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## The role of parliaments in the consolidation and development of social rights in Europe

### Opinion<sup>1</sup>

Committee on the Environment, Agriculture and Local and Regional Affairs  
Rapporteur: Sir Alan MEALE, United Kingdom, Socialist Group

### A. Conclusions of the committee

The Committee on the Environment, Agriculture and Local and Regional Affairs fully supports the report and draft resolution presented by the Social, Health and Family Affairs Committee and congratulates its rapporteur, Ms Carina Ohlsson, on her excellent work. Taking into account the importance of affirming the right to health and the right to a healthy, clean and safe environment in the body of human rights and social rights established by the Council of Europe and in its member states, the committee proposes the following amendments.

### B. Proposed amendments to the draft resolution

#### *Amendment A (to the draft resolution)*

In the draft resolution, paragraph 3, replace the words “the right to a healthy environment” by the words “the right to a healthy, clean and safe environment”.

#### *Amendment B (to the draft resolution)*

In the draft resolution, after paragraph 4.6, insert the following sub-paragraph:

*“create an all-party group on the development of human rights with a view to involving parliamentarians and parliamentary research staff in discussions on the development of a third generation of human rights with respect to a healthy, clean and safe environment;”*

#### *Amendment C (to the draft resolution)*

In the draft resolution, after paragraph 4.7.2, insert the following sub-paragraph:

*“taking an active part in the Council of Europe Conference on the environment, climate change and human rights to be held in Strasbourg in October 2012, with a view to discussing the development of a third generation of human rights with respect to a healthy, clean and safe environment and to exchanging best practices at local, regional and national level;”*

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*Amendment D (to the draft resolution)*

In the draft resolution, paragraph 5.5.2, replace the words “the right to a healthy environment” by the words “the right to a healthy, clean and safe environment”.

*Amendment E (to the draft resolution)*

In the draft resolution, after paragraph 5.5.5, insert the following sub-paragraph:

*“in line with Assembly Recommendation 1614 (2003) and Recommendation 1885 (2009) on drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment, contribute to the drafting, signature and implementation of an additional protocol to the European Convention on Human Rights concerning the right to a healthy, clean and safe environment;”*

## **C. Explanatory memorandum by Sir Alan Meale, rapporteur for opinion**

### **1. Introduction**

1. On behalf of the Committee on the Environment, Agriculture and Local and Regional Affairs, the rapporteur for opinion welcomes the opportunity to contribute to the report of the Social, Health and Family Affairs Committee and particularly wishes to develop the notion of the right to a healthy, clean and safe environment under chapter 3 of the report, which focuses on the role of parliaments in the development of social rights in Europe.

2. The effects of the degrading environment on human development and health are of increasing concern globally and to each of us individually. Nearly every day we are confronted with news articles on the issue, whether connected to the economic crisis, the oil crisis, climate change, natural hazards, nuclear catastrophes or food safety. There are many examples. The recent nuclear catastrophe at Fukushima in Japan was a wake-up call to many European governments and parliaments to reconsider nuclear safety and energy policies, in response to a strong public concern over risks to human health and contamination of the surrounding life-supporting environment (soil, water, sea and air). The recent life-threatening E. coli outbreak is an example of a food security alert in Europe requiring quick action and co-ordination among member states.

3. According to the European Environmental Agency, the interactions between the environment and human health are highly complex and difficult to assess. This makes the use of the precautionary principle particularly important. The best-known health impacts are related to ambient air pollution, poor water quality and insufficient sanitation. Much less is known about the health impacts of hazardous chemicals, which are found in the tissue of nearly every human being and exposure to them has been linked to several cancers and to a range of reproductive problems, including birth defects.<sup>2</sup> Noise is another emerging environmental and health issue.

4. Moreover, human health has always been threatened by natural hazards such as storms, floods, fires, landslides and droughts. Their consequences are being worsened by a lack of preparedness and also by intensified human activities such as deforestation, land degradation, degradation of natural habitats, biodiversity loss and greenhouse gas emissions which lead to the depletion of the stratospheric ozone layer and to climate change.

5. According to the World Health Organization (WHO), environmental hazards are responsible for as much as one quarter of the total burden of disease worldwide, and more than one third of the burden among children. Health impacts of environmental hazards run across more than 80 diseases and types of injuries. Worldwide, as many as 13 million deaths could be prevented every year by making the environment healthier, cleaner and safer.

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2. WWF Campaign “Our Chemical World”: [http://wwf.panda.org/about\\_our\\_earth/teacher\\_resources/webfieldtrips/toxics/our\\_chemical\\_world/](http://wwf.panda.org/about_our_earth/teacher_resources/webfieldtrips/toxics/our_chemical_world/).

## 2. Affirming the right to a healthy, clean and safe environment

6. The fact that degradation of the environment and climate change will have implications for the enjoyment of universally recognised fundamental rights has become more and more evident. Recently, the United Nations Human Rights Council, in its Resolution 10/4 (25 March 2009),<sup>3</sup> recognised that “climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights”. The degradation of the environment and climate change will have a direct impact on fundamental rights such as the right to life, the right to food and drinking water, the right to adequate housing, the right to property and, of course, the right to health. It will also indirectly raise questions of equality, non-discrimination, access to information, access to justice, and so on.

7. A study prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the relationship between climate change and human rights was made available at the United Nations Climate Change Conference in Copenhagen in December 2009. The OHCHR study concluded that a great majority of stakeholders agree that the international community should continue studying the inter-linkages between human rights, the environment and climate change, including the eventual legal, political and economic impacts that this link may have at international and national level.

8. The time is therefore ripe to build on the work of the Human Rights Council and the international community’s achievements in the environmental field in order to deepen understanding of the direct and indirect links between the protection of the environment and the enjoyment of human rights, bearing in mind obligations and responsibilities of states and other actors under human rights treaties and multilateral environmental agreements.

9. In a pan-European context, the Council of Europe has an important role to play to follow up the Human Rights Council initiative and to advance the development of a third generation of human rights which relate to the degradation of the environment and climate change.

10. The Parliamentary Assembly initiated this political and legal debate with its [Recommendation 1614 \(2003\)](#) on the environment and human rights and later reiterated its position in [Recommendation 1885 \(2009\)](#) on drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment.

11. When preparing these two important texts, the Committee on the Environment, Agriculture and Local and Regional Affairs examined the existing corpus of international environmental law and its enforcement, the Council of Europe’s own environmental policies, and made a legal analysis of various implications for the recognition of a human right to the environment.

12. The introduction of a human right to the environment has been the subject of intense legal, philosophical and ethical discussion since the 1970s. Since then, the recognition of this human right has been incorporated in “soft law” such as the first principle of the Stockholm Declaration (1972) and the Rio Declaration (1992). Forty-four national constitutions now contain provisions on environmental protection, either as individual rights or state obligations, or both.

13. Different terminology is used in provisions recognising this new human right as binding or non-binding. There are references, for example, to a salubrious (or humane, adequate, clean, habitable) environment, to the right to protect the public from unreasonable environmental degradation or simply to government bodies’ legal obligations to protect the environment or “natural life support systems”. The variations are partly due to differences in legal policy objectives, and they also reflect the way in which this right has developed over the past decades.

14. As outlined in the explanatory memorandum to Assembly [Recommendation 1614 \(2003\)](#), two models are conceivable for the recognition of the right to the environment: the first model combines specific individual rights with the state’s objective duty to protect them; and the second one ascribes this duty to the state, but does not provide for individual rights. In this second model, only the state’s objective duty would be laid down, and individual rights could be added later. The advantage of this second model is that – unlike the one which involves the inclusion of individual rights – it is more feasible for consensus among negotiating parties. This would help to establish the idea that the state has a duty to protect its citizens by warding off specific environmental dangers as a precondition for the exercise of individual rights, a duty to protect the environment against private individuals and, even more importantly, a duty to repair any damage and restore environmental assets.

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3. Office of the United Nations High Commissioner for Human Rights: <http://www2.ohchr.org/english/issues/climatechange/index.htm>.

15. To date, individual rights to the environment essentially involve three points: the individual's right to participate in public decision making on matters relevant to the environment; the right to access to a court; and the right to information on the environment as outlined in the Aarhus Convention.<sup>4</sup> However, those procedural rights must be expanded to include the individual's right to active protection of the environment by the state, which matches the state's objective duty to protect. Such individual right would require the state either to refrain from causing environmental strain itself or, as the licensing and supervisory authority, to prevent this from being done by third parties.

16. The Committee on the Environment, Agriculture and Local and Regional Affairs also considered two implementation alternatives: through a Protocol to the European Convention on Human Rights or through inclusion of the right to the environment in a revised Article 11 (the right to the protection of health) of the revised European Social Charter. After a critical assessment of the alternatives, the committee was in favour of an additional Protocol to the European Convention on Human Rights, as it grants to individuals procedural and substantive rights of a legally binding nature and it offers an effective legal protection granted by the European Court of Human Rights. Moreover, the Convention exerts great influence on national case law, since it takes legal priority over all levels of domestic law. Comparable legal protection would not be possible under the current system of the revised European Social Charter. On the substantive level, the provision of the right to the environment should have a much wider legal definition than that seen only as an extension to the "right to the protection of health", as described in paragraph 6 of this chapter.

### **3. Council of Europe: multidisciplinary approach to environment, climate change and human rights**

17. In its reply to Assembly [Recommendation 1883 \(2009\)](#) on the challenges posed by climate change and to [Recommendation 1885 \(2009\)](#) on drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment, the Committee of Ministers<sup>5</sup> recognised the importance of a healthy, clean and safe environment and considered that it is relevant to the protection of human rights. Although the European Convention on Human Rights does not expressly recognise a right to the protection of the environment, the convention system already indirectly contributes to the protection of the environment through existing convention rights and their interpretation in the evolving case law of the European Court of Human Rights.

18. Since the earlier Assembly [Recommendation 1614 \(2003\)](#) led to the preparation of a Manual on Human Rights and the Environment, the Committee of Ministers agreed to the proposal of the Steering Committee for Human Rights (CDDH) to update the Manual in the light of the recent case law of the Court and of the European Committee of Social Rights.

19. Moreover, the Committee of Ministers pursued the Assembly's proposal to "explore the linkages between climate change and human rights in Europe, including the implications of climate change-related impacts on the effective enjoyment of human rights, and the role that human rights obligations can play in strengthening international policy making in the field of climate change" and took note of the suggestion of the CDDH that this issue be analysed in greater detail, with particular attention being given to the specificities with respect to the enjoyment of human rights in Europe, as a contribution to a possible wider and multidisciplinary Council of Europe approach to climate change.

20. Following the reply of the Committee of Ministers and with a view to initiating such a multidisciplinary approach to the environment, climate change and human rights, the Committee on the Environment, Agriculture and Local and Regional Affairs has set up an intersecretarial working group in partnership with: the Directorate General of Human Rights and Legal Affairs; the Office of the Commissioner for Human Rights; the European Court of Human Rights; the Congress of Local and Regional Authorities; the Secretariat of the European Social Charter; the Secretariat of the Bern Convention; the Directorate on Education and Language; the Directorate of Youth and Sport; the Directorate of Culture and Natural Heritage; and the Secretariat of the European and Mediterranean Major Hazards Agreement (EUR-OPA).

21. Over the past year, the multidisciplinary working group reviewed respective activities of relevance to the environment, climate change and human rights and established a common web page to increase the visibility of this issue within the Council of Europe and for the member states.<sup>6</sup> The working group is currently preparing a joint Conference on the environment, climate change and human rights to be held in October

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4. UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, adopted on 25 June 1998.

5. [Doc. 12298](#).

6. [www.coe.int/portal/web/coe-portal/what-we-do/culture-and-nature/climate-change](http://www.coe.int/portal/web/coe-portal/what-we-do/culture-and-nature/climate-change).

2012 aiming to explore the issue from various angles: human rights, social rights and social cohesion, rights of migrants, minorities and vulnerable groups, rights of future generations (involving youth organisations), protection of the environment and biodiversity, cultural and natural heritage, education and awareness raising.

22. The aim of the Conference is to build synergy between different sectors of the Council of Europe, to exchange good practice and to achieve progress towards a third generation of human rights with respect to the environment and climate change, in close co-operation with the Council of Europe member states, national parliaments, local and regional authorities and relevant international partner organisations. On behalf of the Assembly, the committee will therefore seek to actively involve national parliamentary delegations as key players in this process.

#### 4. Role of national parliaments

23. The rapporteur for opinion fully agrees with Ms Carina Ohlsson when she states that parliaments, in the exercise of their many functions – namely policy making, legislation, constituency representation, oversight and scrutiny of the executive – can act to make a difference in the development and consolidation of human rights, including social and environmental rights.

24. Thanks to the progressive role of parliaments, the right to the environment is today enshrined in many national constitutions of Council of Europe member states. For example, an individual right to environmental protection has been recognised in the constitutions of Belgium (Article 23-4), Hungary, Norway (Article 110.b), Poland (Article 71), Portugal (Article 66-2), Slovakia (Article 44 and 45), Slovenia (Article 72 and 73), Spain (Article 45-1) and Turkey (Article 56). Protection of the environment is included as a “state objective” in the constitutions of Austria (Article 10-12), Finland (Article 20), Germany (Article 20.a), Greece (Article 24), the Netherlands (Article 21), Sweden (Article 2-2) and Switzerland (Article 24-7).

25. Moreover, parliaments play an important role in inciting governments towards more progressive environmental policies, in particular to develop and enforce national legislation, to abide by the international treaties, to affirm precautionary and sustainability principles, to seek regular use of environmental risk assessments; to invest in research and to develop environmental accounting as a means of reflecting environmental costs in the calculation of national budgets and Gross Domestic Product (GDP).

26. In the follow-up to the Earth Summit in Rio in 1992 and the World Summit on Sustainable Development in Johannesburg in 2002, most countries in Europe have committed to formulating and developing national sustainable development strategies, seeking, *inter alia*, to improve coherence of sustainable development policies across different sectors and levels of governance. Parliaments therefore have an important role in overseeing and contributing to this process.

27. Nationally, parliaments need to be forerunners in developing such a transversal approach to link many sectors namely, territorial and urban planning, economic development, industrial development, energy and use of resources, transport, agriculture and food safety, trade, forestry, social cohesion, healthcare, housing, technical and health standards, waste management, education and awareness raising, communication and so on.

28. Internationally, parliaments are increasingly involved in global initiatives such as the “Parliaments for Water” initiative within the World Water Forum, aiming to push for the recognition of the right to water and sanitation, and government negotiations of post-Kyoto targets for the reduction of greenhouse gas emissions and redefinition of national commitments under the United Nations Framework Convention on Climate Change (UNFCCC). Parliaments also played an important role in setting the biodiversity targets for 2020 at the Conference of the Parties to the Convention on Biological Diversity (Nagoya, Japan, October 2010) and they will have to closely monitor national delivery of those targets.

29. In view of the above considerations, the rapporteur for opinion proposes that national parliaments, where this is not yet the case, create an all-party group on the development of human rights, with a view to involving parliamentarians and parliamentary research staff in discussions on the development of a third generation of human rights with respect to a healthy, clean and safe environment.

#### 5. Conclusion

30. The rapporteur for opinion wishes to underline the link between the right to health and the importance of affirming the right to a healthy, clean and safe environment, which can be considered in the context of this report as an enabling factor to the right to health. However, the right to a healthy, clean and safe environment has a much wider scope and cannot be seen simply as an extension of the right to health.

31. As outlined earlier, degradation of the environment and climate change have a direct impact on fundamental rights such as the right to life, the right to food and drinking water, the right to adequate housing, the right to property and gainful living, and, of course, the right to health. They also indirectly raise questions of equality, non-discrimination, access to information, access to justice and so on. Additionally, the universal value of natural resources and assets will require the development of a system of intergenerational rights.

32. With this in mind and in line with [Recommendation 1614 \(2003\)](#) on the environment and human rights and [Recommendation 1885 \(2009\)](#), the Committee on the Environment, Agriculture and Local and Regional Affairs considers that the right to a healthy, clean and safe environment ought to be defined as an additional protocol to the European Convention on Human Rights.