which must be interpreted in the light of present-day conditions.⁵⁵

The need for flexible interpretation of standing requirements to ensure access to justice

45. Climate change does not fit traditional rules of international law, based on territorial sovereignty and national jurisdiction. It is a cross-border problem that requires cross-border solutions. This applies to the human rights repercussions of the damaging effects of climate change as well.
46. The Commissioner recalls that the Convention is a "living instrument" whose provisions must be interpreted and applied so as to make its safeguards practical and effective. In the words of the Court, "it is (...) necessary to seek the interpretation that is most appropriate in order to realise the aim and achieve the object of the treaty, not that which would restrict to the greatest possible degree the obligations undertaken by the Parties."⁵⁶
47. In addition, the present case is also an opportunity to demonstrate that states – and European human rights institutions – are ready to remove barriers faced by children in accessing justice for environmental harm, in line with international treaties⁵⁷ and standards.⁵⁸ This is particularly salient given the extent to which young people's present and future rights are in jeopardy, and given states' legal commitments to intergenerational equity.⁵⁹
48. The Commissioner is of the view that a strict and formalistic interpretation of standing requirements when human violations caused by climate change are at stake, particularly when children are concerned, would have the undesired effect of depriving them of any reasonable prospect of seeking and obtaining redress for violations of human rights and fundamental freedoms set forth in the Convention.

Conclusions

49. In conclusion, the Commissioner is of the opinion that:
- The environment and human rights are interdependent: living in an unhealthy environment may result in violations of human rights, but conversely, human rights are also the key to rolling back environmental degradation and protecting against its negative effects.
 - Environmental degradation, and climate change in particular, may affect the right to life, the right to private and family life, freedom from inhuman or degrading treatment, and the prohibition of discrimination. Climate change also has a pronounced impact on a variety of social, economic and cultural rights.
 - The Court's existing case-law, notably under Articles 2, 3 and 8 of the Convention suggests that the Convention already encompasses many elements of a right to a healthy environment. Together with the prohibition of discrimination enshrined in Article 14 of the Convention, it provides a solid legal framework to protect those who are suffering because of climate change.
 - The increasingly manifest negative impact of climate change on human rights places a special onus on states to take concrete preventive measures, rather than follow a piecemeal approach that merely reacts to individual complaints.
 - The Paris Agreement and other key international environmental law instruments should be regarded as yardsticks by which states' performance in fulfilling their human rights obligations should be assessed. Similarly, given the disproportionately severe effects of climate change on children, the obligations found in the Convention on the Rights of the Child are of particular relevance.

⁵⁵ *Tyrer v. the United Kingdom*, application no. 5856/72, judgment of 25 April 1978, para. 31; *Christine Goodwin v. the United Kingdom*, application no. 28957/95, Grand Chamber judgment of 11 July 2002, para. 75.

⁵⁶ *Wemhoff v. Germany*, application no. 2122/64, judgment of 27 June 1968, section "as to the law", para. 8.

⁵⁷ See [Aarhus Convention](#) and [Convention on the Rights of the Child](#).

⁵⁸ [Report](#) to the Human Rights Council on the rights of children and the environment (A/HRC/37/58), 24 January 2018.

⁵⁹ See Preamble to the Paris Agreement and Art 3(1) of the United Nations Framework Convention on Climate Change.

- The right to a remedy is central to a human rights approach to combating climate change, and access to justice for individuals who have already suffered is of the utmost importance.
- The extraordinary nature of climate change, and the resulting human rights challenges, create a need to adapt the protection offered by the Convention: a strict and formalistic interpretation of standing requirements when human violations caused by climate change are at stake, particularly when children are concerned, would have the undesired effect of depriving them of any reasonable prospect of seeking and obtaining redress for violations of their human rights and fundamental freedoms set forth in the Convention.