



Recommendation 2211 (2021)¹

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

Parliamentary Assembly

1. The Parliamentary Assembly refers to its [Resolution 2396 \(2021\)](#) “Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe” and reiterates the need for the Council of Europe to modernise its standard-setting activity so as to embrace the new generation of human rights. The Assembly is highly concerned by the speed and extent of environmental degradation, the loss of biodiversity and the climate crisis that directly affect human health, dignity and life. It considers that it is high time for the Council of Europe to show ambition and strategic vision for the future by facing up to this major transformative challenge to human rights and securing their enhanced protection in the era of systemic environmental threats to present and future generations.

2. The Assembly notes that harmful environmental impacts are increasingly affecting the enjoyment of first- and second-generation human rights by individuals and society at large, damaging the shared values that the Council of Europe is called upon to defend. Those impacts are being recognised through environmental litigation at national level across Europe and beyond; they constitute a compelling case for consolidating and updating the Council of Europe's legal arsenal, and linking national action with the commitments made under the relevant international treaties, such as the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement.

3. To this end, the Assembly recommends that the Committee of Ministers:

3.1. draw up an additional protocol to the European Convention on Human Rights (ETS No. 5, hereafter “the Convention”) on the right to a safe, clean, healthy and sustainable environment, based on the terminology used by the United Nations and drawing on the text reproduced below, which is an integral part of this recommendation. The inclusion of this right in the Convention would establish the clear responsibility of member States to maintain a good state of the environment that is compatible with life in dignity and in good health and the full enjoyment of other fundamental rights; this would also support much more effective protection of a safe, clean, healthy and sustainable environment at national level, including for generations to come;

3.2. draw up an additional protocol to the European Social Charter (ETS Nos. 35 and 163, hereafter “the Charter”) on the right to a safe, clean, healthy and sustainable environment; the inclusion of this right in the Charter would make it possible to recognise the interrelationship between the protection of social rights and environmental protection; it would also enable non-governmental organisations to lodge collective complaints on environmental issues;

3.3. launch the preparation of a feasibility study for a “Five Ps” convention on environmental threats and technological hazards threatening human health, dignity and life; the drawing up of such a convention would afford an opportunity to incorporate therein the principles of prevention, precaution and non-regression, which are necessary if humanity's right to a healthy environment is to be properly protected; the convention could also include a supranational monitoring mechanism modelled on

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).



independent expert committees such as the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO);

3.4. revise Recommendation CM/Rec(2016)3 on human rights and business with a view to strengthening corporate environmental responsibility for the adequate protection of the human right to a safe, clean, healthy and sustainable environment.

Appendix – 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

Preamble

The member States of the Council of Europe and other High Contracting Parties to the European Convention on Human Rights, signatories hereto,

Considering the urgent nature of the environmental crisis and its consequences for biodiversity, ecosystems and present and future generations;

Recognising the interrelationship between environmental protection and human rights;

Taking into account the intrinsic value of nature and the paramount importance of the duties and obligations of present generations to the environment and future generations;

Recalling that every human being “has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being” and bears a “solemn responsibility to protect and improve the environment for present and future generations” (Principle 1 of the Stockholm Declaration, adopted by the United Nations Conference on the Human Environment of 1972);

Noting that the right to a safe, clean, healthy and sustainable environment requires going beyond an approach based on individual rights alone;

Being resolved to define the right to a healthy environment as an autonomous right of humanity;

Have agreed as follows:

Section I – Definition

Article 1

For the purposes of this Additional Protocol, “the right to a safe, clean, healthy and sustainable environment” means the right of present and future generations to live in a non-degraded, viable and decent environment that is conducive to their health, development and well-being.

Section II – General principles

Article 2 – Principle of transgenerational responsibility, equity and solidarity

Every generation has a duty to protect the environment and biodiversity and to prevent any irreparable and irreversible damage to life on Earth, so as to ensure the right of subsequent generations to live in a safe, clean, healthy and sustainable environment.

Every generation shall ensure that natural resources are used and managed in an environmentally sustainable manner, and that scientific and technological progress in all areas does not harm life on Earth.

Every generation is responsible for the protection of the environment and has a duty to:

- a. prevent environmental damage;
- b. remedy environmental damage.

Article 3 – Principle of environmental non-discrimination

- a. No one shall be discriminated against on account of his/her belonging to a particular generation.
- b. Each High Contracting Party shall see to it that discrimination is prohibited and shall ensure equal and effective protection against discrimination to enable all individuals, groups and peoples to enjoy a safe, clean, healthy and sustainable environment.
- c. Each High Contracting Party shall ensure that additional measures are taken to protect the rights of persons who are more vulnerable to or particularly threatened by environmental harm.

Article 4 – Principles of prevention, precaution, non-regression and in dubio pro natura

Where a risk of harm to the environment and biodiversity has been established, measures for preventive action and rectification, as a priority at source, shall be put in place to avoid the occurrence of environmental damage.

Where there are threats of severe damage to the environment or to human, animal or plant health, lack of scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent the degradation of the environment and biodiversity.

- a. Any rolling back of legal protection of the environment or of access to environmental justice shall be prohibited.
- b. National and international provisions on the environment may be subject only to continuous improvement, having regard to the current state of scientific and technological knowledge.

In case of doubt, all matters before courts, administrative agencies and other decision makers must be resolved in a way most likely to favour the protection and conservation of nature, with preference to be given to alternatives that are least harmful to the environment.

Section 3 – Substantive right

Article 5 – Right to a safe, clean, healthy and sustainable environment

Everyone has the right to a safe, clean, healthy and sustainable environment.

Article 6 – Procedural rights

- a. Everyone is entitled to access information relating to the environment held by public authorities, without having to prove an interest.
- b. If a project, programme or policy has an impact on the environment and biodiversity, everyone shall be entitled to be consulted in advance in order to be heard by the decision-making bodies regarding the authorisation and development of that project, programme or policy.
- c. Everyone has the right of access to justice in matters relating to the environment.
- d. Everyone whose rights as set forth in this Protocol are violated shall have an effective remedy.

Section 4 – Implementation of the Protocol

Article 7

In the interpretation of the right set forth in Article 5 of this Protocol, the principles of international and European environmental law shall be applied.

The exercise of the rights set forth in this Protocol may be subject only to such formalities, conditions and restrictions as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or for the protection of the rights and freedoms of others.

Section 5 – Final clauses

Article 8

No derogation from the provisions of this Protocol, with the exception of Article 6.b thereof, shall be made under Article 15 of the Convention.

Article 9

No reservation in respect of the provisions of this Protocol, with the exception of Article 6.b thereof, may be made under Article 57 of the Convention.

Article 10

This Protocol shall be open for signature by the member States of the Council of Europe and the other High Contracting Parties to the European Convention on Human Rights. It shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 11

- a.* This Protocol shall enter into force on the first day of the month following the date on which five member States of the Council of Europe have expressed their consent to be bound by the Protocol.
- b.* In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the date of the deposit of the instrument of ratification, acceptance or approval.

The Secretary General of the Council of Europe shall notify the member States of:

- a.* any signature;
- b.* the deposit of any instrument of ratification, acceptance or approval;
- c.* any date of entry into force of this Protocol;
- d.* any other act, notification or communication relating to this Protocol.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg on [date], in English and French, both texts being equally authentic, in a single copy, which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.