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Mainstreaming the human right to a safe, clean, healthy and sustainable environment with the Reykjavik process

Report[1]
Committee on Social Affairs, Health and Sustainable Development
Rapporteur: Mr Simon MOUTQUIN, Belgium, Socialists, Democrats and Greens Group

Summary

The report highlights the urgent need to formalise the right to a healthy environment within the Council of Europe, underlining the positive developments in its recognition at global level and in national law. Despite States' different approaches on the issue, a legally binding framework is clearly needed in order to enshrine this right in international law and satisfy the need for the protection of the right to a healthy environment as a human right in a consistent way, possibly through an additional Protocol to the European Convention on Human Rights or an autonomous convention.The report stresses that the right to a healthy environment is unique as it transcends individual rights and encompasses present and future generations, and calls for a responsible, forward-looking strategy. It stresses the importance of capitalising on existing Council of Europe standards and developing strategic environmental governance, including a special intergovernmental committee and a monitoring mechanism. It calls for concrete and concerted action to prevent the Council of Europe from losing its credibility in environmental action.

1. Reference to Committee: Doc. 15804, Reference 4753 of 23 June 2023.

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A. Draft resolution[2]

1. The Parliamentary Assembly stresses that the challenge of climate change constitutes the greatest existential emergency for humankind and that this emergency is mainly due to the lack of long-lasting structural action.

2. The Assembly notes with dismay that the Council of Europe is now the only regional human rights system which has not yet formally recognised the right to a healthy environment.

3. For decades, however, the Assembly has been urging the Council of Europe member States to take this step. In particular, it reaffirms its Recommendation 2211 (2021) "Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe".

4. The Assembly notes that at the 4th Council of Europe Summit, held in Reykjavik on 16 and 17 May 2023, the Heads of State and Government recognised the urgency of additional efforts to protect the environment, as well as to counter the impact of the "triple planetary crisis of pollution, climate change and loss of biodiversity" and its effects on human rights, democracy and the rule of law. An Intersecretariat Task Force on the Environment was established in January 2024 and has carried out a stocktaking survey of existing activities, planned activities and proposals for new activities. It also proposed elements for the development of a first Council of Europe strategy on the environment.

5. The Assembly also notes that in 2024, the Committee of Ministers will have to follow up work on the feasibility of instruments on human rights and the environment and the draft convention superseding and replacing the Convention on the Protection of the Environment through Criminal Law (ETS No. 172).

6. Mindful of the strategic importance of this moment, almost one year on from the 4th Summit and three years after Recommendation 2211 (2021), the Assembly wishes to update its expectations and contribute to the implementation of the Reykjavik process through concrete and realistic proposals.

7. The post-Reykjavik environment Strategy will be implemented by and for the young generations and must be supported by civil society. The course must therefore be firmly fixed for the future and the bar set high as the Council of Europe and its member States will be held accountable for decades to come. The Assembly considers that the requirements in terms of accountability must be extremely strict: transparency, ethics, accessibility, responsibility, efficiency, and reliability must be the watchwords of all the measures deployed.

8. The Assembly underlines the need for the future strategy to have a clear goal in terms of setting standards at European level and encourages decision makers to focus on drawing up a legal binding instrument recognising an autonomous right to a healthy environment within the Council of Europe.

9. The Assembly reiterates that the nature, content and implications of the right to a healthy environment have been widely documented for decades and have been the subject of a wealth of scientific, normative and judicial material.

10. The Assembly welcomes the fact that almost all Council of Europe member States recognise the right to a healthy environment in one form or another in their national legislation and that some systems have already adopted an eco-centric view of this right.

11. In terms of governance, ecological transition will not take place without the buy-in of citizens because of its far-reaching impact on lifestyles. In the Assembly's view, this means that the future strategy must introduce concrete and ambitious measures to promote social acceptance of environmental policies, ensuring meaningful and fully-fledged citizen participation at national level.

12. In addition to compliance with environmental standards and policies, the Assembly encourages measures aimed at strengthening the resilience of the most vulnerable populations and ensuring their inclusion without discrimination in the transition to a sustainable future.

13. The Assembly believes that greater responsiveness can be achieved through the development of specialised environmental teams in all branches of governance. This approach should also be encouraged in the allocation of budgets to courts. For national parliaments to be involved in such developments and environmental policies in general entails that they too should have specialised bodies.

2. Draft resolution adopted by the committee on 25 March 2024.

14. In the light of these considerations, the Assembly calls on the Council of Europe member States to:

14.1. continue to reflect continuously at national level on the nature, content and implications of the right to a healthy environment so that, in the near future, this right will be recognised in law as an autonomous human right in each member State;

14.2. step up their efforts to promote, in all governance bodies, the legitimacy and added value of the Council of Europe playing a leading role in drawing up a binding legal instrument recognising an autonomous right to a healthy environment;

14.3. engage in innovative projects to transform environmental governance and in particular to:

14.3.1. encourage the introduction of effective citizen participation mechanisms at national level, such as citizens' assemblies on climate, to promote social acceptance of environmental policies;

14.3.2. provide a framework, structure and support for local initiatives targeting the populations most vulnerable to environmental problems, such as programmes designed to mobilise young people from working-class backgrounds;

14.3.3. support the creation of specialised environmental teams in all branches of governance.

B. Draft recommendation[3]

1. The Parliamentary Assembly refers to its Resolution ... (2024) “Mainstreaming the human right to a safe, clean, healthy and sustainable environment with the Reykjavik process”.

2. The Assembly maintains that the recognition of the right to a healthy environment must be based on a human rights approach. In this regard, it reaffirms its Recommendation 2211 (2021) “Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe”, in which it proposed complementary tools to achieve this.

3. The Assembly notes that the Council of Europe already offers a convention ecosystem covering many aspects of the right to a healthy environment. It sees this as an opportunity to capitalise on existing standards.

4. The Assembly therefore recommends that the Committee of Ministers:

4.1. actively support the work of the Intersecretariat Task Force on the Environment established following the 4th Council of Europe Summit, and carefully consider its proposals when drawing up a strategy and an action plan;

4.2. give utmost priority to implementing the encouragement made in Reykjavik to set up an *ad hoc* intergovernmental committee to organise, co-ordinate and run the implementation of the strategy and the action plan;

4.3. devote the normative part of the strategy to the formal recognition of the right to a healthy environment at the level of the Council of Europe, by developing a binding legal instrument as soon as possible;

4.4. in so doing, focus on the rapid implementation of Recommendation 2211 (2021), including devising a specific, autonomous instrument covering substantive rights and procedural matters relating to the environment that capitalises fully on the standards which have already been drawn up;

4.5. ensure that the draft convention superseding and replacing the Convention on the Protection of the Environment through Criminal Law (ETS No. 172), currently being prepared within the Council of Europe, incorporates the notion of ecocide as a criminal offense and establishes an effective monitoring mechanism;

4.6. give the *ad hoc* intergovernmental committee a multidisciplinary role, enabling it to act as an interface between the Council of Europe and civil society in its broadest sense and to carry out activities aimed at environmental monitoring and governance as soon as it has been set up;

4.7. highlight the committee’s added value in dealings with the Organisation’s other bodies, with which effective and focused partnerships may be established to drive forward change in environmental monitoring and governance;

4.8. set up a rapporteur group on environmental affairs at Committee of Ministers level to ensure unity and co-ordination in decision making.

3. Draft recommendation adopted by the committee on 25 March 2024

C. Explanatory memorandum by Mr Simon Moutquin, rapporteur

1. Introduction

1. The Committee on Social Affairs, Health and Sustainable Development tabled a motion for a resolution entitled “Mainstreaming the human right to a safe, clean, healthy and sustainable environment with the Reykjavik process”. The motion was referred to the committee for report on 23 June 2023 and I was appointed rapporteur on 19 September 2023.

2. Between 2021 and 2022, the United Nations Human Rights Council and General Assembly adopted resolutions explicitly recognising “the right to a clean, healthy and sustainable environment”. This recognition was in line with the development of regional human rights instruments which already incorporated this right.[4] In the wake of these developments, the Council of Europe became an exception: it is now the only regional human rights system which has not yet formally recognised this right. Therefore, it is not surprising that at the 4th Council of Europe Summit (held on 16 and 17 May 2023 in Reykjavik), the Heads of State and Government acknowledged “the urgency of additional efforts to protect the environment, as well as to counter the impact of the triple planetary crisis of pollution, climate change and loss of biodiversity on human rights, democracy and the rule of law”. The Parliamentary Assembly welcomes this.

3. Following the Reykjavik Declaration, in January 2024, the Secretary General set up a new Directorate for Social Rights, Health and Environment within the Directorate General Human Rights and Rule of Law, and in particular for the follow-up to the Reykjavik Process and the Environment. As a result, an Intersecretariat Task Force on the Environment was established, the first task of which was to take stock of existing activities, planned activities and proposals for new activities. It also proposed elements for the development of a first Council of Europe strategy on the environment.

4. At their 1498th meeting in May 2024, the Ministers' Deputies will follow up on the proposals of the Task Force. Some weeks after, in June 2024, the Steering Committee for Human Rights (CDDH) is expected to present the Committee of Ministers with its conclusions on the need for, and feasibility of, one or more instruments on human rights and the environment, following the work of the Drafting Group on Human Rights and the Environment (CDDH-ENV). At the end of the year, it will be the turn of the Committee of Experts on the Protection of the Environment through Criminal Law (PC-ENV) to pass on the results of its work to draw up a new convention on this issue.

5. This report follows on from my report on “Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe” and the related Resolution and Recommendation, which were adopted unanimously.[5] Almost one year on from the 4th Summit, it is intended to update and refine the Assembly’s position in view of the progress made and the political and legal stumbling blocks highlighted since 2021. The aim is to use this as a basis to present a roadmap of concrete priorities designed to respond to the challenges. This will make it possible for the Assembly to update its expectations at a strategic point in time, namely that of the beginning of the implementation of the undertakings made in Reykjavik with a view to securing the human right to a safe, clean, healthy and sustainable environment.

6. While financial, geopolitical and health crises have taken frontstage recently and overshadowed the attention which was paid in 2021 to the challenge of climate change, this is without any doubt the greatest existential emergency for humankind and requires immediate and concerted action.

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4. The right to a healthy environment is recognised in the African Charter of Human and Peoples’ Rights (Article 24), the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (Article 11) and the Arab Charter on Human Rights (Article 38). To this can be added the Human Rights Declaration of the Association of Southeast Asian Nations (ASEAN) (non-binding) and, in procedural matters only, the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

5. Doc. 15367, Resolution 2396 (2021) and Recommendation 2211 (2021).

2. Three major steps forward in the form of postulates

2.1. Progress towards giving the Council of Europe a leading role[6]

7. According to the United Nations Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, in 2019, over 80% of UN member States (156 out of 193) recognised the right to a healthy environment in their national legislation in one form or another.[7] The nature, content and implications of the right to a healthy environment have been widely documented for decades and have been the subject of a wealth of scientific, normative and judicial material.

8. On the European continent, some States have adopted specific laws, others have already incorporated an eco-centric view into their system and others have only codified environmental protection as a constitutional principle or objective.[8] The definition, scope, content and legal enforceability of the right therefore vary considerably from one State to another. Another factor, albeit present to differing degrees depending in particular on the States' commitments to environmental treaties, is the case law of domestic courts, which helps directly or indirectly to shape the right to a healthy environment at national level.[9] Indeed, in most States which recognise the right to a healthy environment in their national legislation, this right is enforceable before the administrative or constitutional courts.

9. Consequently, the reflection into the nature, content and implications of the right to a safe, clean, healthy and sustainable environment is under way and answers are being found at national level. The embedding process at this level has been set in motion and it will not stop. In Recommendation CM/Rec(2022)20 on human rights and the protection of the environment, the Committee of Ministers encouraged the member States to continue this process and to look on the right to a healthy environment as a key human right for the enjoyment of other human rights. The Reykjavik Declaration transformed this aim into an undertaking to actively consider recognising the right to a clean, healthy and sustainable environment at national level as a fully-fledged human right.

10. The fact that this recognition is not the result of a common or universal understanding of the substantive content of the right to a healthy environment among the Council of Europe member States should not act as any kind of curb on progress. This is an evolving and volatile fact, as the changes are rapid, as evidenced by the abundance of litigation proceedings pending before the courts of the Council of Europe member States. Nor has the lack of a common understanding ever prevented the European Court of Human Rights from gradually building up its case law on the environment or on any other subject.

11. Nonetheless, it seemed to me, that some member States have been using this lack of common or universal understanding as a pretext to distance themselves from the Council of Europe's work in this area, or even to deny it its legitimacy or its added value when it comes to environmental matters. At the end of the day, it is not of great matter that there is no common understanding. There is no question of the Council of Europe substituting itself for parliaments or governments – its aim is to provide them with a minimum standard.

12. The lack of a common understanding would on the contrary seem to indicate that the time has indeed come for the member States to define the content of this right and its function in the European context. This would allow them to clarify their understanding along shared lines while leaving them with some discretion to decide how to meet their obligations. Besides the political necessity for the Council of Europe, such a definition would have the advantage of guiding national legislation and would contribute greatly to legal certainty. It would also enable Council of Europe member States to influence any subsequent changes relating to the right to a healthy environment at international level.

2.2. Towards legally binding formalisation

13. The Assembly could welcome the fact that the CDDH-ENV has focused on the need and feasibility of one or more instruments establishing a legal recognition of the right to a healthy environment within the Council of Europe. The Assembly trusts that in the follow up to this work, the Committee of Ministers will go

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6. An overview of progress is presented from an academic viewpoint in the article by C. Heri, L. Nordlander and A. Savaresi, "Recognizing the Right to a Healthy Environment at the Council of Europe: Why Does it Matter?", published on the blog GNHRE on 5 January 2024.
7. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Human Rights Council (HRC), 30 December 2019, A/HRC/43/53.
8. «Manual on human rights and the environment», 3rd edition, Council of Europe, 2022, pp. 183 to 197.
9. L. Lavrysen, "Environmental Law in the Courts of Europe: A Rough Sketch" in Environmental Law before the Courts: A US-EU Narrative, Springer, 2023, pp. 201 to 230.

beyond the mere political recognition of the right to a healthy environment envisaged by the Reykjavik Declaration. Political recognition has been achieved at least since the political impetus given by the Georgian Presidency through the High-Level Conference of 2020 on Environmental Protection and Human Rights, which was taken up by the following presidencies[10] and, more recently, by Recommendation CM/Rec(2022)20 and by the Icelandic Presidency of the Committee of Ministers[11] and of course the Reykjavik Declaration itself.

14. We will assume therefore that the need to recognise an autonomous right to a healthy environment is no longer in doubt from a political viewpoint following the Reykjavik Summit. Any retreat from this position would not be credible.

15. The challenge of the post-Reykjavik period lies in formalising this right on a legal level. This is a real headache, which the CDDH-ENV has been trying to disentangle for three years now so that the Committee of Ministers can take an informed position.

16. I often hear it said that the Assembly's work carried out in 2021, which was at the core of the CDDH-ENV's work, focused on adding a protocol to the European Convention on Human Rights. This is partly true. We did indeed make the effort of preparing a draft protocol in advance to show that this was not an impossible task from a legal and semantic viewpoint.[12] This being said, this proposal was not exclusive and was designed to complement other options which the Assembly recommended to be considered in combination with one another.

17. We proposed thus to complement the other leading treaty of the Council of Europe protecting human rights (the revised European Social Charter (ETS No. 163)) through the explicit recognition of the right to a healthy, safe, clean and sustainable environment through an additional protocol; to consider drawing up a separate and comprehensive convention containing provisions on the "Five Ps" of Prevention, Prosecution of violations of the right to a safe, clean, healthy and sustainable environment, Protection of victims, so that the Contracting States adopt effective and Perennial "integrated Policies", including a supranational monitoring mechanism along the lines of a committee of independent experts; and to revise Recommendation CM/Rec(2016)3 on human rights and business.

18. The heart of the campaign and the Assembly's position therefore were to work at least towards the preparation of a legally binding Council of Europe instrument to guarantee the right to a safe, clean, healthy and sustainable environment.[13] This should still be the Assembly's position three years on.

19. This position is all the more true since, in the meantime, the Council of Europe member States all voted, on 26 July 2022, in favour of recognising this right in a non-binding legal instrument, namely Resolution 76/300 of the General Assembly of the United Nations.[14] This is an approach which the Reykjavik Declaration proposed to retain (Appendix V, point i). I see no interest, save a purely symbolic one, in reproducing the content of this resolution in a non-binding form in the framework of the Council of Europe.

2.3. Towards the recognition of an autonomous right to a healthy environment

20. The Assembly's efforts to recognise an autonomous right to a safe, clean, healthy and sustainable environment go back to 1999 and were given new impetus in 2021 through Resolution 2396 (2021) and Recommendation 2211 (2021) "Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe".[15]

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10. Final Declaration of 27 February 2020 at the end of the High-Level Conference on Environmental Protection and Human Rights organised under the aegis of the Georgian Presidency of the Committee of Ministers. Joint Declaration on human rights and the environment by the outgoing presidency (Georgia) and the incoming presidencies (Greece and Germany) of the Committee of Ministers, 5 May 2020. See also E. Lambert, "Introductory Report to the High-level Conference on Environmental Protection and Human Rights".

11. See the priorities for the Presidency of the Committee of Ministers (CM/Inf(2022)23-rev, 27 mars 2023) and the Stocktaking of the Icelandic Presidency (CM/Inf(2023)9, 2 June 2023).

12. This draft is appended to Recommendation 2211 (2021) and recognises each individual's right to a healthy environment, which is defined as the right of present and future generations to live in a healthy environment. Its general principles include transgenerational responsibility, equity and solidarity, prevention, precaution, non-regression, *in dubio pro natura* and the prohibition of environmental and intergenerational discrimination. It also lists procedural rights of access to environmental information, rights of consultation on projects with an impact on the environment and biodiversity, and access to justice and effective remedies relating to the environment.

13. Report, Doc. 15681, "The Reykjavik Summit of the Council of Europe: United around values in the face of extraordinary challenges", para. 16.2.

14. A/76/L.75, Resolution adopted by 161 votes for, none against and 8 abstentions.

21. By recognising an autonomous right, what we mean is a recognition which goes beyond the "greening" of the human rights contained in the European Convention on Human Rights and the revised European Social Charter, which was made necessary by the impact on respect for fundamental rights of the deterioration of the environment and the climate. I will not dwell therefore on the progressive integration of environmental protection into the case law of the Court due to the failure to respect the right to life (Article 2) in the most serious cases, or the right to a private life (Article 8) in cases of "serious breaches" with an adverse impact on the well-being or health of citizens, or on the case law of the European Committee of Social Rights (ECSR) in its work of interpreting the right to protection of health (Article 11). However much this might teach us, it is an indirect and fragmented approach which falls far short of the real and current challenges. The Court sums this up perfectly: the crucial element which must be present in determining whether, in the circumstances of a case, environmental pollution has adversely affected one of the rights safeguarded by the Convention is the existence of a harmful effect on a person's private or family sphere (or a person's life or health) and not simply the general deterioration of the environment.[16] Similarly, the ECSR has been able to decide that a State party is not in conformity with the Charter under the "right to a healthy environment" because of the shortage of measures taken to protect the health and safety of the persons concerned[17] or to guarantee access to adequate housing.[18]

22. The outcome of climate cases pending before the European Court of Human Rights should not fundamentally change matters in this respect.[19] At best, these cases will be a test to determine whether the Convention system, as it is currently designed, is suited to countering the indirect infringements resulting from damage linked to climate change.[20] In addition, supposing the Court examines the substance of these cases, it is difficult to see how a more obvious "greening" of human rights would be politically desirable in view of the risk that the Court will thereby be in a position to impose economic and political choices regarding the environment on governments. I emphasise this point to counter the argument long used by the Committee of Ministers to oppose the Assembly's calls for recognition of the autonomous right to a healthy environment, lastly in its reply to Recommendation 2211 (2021).[21] In the Assembly's view, only a move by governments to recognise this right is essential and will enable the Council of Europe to remain legitimate in the 21st century.

23. The aforementioned campaign by the Assembly was the starting point for the current debate on the recognition of the right to a healthy environment at the Council of Europe. At its final meeting (19-21 March 2024), the CDDH-ENV completed the task for which it was appointed by the CDDH, namely its assessment of the options tabled by the Assembly and civil society. The approach adopted was intended to be all-embracing insofar as each option was considered on its own and in combination with others so as to highlight how each option or combination of options could offset the shortcomings of others.

3. The need for realism in paving the way after Reykjavik

3.1. May the end not compromise the means

24. The final decisions on the follow-up to the Reykjavik Summit's environment goals are for the governments to take, as represented at the Council of Europe by the Ministers and their Deputies. The Assembly's role at this stage is to give its opinion on the minimum orientations needed to get the most out of the activities under way and to trace the outlines of the strategy.

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15. Recommendation 1431 (1999) "Future action to be taken by the Council of Europe in the field of environment protection"; see also Recommendation 1614 (2003) "Environment and human rights" and Recommendation 1885 (2009) "Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment".

16. See, on the subject of Article 8 of the Convention: Kyrtatos v. Greece, application no. 41666/98, para. 52, judgment of 22 May 2003 and Cordella and Others v. Italy, applications nos. 54414/13 and 54264/15, para. 101, judgment of 24 January 2019.

17. Under Articles 3 (the right to safe and healthy working conditions) and 11 (right to protection of health) of the revised Charter, Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision of 6 December 2006.

18. Under Article 31 of the revised Charter (right to housing), Médecins du Monde – International v. France, Complaint No. 67/2011, decision of 11 September 2012.

19. Verein KlimaSeniorinnen and Others v. Switzerland, application no. 53600/20, Carême v. France, application no. 7189/21, and Duarte Agostinho and others v. Portugal and 32 other member States, application no. 39371/20.

20. See on this subject, the contribution by N. Kobylarz, "Anchoring the Right to a Healthy Environment in the European Convention on Human Rights: What Concretized Normative Consequences Can Be Anticipated for the Strasbourg Court?", in Environmental Law before the Courts: A US-EU Narrative, Springer, 2023, pp. 153 to 201.

21. Doc. 15623.

25. It is important to set a clear goal. In this respect, the Assembly should encourage the decision makers, having confirmed that the Reykjavik process was officially launched in political terms, not to fall short of the postulates which this report has reiterated above and to centre a part of the strategy on drawing up a binding legal instrument recognising an autonomous right to a healthy environment within the Council of Europe.

26. After this, it is crucial, for the means deployed as part of the strategy, to be based on high standards in terms of accountability: transparency, ethics, accessibility, responsibility, efficiency and reliability must thread themselves through all the measures deployed. The post-Reykjavik environment strategy will be implemented by and for the young generations and must be supported by civil society. Our course must be resolutely set for the future, and we should be setting the bar high, as the Council of Europe will be held accountable for decades to come.

3.2. An approach based on human rights but not only

27. What approach should we take? Clearly, we should continue to favour the human rights-based approach dating back to the Stockholm Conference of 1972 and firmly reiterated in the Reykjavik Declaration. We cannot emphasise too much that it proclaims a form of "public order" linked to ethics and human dignity with which the environment is closely connected.

28. We should not abandon the approach that the Assembly has advocated for decades (see above), but it is becoming increasingly obvious, with the speed at which environmental problems are growing and intensifying, that a new reality has emerged: the right to a healthy environment is unique, it "is both a human right and a right transcending humankind",[22] and it relates to a shared human asset belonging to present and future generations. Bearing this in mind, the Council of Europe's standard human rights treaties may prove too narrow and ill-equipped to guarantee environmental human rights effectively as they are obliged to propose one-off solutions at a (quasi)individual level to global problems.[23]

29. It seems inevitable therefore that as we devise future norms, we will be forced to question the anthropocentric nature of the right to a healthy environment and rethink the approach centring on individual rights when drafting an autonomous convention. Such a process will moreover allow for the standard-setting process in the environmental sphere to progress notwithstanding the current priority of the Convention, namely the accession process of the European Union, which is now accepted and likely to mobilise energies for several years to come.

3.3. An inclusive format drawing from the framework of existing conventions

30. The Council of Europe's experience in protecting the environment goes beyond human rights, covering the ecological management of landscapes, protection of wildlife, public health and a multitude of procedural requirements which are needed to promote the environmental cause. The preamble to Appendix V to the Reykjavik Declaration recognises this legitimacy.

31. Indeed, the diversity of the standard-setting arsenal which the Council of Europe has set up through its compulsory norms is indisputable. The Convention on the Conservation of European Wildlife and Natural Habitats (1979, ETS No. 104, "Bern Convention") is a unique international instrument. The Landscape Convention (2000, ETS No. 176, "Florence Convention"), initiated by the Congress of Local and Regional Authorities, covers all the dimensions of the landscape. On a procedural level, the Council of Europe's contribution is also highly developed. The Convention on Access to Official Documents (2009, CETS No. 205, "Tromsø Convention") concerns access to information, access to public participation in decision-making processes and access to justice, particularly in the environmental sphere. The Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment (1993, ETS No. 150, "Lugano Convention")[24] grants *locus standi* to environmental associations and foundations, establishes the polluter pays principle and recognises pure ecological damage. The Convention on the Protection of the Environment through Criminal Law (1998, ETS No. 172),[25] which is currently being replaced, was the first international instrument to make it compulsory to criminalise environmentally damaging behaviour.

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22. E. Gaillard, "Pour une approche systémique, complexe et prospective des droits de l'homme" ["For a systemic, complex and prospective approach to human rights]", in Changements environnementaux globaux et droits de l'homme, Bruylant, Bruxelles, 2012, p. 52.
23. E. Lambert, "Comment rendre crédible et effective la protection des droits humains écologiques par le Conseil de l'Europe?" ["How to make the protection of environmental human rights by the Council of Europe credible and effective"], *Revue trimestrielle des droits de l'Homme* 2020/3 (no. 123), pp. 609 to 628.
24. Dormant convention, 5 ratifications.
25. Dormant convention, 3 ratifications.

32. This diversity presents an opportunity to consider all the aspects of the right to the environment and devise a specific, autonomous and inclusive instrument covering substantive rights and procedural matters. It encourages us to capitalise fully on the standards which have already been drawn up.

33. This will enable the member States to rationalise the undertakings they have already entered into while working towards new commitments where they prove essential for the proper respect of life on earth. A priority task in this area will be standard-setting work on the responsibility of private sector partners. There is no shortage of codifying instruments in this field. The United Nations Guiding Principles on Business and Human Rights,[26] Recommendation CM/Rec(2016)3 on human rights and business and the Guidelines for Multinational Enterprises on Responsible Business Conduct[27] of the Organisation for Economic Co-operation and Development (OECD) will help the Council of Europe gain time in drawing up and expanding responsible business conduct standards. We are also awaiting the imminent results of the work of the *ad hoc* drafting group of the Standing Committee of the Bern Convention, initiated in 2022, aimed at strengthening and ensuring the sustainability of its financing system.[28]

34. In the same vein, we can fully support the terms of reference of the PC-ENV appointed by the Committee of Ministers in 2022 to draft a new convention on the protection of the environment through criminal law. In certain respects, the initial convention of 1998 had to be clarified and updated. This momentum should not be lost by waiting for the formal adoption of the EU Directive on the protection of the environment through criminal law intended to replace Directive 2008/99/EC.[29] Referring to Resolution 2477 (2023) and Recommendation 2246 (2023) "Environmental Impact of Armed Conflicts", I am of the opinion that the Council of Europe stands to gain by thinking bigger and moving away from the notion of qualified infringement as outlined in the Directive, to embrace that of "ecocide" and establish an effective monitoring mechanism.

4. A dynamic triangle empowered by suitable and adaptable modes of governance

35. In addition to the normative aspect, a key element of the strategy will be to demonstrate creativity and develop a genuine strategic vision regarding the modes of governance, including monitoring and co-operation.

4.1. Priority number one – the Reykjavik Committee

36. The Reykjavik Declaration contains a truly groundbreaking feature, namely a call to create a "new intergovernmental committee on environment and human rights"; it also acknowledges that the Council of Europe has "both the tools and the structures to address human rights and the environment, in the spirit of co-operation and by sharing experience and promising practice".

37. The foremost urgency, immediately following the ministerial session of May 2024, lies in the establishment of this *ad hoc* committee to organise, co-ordinate and run the implementation of the Strategy and the action plan, not only from a standard-setting viewpoint (see above) but also in terms of governance. This operational committee, whose cross-cutting tasks will call for close internal co-operation between the various sectors of the Secretariat, will work closely together with the recently established intersecretariat Task Force.

38. The Assembly is not against the idea of the Reykjavik Committee being made up of intergovernmental experts if they benefit from the expertise and responsiveness of specialised ministries. Its working methods could be based initially on those of the European Commission against Racism and Intolerance (ECRI) at the time of its creation and centre on three main activities: collecting and promoting examples of good practice on a country-by-country basis, making practical recommendations to States, and ensuring interaction with civil society in its broadest sense, namely the scientific and academic world, youth associations, citizens' movements, environmental campaigners and groups speaking on behalf of people who are the most

26. The Guiding Principles on Business and Human Rights implement the UN "Protect, Respect and Remedy" Framework. The Human Rights Council approved the Guiding Principles in Resolution 17/4 of 16 June 2011.
27. The OECD Guidelines are recommendations addressed by governments to multinational enterprises. They cover all the main areas of business responsibility, including human rights, environment, disclosure, science and technology, competition, and taxation. The 2023 edition provides updated recommendations across key areas, such as climate change, biodiversity, technology, business integrity and supply chain due diligence, etc.
28. Report of the 43rd meeting of the Standing Committee of the Bern Convention held in Strasbourg from 27 November to 1 December 2023 (section 3.1).
29. The final compromise text was made public on 1 December 2023 and adopted by the European Parliament on 27 February 2024.

economically and socially vulnerable or most exposed to environmental degradation. It goes without saying that the Reykjavik Committee can count on the support of the Assembly and its Parliamentary Network for a Healthy Environment to disseminate its work in national parliaments.

4.2. A creative role under constraint

39. It is clear from the information available to the Assembly that the Reykjavík Committee will immediately face a constraint, namely the limited means provided for in the 2024-2025 budget to deploy the projects and activities for the implementation of the commitments made in Reykjavik. However, the budget can and should be revised for 2025. The Reykjavik Committee will have to play a creative role, capitalising on the Organisation's existing capacity and resources. I propose three projects focusing on methods of environmental governance which could be launched without additional resources and would reflect the added value and visibility of the Council of Europe without delay.

40. The first would be to contribute to the construction of social acceptance of environmental policies through fully-fledged citizen participation at national level. Because of its far-reaching impact on lifestyles, ecological transition will not take place without the consent of citizens and this calls for a change to the rules of the game based on a bottom-up model. Several European States have already seen the development of very interesting local initiatives such as the emergence of a new deliberative model for environmental policy making through the creation of citizens' assemblies on climate[30] or support and education for groups of young people from working-class backgrounds to mobilise around entrepreneurs,[31] which should be supervised, structured and promoted to increase their legitimacy and their public profile. Within the Council of Europe, the Reykjavik Committee could draw on the experience and activities of the Congress of Local and Regional Authorities and establish a partnership with this institution, which is increasingly present in this field.

41. I seek to go beyond mere compliance with environmental norms and policies. My ultimate goal is to integrate a social perspective into all environmental public policies. Recognising that the most vulnerable populations are often the first affected by environmental challenges, we must promote initiatives that not only protect our environment but also strengthen the resilience of marginalised communities and ensure their inclusion in the transition to a sustainable future.

42. The second is to promote the development of specialised environmental teams at all levels of governance and hence improve the response potential. At government level, besides encouraging the creation of ministerial portfolios focusing on the environment, there has been a boom in the creation of specialist agencies or bodies tasked with advising the government, and this would be worth cultivating. This approach should also be promoted when equipping the courts, whether it be through specialised judicial bodies, specialist court divisions or special summary environmental proceedings. Whether judicial, administrative or constitutional, national or international, they are all concerned and climate justice stands to gain from greater expertise. For national parliaments to be involved in such developments and environmental policies in general entails that they too should have specialised bodies. At the Council of Europe level, the Reykjavik Committee will report to the Committee of Ministers, which could set up a rapporteur group on environmental affairs. It could also work with the European Commission for the Efficiency of Justice (CEPEJ) to investigate the benefits of setting up a working group on ways of increasing the efficiency of climate justice.

43. The third relates to the enhancement in practice of legal protection for environmental defenders. The Council of Europe Commissioner for Human Rights has made recommendations on the way in which the stakeholders could better protect and support their work.[32] In the context of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ("Aarhus Convention"), a rapid response mechanism has been established to protect environmental defenders and a first Special Rapporteur for this new system has been appointed.[33] The Reykjavik Committee could contribute to the establishment of a legal support programme specially designed for such defenders.

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30. An overview of citizens' assemblies in Europe is provided in "Les assemblées citoyennes Nouvelle utopie démocratique" ["Citizens' assemblies – A new utopia?"], Marthe Fatin-Rouge Stefanini and Xavier Magnon (ed.), DICE publishers 2022 (https://books.openedition.org).

31. One example among many others is the NGO makesense which runs projects throughout the world to inspire and equip citizens, entrepreneurs and organisations to build an inclusive and sustainable society (https://france.makesense.org/organisations/associations-et-ong/transition-juste/).

32. "Environmental Rights Activism and Advocacy in Europe Issues, Threats, Opportunities" – Report on the on-line Round-table with Environmental Human Rights Defenders and Activists on 18 December 2020 by the Office of the Council of Europe Commissioner for Human Rights.

4.3. The Grail – a complaints and monitoring mechanism

44. In the longer term, the most effective governance tool which comes to mind, because of the experience acquired by the Organisation in human rights through the European Court of Human Rights and the European Committee of Social Rights, is the introduction, at the Council of Europe level, of a complaints mechanism against State and non-State bodies and an environmental monitoring procedure.

45. Embarking on such an ambitious project will require major analytical, logistical and financial means. Nor would it be possible for the Reykjavik Committee, at first glance, to go ahead with this without conducting a feasibility study to complement that already carried out by the CDDH-ENV, geared to the choices that the Committee of Ministers will have made about the normative step forward.

46. The Council of Europe has established robust models that have proven their effectiveness and could serve as inspiration. In addition to expanding the jurisdiction of treaty bodies through the addition of substantive rights, the Assembly had discussed in 2021 the establishment of an independent expert committee, such as the Group of Experts on Action against Trafficking in Human Beings (GRETA), the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) or the ECRI.[34] More ambitious models could also fuel the debate such as the European Commission for Democracy through Law (Venice Commission) and the Commissioner for Human Rights.

47. In my view, the option which seems most in keeping with the current challenges is the appointment of a special representative of the Secretary General for environment and human rights. His or her task would be to examine complaints and, in connection with this, but also on his or her own initiative, to lead investigations and carry out analyses and assessments on specific environmental issues, by examining, with the help of a team with an adequate and stable budget, environmental policies, practices and consequences in the member States.

48. This special representative could be given the power to call on independent experts enabling him or her to outsource the establishment of scientific facts. Environmental matters are often very complex and call on the advanced scientific knowledge in the areas of climate, health, environment, biodiversity, natural disasters, etc. It is important for the Council of Europe to set an example and not to use this complexity as a pretext to remain inactive.

49. A special representative would also raise the profile of the Reykjavik Committee and would enable the Council of Europe to be represented at a technically and politically high level in world events and forums on environmental issues.

5. Conclusion

50. The follow-up to the Reykjavik Declaration is a living process, many parameters of which will be discussed and analysed over the long term. For the moment, this follow-up lacks a binding element to bring all the work together. It is to be hoped that this contribution by the Assembly will provide a source of inspiration and that the Committee of Ministers will shift its position so that it can contribute unequivocally to efforts to remedy the shortcomings.

51. This will require resolute political action and commitments, along with the budgetary resources needed to build a comprehensive and efficient Council of Europe framework for the protection of the environment and counter the impact of its degradation on human rights, which is the extraordinary challenge of our times.

52. I would point out that the Council of Europe's raison d'être and credibility are at stake. The Organisation is expected, especially by the younger generations, to make up the time lost. I hope that this report will be the last to note for the umpteenth time the disparity between the Assembly's decades-long call for the Council of Europe to step up its environmental activities and the actual progress in this area.

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33. At its 7th session (Geneva, 18-21 October 2021), the Meeting of the Parties to the Aarhus Convention adopted Decision VII/9 on a rapid response mechanism in the form of an independent Special Rapporteur on environmental defenders.

34. Doc. 15681, op. cit.