Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2396 (2021)[1]

Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe

Parliamentary Assembly

1. The global vision of contemporary human rights protection has evolved significantly in the last decade. While the notion of sustainable development has slowly made its way into policy making worldwide, our understanding of the environment as a crucial factor for human development and human rights has brought new legal challenges into focus for the member States of the Council of Europe. Environmental pollution, loss of biodiversity and the climate crisis are making people and the planet sick, leading to premature deaths among the current generation and stealing viable living space from future generations.

2. These novel threats to human life, well-being and health no longer stem only from national governments' failure to uphold civil and political rights, but also from their lack of action to prevent cumulative harm to individuals from environmental degradation caused by the commercial exploitation of nature. The current situation increasingly gives rise to both violations of fundamental rights and legal disputes.

3. The Parliamentary Assembly notes that as early as 1972, the Stockholm Declaration of the United Nations Conference on the Human Environment explicitly linked environmental protection and first-generation human rights, indirectly referring to the right to a healthy environment. Since then, about half the countries of the world have recognised the right to a healthy environment in their constitutions, including 32 Council of Europe member States. The right to a healthy environment is also recognised worldwide through a series of regional agreements and arrangements – with the exception of the European region.

4. The Assembly believes that the European vision of contemporary human rights protection could nevertheless become a benchmark for ecological human rights in the 21st century, if action is taken now. So far, this vision has been limited to civil and political rights enshrined in the European Convention on Human Rights (ETS No. 5, hereafter "the Convention") and its protocols and socio-economic rights recognised in the European Social Charter (ETS Nos. 35 and 163, hereafter "the Charter").

5. The Assembly notes that the Convention does not make any specific reference to the protection of the environment, and the European Court of Human Rights (hereafter "the Court") can thus not deal effectively enough with this new-generation human right. The Assembly's call for action, in particular in Recommendation 1885 (2009) "Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment", was unfortunately not followed by the Committee of Ministers.

6. The Court's case law provides for indirect protection of the right to a healthy environment by sanctioning only environmental violations that simultaneously result in an infringement of other human rights already recognised in the Convention. The Court thus favours an anthropocentric and utilitarian approach to the environment which prevents natural elements from being afforded any protection per se. The Assembly encourages the Council of Europe to recognise, in time, the intrinsic value of nature and ecosystems in the light of the interrelationship between human societies and nature.

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1. *Assembly debate* on 29 September 2021 (27th sitting) (see Doc. 15367, report of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Mr Simon Moutquin). *Text adopted by the Assembly* on 29 September 2021 (27th sitting).
See also Recommendation 2211 (2021).

7. The Assembly is convinced that the Council of Europe as the European continent's leading human rights and rule of law organisation should stay proactive in the evolution of human rights and adapt its legal framework accordingly. A legally binding and enforceable instrument, such as an additional protocol to the Convention, would finally give the Court a non-disputable basis for rulings concerning human rights violations arising from adverse environment-related impacts on human health, dignity and life.

8. The Assembly considers that an explicit recognition of a right to a healthy and viable environment would be an incentive for stronger domestic environmental laws and a more protection-focused approach by the Court. It would make it easier for victims to lodge applications for remedies and would also act as a preventive mechanism to supplement the currently rather reactive case law of the Court.

9. Recognising an autonomous right to a healthy environment would have the benefit of allowing a violation to be found irrespective of whether another right had been breached and would therefore raise the profile of this right. In this context, the Assembly notes that the United Nations (UN), in its studies and resolutions on human rights and the environment, mainly refers to the human rights obligations linked to the enjoyment of "a safe, clean, healthy and sustainable environment". The Council of Europe should be encouraged to use this terminology for its own legal instruments – though it may want to go even further and guarantee the right to a "decent" or "ecologically viable" environment.

10. The Assembly also supports drafting an additional protocol to the Charter on the right to a safe, clean, healthy and sustainable environment. The Charter and the Convention are two complementary and interdependent systems, each of which has its own specific features, hence the need for separate additional protocols.

11. The Assembly moreover believes that there is a growing need to ensure genuine co-responsibility for the prevention and alleviation of environmental harm by both States and non-state actors, including corporate actors. As private-sector self-regulation alone does not always serve the common interest, State regulation has a major role to play. States should therefore strengthen corporate environmental responsibility, not least through the revision of Committee of Ministers Recommendation CM/Rec(2016)3 on human rights and business, and engagement in the work of the UN "open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights on a legally binding instrument on business activities and human rights".

12. The Assembly also recognises the particular responsibility that current generations bear towards future generations. The irreversible damage to nature and the short- and long-term effects of the climate crisis will adversely affect future generations, which must be protected accordingly. In order to entrench the principle of transgenerational responsibility, equity and solidarity, new rights and duties are needed. The Assembly thus supports recognising the right of future generations to a healthy environment and humanity's duties towards living beings. Among these, the duty of non-regression meets the requirement for transgenerational equity by helping to counter growing environmental degradation and by ensuring a degree of legal certainty with respect to environmental law.

13. While the threats of environmental degradation and climate change are among the biggest challenges facing humanity today, the Assembly views the unfettered use of certain new, man-made technologies (such as artificial intelligence, nanotechnology and genetic engineering) as a human rights challenge. It therefore considers that the Council of Europe should prepare a "Five Ps" convention on environmental threats and technological hazards threatening human health, dignity and life – in the spirit of the Stockholm Declaration. By **p**reventing and **p**rosecuting violations of the right to a safe, clean, healthy and sustainable environment, and **p**rotecting the victims, the contracting States would adopt and implement state-wide integrated **p**olicies that are effective and offer a comprehensive response to environmental threats and technological hazards, involving **p**arliaments in holding governments to account for the effective implementation of environment-friendly pro-human rights policies.

14. In the light of the above considerations, the Assembly recommends that the member States of the Council of Europe:

14.1. build and consolidate a legal framework – domestically and at European level – to anchor the right to a safe, clean, healthy and sustainable environment, based on the UN guidance on this matter;

14.2. support multilateral efforts concerning the explicit recognition and protection of the right to a safe, clean, healthy and sustainable environment through international and European law;

14.3. participate in a political process under Council of Europe auspices aimed at preparing legally binding and enforceable instruments – an additional protocol to the Convention and an additional protocol to the Charter in order to protect more effectively the right to a safe, clean, healthy and sustainable environment – as well as a “Five Ps” convention on environmental threats and technological hazards threatening human health, dignity and life;

14.4. strengthen the corporate environmental responsibility of enterprises operating under their jurisdiction by setting up a dedicated binding legal framework that defines corporate responsibility for safeguarding human health, the right to a safe, clean, healthy and sustainable environment, and environmental integrity, and by making them reduce the harmful environmental footprint of their commercial activities;

14.5. contribute to the revision of the Committee of Ministers Recommendation CM/Rec(2016)3 on human rights and business in order to determine and incorporate the requirements of corporate environmental responsibility.

15. The Assembly urges national parliaments to advocate adequate protection of the right to a safe, clean, healthy and sustainable environment at the national, European and global levels. It invites them to hold extensive public consultations on this matter and to proceed with the adoption of laws and the initiation of the legal instruments necessary for the completion of the comprehensive coverage of this right, and to monitor their effective implementation.