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Towards a Unified Path of Environmental Protection? European Regional Courts and Climate Litigation

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Riassunto in italiano

Il contenzioso climatico è un fenomeno di portata globale in costante crescita, nel quale soggetti privati e ricorrenti individuali, solitamente supportati da associazioni ambientaliste e organizzazioni non governative, utilizzano gli strumenti giudiziari con l'obiettivo di contestare le politiche e le legislazioni climatiche statali giudicate insufficienti a contrastare il cambiamento climatico. Secondo i criteri del Sabin Center's Climate Change Litigation Database, rientrano in questa categoria le controversie che hanno come oggetto del contendere il diritto, le politiche pubbliche o le evidenze scientifiche legate al clima e che riguardano in particolare mitigazione, adattamento o risarcimento dei danni. In questo scenario, il cambiamento climatico rappresenta una sfida senza precedenti per i sistemi giuridici europei, che pur avendo tradizioni procedurali e sostanziali differenti, manifestano una progressiva convergenza. Muovendo da tali premesse, la presente ricerca mira a verificare se l'interazione, in termini di dialogo o latente tensione, tra la Corte di Giustizia dell'Unione Europea (CGUE) e la Corte Europea dei Diritti dell'Uomo (CEDU) stia effettivamente contribuendo all'emergere e al consolidamento di uno standard normativo e giurisdizionale unificato per la protezione dell'ambiente in Europa.

Il primo capitolo mappa le fonti di diritto internazionale e sovranazionale che legittimano l'intervento delle due Corti europee. L'analisi dell'evoluzione del diritto internazionale in materia ambientale, a partire dalla Dichiarazione di Stoccolma del 1972 sino ad arrivare all'Accordo di Parigi del 2015, e includendo i recenti esiti della trentesima sessione della Conferenza delle Parti (COP30) dell'UNFCCC svoltasi in Brasile lo scorso novembre, dimostra come concetti cardine quali sviluppo sostenibile e i diritti procedurali sanciti dalla Convenzione di Aarhus del 1998 siano ormai integrati negli strumenti internazionali sul clima. Tuttavia, l'architettura internazionale manifesta intrinseche debolezze sostanziali. Un'analisi dettagliata dell'Accordo di Parigi evidenzia come quest'ultimo imponga precisi obblighi procedurali, quale la sottomissione di Contributi Determinati a Livello Nazionale (NDCs), ma ometta obblighi sostanziali vincolanti di mitigazione, nonché l'adozione di specifiche sanzioni in caso di inadempimento.

In questo contesto, a partire dal Vertice di Parigi del 1972, sede in cui la protezione ambientale venne designata quale una nuova sfera dell'azione comunitaria, l'Unione Europea ha progressivamente intensificato il proprio attivismo in materia, dando vita a un imponente corpus normativo sovranazionale. Tale evoluzione ha visto la sua formale consacrazione con l'inclusione della protezione ambientale tra gli obiettivi fondamentali dell'Unione ai sensi dell'Articolo 3 del Trattato sull'Unione europea (TUE).

Inoltre, gli Articoli 11 e 191-193 del Trattato sul funzionamento dell'Unione Europea (TFUE) conferiscono alle istituzioni dell'Unione la competenza di legiferare in materia ambientale. Si tratta di una competenza condivisa tra gli Stati membri e l'Unione stessa, nell'ambito della quale entrambi sono legittimati a adottare atti giuridicamente vincolanti. I principi cardine dell'azione climatica europea, codificato all'Articolo 191 TFUE, includono i criteri di precauzione, prevenzione, correzione alla fonte e il principio "chi inquina paga". Tali principi sono alla base dell'attività del legislatore comunitario, sebbene la giurisprudenza prevalente escluda la loro diretta invocabilità da parte dai singoli per imporre misure rimediali immediate. Sul piano del diritto derivato, l'Unione ha progressivamente formalizzato i propri impegni climatici attraverso la Legge Europea sul Clima (Regolamento 2021/1119), la quale rende giuridicamente vincolante l'obiettivo di neutralità climatica da raggiungere entro il 2050. Infine, a seguito del formale riconoscimento del formale riconoscimento del medesimo valore giuridico dei trattati sancito dall'entrata in vigore del Trattato di Lisbona, la Carta dei Diritti Fondamentali dell'Unione Europea si è affiancata alle fonti di diritto primario. In questo quadro, l'Articolo 37 prescrive l'integrazione di un alto livello di tutela ambientale nelle politiche dell'Unione, assumendo una preminente valenza interpretativa nell'applicazione dell'ordinamento europeo.

La stretta correlazione tra l'aggravarsi degli effetti del cambiamento climatico e le relative ripercussioni sul godimento dei diritti umani è stata formalmente riconosciuta dal preambolo dell'Accordo di Parigi. È in questo scenario che risulta fondamentale l'analisi della Convenzione Europea dei Diritti dell'Uomo (CEDU), adottata nel 1950 nell'ambito del Consiglio d'Europa. La Convenzione garantisce la tutela dei diritti civili e politici a tutti i soggetti sottoposti alla giurisdizione dei suoi 46 Stati membri; la CEDU è stata successivamente ampliata e integrata da 16 Protocolli addizionali, vincolanti esclusivamente per gli Stati che li abbiano formalmente ratificati. La Corte Europea dei Diritti dell'Uomo è stata istituita con la specifica funzione di assicurare l'osservanza degli obblighi derivanti dalla Convenzione da parte degli Stati contraenti. Nell'esercizio della sua attività, la Corte applica diversi principi and dottrine giuridiche, tra cui spiccano i criteri di sussidiarietà, il margine di apprezzamento statale e il principio di proporzionalità, unitamente alla configurazione di obblighi positivi e negativi. Nonostante il testo della Convenzione non codifichi un diritto autonomo all'ambiente salubre, l'interpretazione evolutiva promossa dalla Corte di Strasburgo consente l'applicazione dei diritti civili e politici tradizionali alle istanze e ai ricordi di matrice ambientale e climatica. Questo processo di estensione interpretativa viene definito in dottrina come "greening of human rights" (ecologizzazione dei diritti umani).

Il secondo capitolo mette a confronto i due sistemi sul piano procedurale e sostanziale. La principale criticità strutturale dell'ordinamento dell'Unione Europea risiede nelle rigide barriere di accesso alla CGUE nell'ambito del ricorso per annullamento (Articolo 263 TFUE). In virtù della storica formula Plaumann, i ricorrenti non privilegiati, ovvero i singoli individui e le ONG, devono dimostrare che l'atto impugnato li colpisca a causa di qualità personali o circostanze atte a distinguerli da qualsiasi altro soggetto. Nel celebre contenzioso climatico *Carvalho e altri c. Parlamento e Consiglio* (2021), la Corte di Lussemburgo ha confermato tale approccio dottrinale, stabilendo che il fatto che il cambiamento climatico colpisce, seppur con modalità differenti l'intera popolazione, non legittima i privati a impugnare misure di applicazione generale. Tale rigida interpretazione genera una tensione con i dettami della Convenzione di Aarhus, della quale l'Unione e i suoi Stati membri sono parti contraenti. Di conseguenza, come evidenziato dalla stessa giurisprudenza di Lussemburgo, la tutela ambientale si sposta interamente sulla cooperazione giudiziaria tramite il rinvio pregiudiziale di validità o interpretazione ai sensi dell'Articolo 267 TFUE, sollevato dai giudici nazionali. Parallelamente, come precedentemente accennato, mediante la dottrina dello "strumento vivente" (living instrument), la Corte di Strasburgo ha progressivamente incorporato la tutela ambientale per via interpretativa, legandola specificatamente all'Articolo 2 (diritto alla vita) e all'Articolo 8 (diritto al rispetto della vita privata e famigliare) della Convenzione. La vera svolta per quanto riguarda la legittimazione ad agire (*locus standi*) si è verificata con storica sentenza *KlimaSeniorinnen* (2024). Consapevole della natura della crisi climatica, la CEDU, pur mantenendo criteri restrittivi di "status di vittima" per i singoli individui (Articolo 34 CEDU), il quale richiede una soglia elevata di esposizione personale e un bisogno urgente di protezione, ha riconosciuto la legittimità ad agire per le associazioni ambientaliste e alle ONG ambientali che possiedano determinati requisiti statuari e di rappresentatività.

Dal punto di vista sostanziale, la Corte di Strasburgo ha stabilito che gli Stati contraenti hanno l'obbligo positivo di adottare un quadro legislativo e amministrativo interno, quantificabile e vincolante, volto a mitigare le emissioni di gas serra e implementare misure volte alla riduzione degli impatti negativi sulla salute e sul benessere, in conformità con i parametri dell'Accordo di Parigi. Direttamente radicato negli Articoli 2 e 8 CEDU è inoltre l'obbligo attivo degli stati di diffondere le informazioni sui rischi per la salute, in linea con l'Articolo 10 CEDU. Per quanto riguarda l'Unione, la Corte di Giustizia ha rafforzato il rispetto delle norme interpretando il diritto derivato dell'UE in materia ambientale come idoneo a generare diritti in capo ai cittadini, qualora i valori volti a proteggere la salute umana vengano superati (cause *Commissione c. Germania*, 1991 e *Craeynest*, 2019). La Carta dei Diritti Fondamentali opera in questo ambito sia come "scudo" sia come "spada: essa è stata utilizzata per spingere verso standard più alti di tutela in nome dell'interesse generale alla protezione ambientale (causa *Standley*, 1999).

Il terzo capitolo esamina la possibilità di configurare un quadro europeo unitario di protezione climatica, evidenziando le principali divergenze attuali, le sinergie nascenti e i futuri sviluppi normativi con uno sguardo alle corti internazionali. Dall'analisi emerge chiaramente come persistano punti di attrito procedurali e sostanziali tra le due Corti. Viene in primo luogo evidenziata la rigidità della formula Plaumann e dello "status di vittima" all'interno del sistema CEDU, due elementi che ostacolano la legittimazione ad agire nel contenzioso climatico. In aggiunta, si riscontra la difficoltà delle Corti sovranazionali europee di fronte ai danni climatici transfrontalieri. In questo contesto, il capitolo guarda alle soluzioni esterne offerte dalla Corte Interamericana dei Diritti Umani e del sistema costituzionale del Sudafrica, come possibili modelli a cui ispirarsi per superare questi limiti. Infine, un ulteriore punto di divergenza risulta essere il diverso approccio sostanziale: da un lato l'approccio tecnico-legislativo dell'UE, basato sul diritto derivato, e dall'altro quello orientato ai diritti umani CEDU. Questa distanza è amplificata dal ritardo nell'adesione formale dell'UE alla CEDU, dinamica che rischia di creare discrepanza nei due sistemi che operano nella stessa area geografica e che interpretano standard simili in materia di diritti umani. Nonostante i punti di frizione appena sottolineati, vi sono due fattori che stanno avvicinando le due giurisdizioni. Anzitutto, le due Corti utilizzano gli stessi trattati internazionali come parametri per guidare i propri giudizi.

Infatti, l'Accordo di Parigi viene impiegato dalla CEDU come parametro per stabilire se lo stato violi i diritti umani omettendo di ridurre le emissioni, mentre la CGUE lo usa invece come punto di riferimento per l'interpretazione delle leggi europee, come quelle collegate al Green Deal. Inoltre, la Convenzione di Aarhus ha portato all'adozione del Regolamento (UE) 2021/1767, ampliando la possibilità ai privati di chiedere il riesame degli atti amministrativi europei e la CEDU ha utilizzato il medesimo accordo internazionale per ampliare lo scopo procedurale della CEDU. Oltre a ciò, si registra una progressiva convergenza nel facilitare l'accesso ai tribunali per le associazioni ambientaliste, come dimostrato dal caso *KlimaSeniorinnen* (2024) e dalla sentenza della CGUE *Deutsche Umwelthilfe* (2022). In quest'ultima, la Corte di Lussemburgo ha riconosciuto il diritto delle associazioni ambientalistiche di contestare gli atti amministrativi nazionali che violano il diritto ambientale dell'UE.

Dopo aver constatato che non esiste ancora, allo stato attuale, uno standard normativo e giurisdizionale unificato per la protezione dell'ambiente in Europa, dinamica emersa grazie all'analisi dei maggiori punti di frizione e convergenza dei due sistemi sovranazionali europei, il lavoro di tesi si conclude con la disanima del principio di equità intergenerazionale e del diritto autonomo ad un ambiente salubre (R2HE). Tale istanza impone doveri specifici di conservazione delle risorse, nonché di prevenzione e compensazione dei danni, stabilendo che le generazioni future titolino dello stesso diritto ad un ambiente sano rispetto a quelle presenti. In quest'ottica, tribunali nazionali oltreoceano ad esempio nelle Filippine e negli Stati Uniti, unitamente a corti internazionali quali la Corte Internazionale di Giustizia e la Corte Interamericana dei Diritti Umani, hanno riconosciuto la legittimazione ad agire di minori e generazioni non ancora nate, sancendo l'obbligo di considerare le posterità nelle decisioni odierne. Anche nel panorama europeo, casi emblematici come *Urgenda* (2015) e la Corte costituzionale tedesca (2021) hanno censurato l'illegittimità di politiche volte a sacrificare le libertà future in nome di vantaggi economici immediati. Sebbene i Trattati istitutivi dell'UE non tutelino esplicitamente le generazioni future, il capitolo analizza come l'equità intergenerazionale possa diventare un principio generale del diritto comunitario. Ciò avverrebbe attraverso, inter alia, l'equilibrio tra gli interessi a breve e lungo termine sancito dall'Art. 3(3) del TUE, o tramite il paradigma dello sviluppo sostenibile. Infine, nella sentenza *KlimaSeniorinnen*, la Corte di Strasburgo ha formalizzato l'importanza di una ripartizione equa dell'onere intergenerazionale, arginando il rischio che gli interessi politici brevi possano prevalere sulla sostenibilità di lungo periodo.

Riconosciuto formalmente dall'Assemblea Generale delle Nazioni Unite nel 2022, il diritto a un ambiente sano (R2HE) si articola in una dimensione sostanziale, che include, ad esempio, l'accesso ad aria e acqua pulita, e in una dimensione procedurale, quale accesso alle informazioni e il diritto di accesso alla giustizia. Inoltre, tale diritto supera il classico approccio antropocentrico di protezione ecologica orientato all'utilità dell'uomo, per abbracciare una dimensione oggettiva: l'ambiente è tutelato in quanto tale, secondo il principio *in dubio pro natura*.

In seno al Consiglio d’Europa, gli Stati membri hanno storicamente respinto l’adozione di un protocollo specifico sulla base del fatto che la CEDU garantisse già una protezione ambientale grazie all’interpretazione “verde” dei diritti contenuti all’interno della Convenzione stessa. Conseguentemente, casi di puro danno ecologico venivano sistematicamente dichiarati inammissibili. L’adozione di un protocollo dedicato al R2HE non solo permetterebbe di garantire parità tra gli interessi ambientali e la salvaguardia dei diritti umani, ma potrebbe inoltre spianare la strada al riconoscimento di tale diritto quale principio generale dell’ordinamento dell’Unione, alla luce della sua già diffusa codificazione nelle tradizioni costituzionali di ben 15 Stati membri dell’UE. In conclusione, entrambi i concetti si configurano come uno strumento per proiettare il diritto europeo oltre la mera tutela individuale e presentista, introducendo una nuova dimensione temporale ed ecologica capace di favorire una più profonda convergenza tra i due sistemi sovranazionali.

Introduction

Today, human-made climate change is widely acknowledged as one of the foremost challenges of our time. Extreme weather conditions and events, such as droughts, higher sea levels, frequent and more intense heat waves, as well as severe storms and floods, are dramatically affecting all regions of the world. Scientific reports predict that many aspects of climate change, which are induced by air pollutants emitted into the atmosphere by anthropogenic activities, will worsen as the global temperature increases, thus highlighting the paramount importance of forthcoming decisions adopted at the international level (Intergovernmental Panel on Climate Change, 2022). Climate litigation is a recent and rapidly growing phenomenon on the global scale, where judicial intervention is used by private claimants, usually backed by environmental associations or NGOs, to challenge the insufficient steps taken to prevent and reverse climate change, both against public bodies and corporate entities, with the aim of fostering climate justice. In this context, litigation is not purely a way to vindicate individual rights, but a comprehensive strategy to force change in law (Preston, 2021, as cited in Antoniolli, 2023).

The Sabin Center's Climate Change Litigation Database requires climate change law, policy, or science to be a "material issue of law or fact in the case" for a lawsuit to be considered as climate litigation. Climate change litigation may raise issues related to the reduction of greenhouse gas (GHG) emissions or other drivers of climate change (mitigation), actions in response to climate change's impacts (adaptation), or compensation for damages climate change has already caused (damages) (Climate Judiciary Project Team, 2025). Of course, courts belong to specific legal orders, either national, regional or international, and apply the rules and procedures of those orders; consequently, there is no single model. However, the novelty of recent years is that, while in the past these systems operated in relative isolation, nowadays they are often connected, both in terms of rules and strategies (Antoniolli, 2023).

While the first European climate cases were filed in the 1990s, climate litigation on the continent began in earnest in the mid-2000s and has been on the rise ever since. From a handful of lawsuits initiated in 2005, mostly pertaining to the then-recently implemented European Union Emissions Trading System, European climate litigation increased to nearly 50 cases brought in 2021. To date, there have been 285 climate cases filed across Europe over the last 30 years (Setzer et al., 2022, as cited in Climate Judiciary Project Team, 2025), some of which have had an outsized impact around the world.

The progression of European climate litigation over time has been described through three waves (Setzer et al., 2022; Peel & Osofsky, 2020, Golnaraghi et al., 2021, as cited in Climate Judiciary Project Team, 2025); rather than supplanting each other, each of them introduces a new thread resulting in a gradual expansion of the litigation landscape. Between the 1980s and the mid-2000s, the first wave primarily consisted of administrative law challenges to individual government decisions that would increase GHG emissions or that failed to adequately consider their impact on the climate. From the mid-2000s to the early 2010s, the second wave added legal challenges to new climate change legislation and "gap filling" litigation with the aim of forcing action in policy areas left unaddressed. It is around the time of the 2015 Paris Agreement that the third wave appears, referring to suits that typically use constitutional and human rights law to argue that governments have positive obligations to take ambitious climate action (Setzer et al., 2022, as cited in Climate Judiciary Project Team, 2025).

In Europe, climate litigation has been brought before regional courts, namely the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) which are used by litigants to achieve different purposes. Since 2005, the CJEU has heard a total of 60 climate cases, most of which centre around the EU's climate and energy legislation. In fact, more than half of these disputes concern the EU's Emission Trading System (Directive 2003/87/EC), the EU's Renewable Energy Directive, and the EU's Land Use, Land Use Change, and Forestry (LULUCF) Regulation (Setzer et al.).

In contrast, but in parallel, Europe has been the most active region for rights-based climate litigation since 2015 (Rodríguez Garavito, 2022, as cited in Didi, 2023). As the primary interpreter of the European Convention on Human Rights, the ECtHR hears cases concerning human rights claims (de la Rosa Jaimes, 2015, as cited in Climate Judiciary Project Team, 2025). The first climate case before the Strasbourg Court was issued in 2020, with 12 more cases filed since then (Sabin Ctr. for Climate Change L., as cited in Climate Judiciary Project Team, 2025), usually relying on either Article 2 or 8 of the Convention, specifically protecting the right to life and the right to private and family life respectively (de la Rosa Jaimes). As such, human rights are being used to fill the governance gaps and address insufficient ambition in climate action, thereby forcing states to implement existing climate legislation, whether concerning mitigation or adaptation policies, or both.

Looking forward, this wave of litigation is expected to continue as climate impacts become more frequent and intense, the energy transition continues to drive the development of new projects, and as individual countries and the European Union put into place more climate-related policies. In this evolving scenario, courts throughout Europe will play an integral role in, among other things, articulating the roles and responsibilities of various actors, evaluating environmental reviews, evaluating companies' marketing claims, and assessing whether governments or private entities are setting sufficient, or making sufficient progress towards, emissions reduction targets (Climate Judiciary Project Team, 2025).

While it is fundamental to acknowledge the distinct natures of the European Union and the Council of Europe, as well as the differences within their judicial machinery, this dissertation transcends a mere description of these institutional structures. Specifically, it aims to analyse the operational framework and the case law of the two Courts to understand whether their dynamic interaction, encompassing both frictions and convergences, is leading to the creation of a unified European regime. Accordingly, the central inquiry guiding this research is formulated as follows: Does the interaction, whether in the form of frictions or convergences, between the Court of Justice of the European Union and the European Court of Human Rights contribute to the emergence of a unified European framework of climate protection?

To address the research question, this dissertation adopts a qualitative, desk-based methodology rooted in comparative judicial analysis. The study examines relevant primary and secondary sources, namely the jurisprudence issued by both courts up to 2025, coupled with foundational international environmental treaties and European Union primary law. Secondary sources, including specialised institutional reports, alongside contemporary literature are utilized to contextualize the socio-legal impact of these judicial decisions. The comparative dimension of this research is twofold. First, it contrasts the procedural mechanisms governing access to justice. Second, it assesses the substantive standards applied by both Courts when evaluating state obligations towards climate protection. Within this conceptual framework, the interaction is analysed to determine whether institutional frictions and substantive convergences are fragmented or, conversely, if they are progressively fostering a cohesive European climate architecture.

Chapter 1 examines the normative and legal sources that legitimise the intervention of both Courts in European climate litigation. The discussion opens with an outline of key international treaties and instruments influencing European climate jurisdiction. Subsequently, the second delves into primary and secondary legislation on the environment and climate within the European Union, exploring its core general and environmental principles, key actors, and institutional dynamics governing environmental governance. Attention then shifts to the Charter of Fundamental Rights of the EU (CFR), continuing with an overview of the CJEU and its mandate. Finally, an analysis of the European Convention on Human Rights, the core principles and methodology guiding its interpretation, and the operational scope of the ECtHR concludes the chapter.

Chapter 2 offers a comparative analysis of the two Courts through a dual methodological lens: procedural and substantive. The discussion initially evaluates the procedural threshold and admissibility criteria within both legal orders, investigating their interplay with the Aarhus Convention and the main instruments governing *locus standi*. It then shifts attention to the procedural hurdles inherent to the European Union system, most notably those caused by the Plaumann formula, before contrasting them with the ECtHR's approach, where the procedural dimension is analysed in terms of victim status and the 'greening' of procedural rights. Ultimately, the chapter scrutinises the substantive dimension of states' environmental duties under both jurisdictions, concluding with an assessment of the role played by the CFR as an interpretative tool.

Lastly, Chapter 3 addresses the primary points of friction between the two regimes, specifically the asymmetries in standing, the territorial framing of jurisdiction, and substantive divergences. It also explores potential avenues to overcome these obstacles, drawing inspiration from the cross-fertilization provided by other national and international courts. Thereafter, the chapter analyses the elements of convergence that are increasingly shaping the evolving landscape of strategic climate litigation in Europe, namely the shared normative benchmarks established by international treaties and the emerging role of environmental NGOs. The third section then examines the emergence of the principle of intergenerational equity, assessing its potential to be recognized as a general principle of EU law. To conclude the dissertation, the final section conceptualises the autonomous right to a healthy environment as a powerful solution to counter current environmental shortcomings.

Chapter 1

Theoretical and Normative Framework: Environmental Law and Human Rights in Europe

To assess the structural and procedural comparison in the field of climate litigations between the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR), the analysis of normative and legal sources, which legitimise their intervention, must necessarily be the starting point of my dissertation. Accordingly, sections 1.2 and 1.3 provide a brief analysis of the structural framework and institutional mandate of the two Courts, key elements to define the operational environment and the scope of their respective competences. Therefore, this chapter aims to give an overview of the normative foundations, as well as their evolution, upon which the jurisdiction and approaches of these two judicial bodies rest in this domain.

1.1 Key International Treaties Shaping European Climate Jurisdiction

As noted by Antoniolli (2023), it is during the 1970s that the international community started to raise awareness of the negative externalities caused by human interference with the environment. Consequently, this new perspective paved the way for the adoption of major international instruments in environmental law, which entail the fundamental principles and obligations applied and interpreted by both the CJEU and the ECtHR.

The 1972 UN Conference on the Human Environment constituted a watershed in the international effort towards the protection of the environment. Held in Stockholm, it was the first world conference to bring attention to environmental issues by linking economic growth with the pollution of natural resources and the detrimental consequences on human well-being (United Nations, n.d.). In that instance, the Stockholm Declaration and the Action Plan for the Human Environment were adopted by the Parties. These documents contain a series of principles and recommendations "to safeguard and wisely manage the heritage of wildlife and its habitat [...]"[1]. Furthermore, another major achievement was the creation of the United Nations Environment Programme (UNEP), the UN's ongoing leading authority on the environment (United Nations, n.d.).

In 1992, Rio de Janeiro hosted the UN Conference on Environment and Development (UNCED), also referred to as the 'Earth Summit', 20 years after the Stockholm Conference. This conference, which convened political leaders, diplomats, scientists, representatives of the media, and NGOs from 179 countries, introduced the revolutionary concept of sustainable development (United Nations, n.d.). Sustainable development was defined as an objective to be achieved in the 21st century, supported by recommendations outlined in Agenda 21. Moreover, the Rio Declaration with its 27 principles, the United Nations Framework Convention on Climate Change (UNFCCC), the Convention on Biological Diversity, and the Declaration on the principles of forest management were formalised on this occasion (United Nations, n.d.).

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[1] United Nations. (1972). *Report of the United Nations Conference on the Human Environment*. https://docs.un.org/en/A/CONF.48/14/Rev.1

Moving from substantial to procedural commitments, the 1998 UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) is the pioneering international agreement on environmental democracy (Directorate-General for Environment, n.d.). Supplemented by its Protocol on Pollutant Release and Transfer Registers (2009) and amended by Decision II/1 on genetically modified organisms (2005), it implements the three fundamental rights enshrined in Principle 10 of the Rio Declaration[2], namely access to information, public participation, and access to justice. Being a rights-based instrument, the Aarhus Convention couples individual rights, human health, and environmental protection with public authorities'[3] accountability, transparency, and responsiveness. It entered into force in 2001 and, as of April 2025, counts 48 Parties, including the European Union (United Nations Economic Commission for Europe, n.d.). Following its ratification in 2005, the provisions of the Convention apply to EU institutions, therefore allowing for public scrutiny of the Union's acts affecting the environment (Directorate-General for Environment, n.d.).

The Kyoto Protocol was named after the Japanese city that served as the location for the third Conference of the Party to the UNFCCC (COP3) in 1997. After a torturous ratification process, it entered into force in 2005 and, to date, it comprises 192 Parties. Its overall objective was to stabilise and reduce the atmospheric concentration of GHG caused by socio-economic activities, recognised as the primary source of global warming. The Protocol did not impose any commitment on developing nations; instead, it mandated binding emission reduction targets for industrialised countries under the principle of 'common but differentiated responsibility and respective capabilities'[4]. The compulsory requirement was to reduce emissions by 5% compared to 1990 levels over the first commitment period (2008-2012), subsequently augmented to 18% below 1990 levels in the second commitment period (2013-2020) after the adoption of the Doha Amendment in 2012 (United Nations, n.d.).

This dichotomy in mitigation commitments was transcended through the Paris Agreement, a legally binding agreement, adopted in 2015, which represents the foundation for the current framework for action at the global level (Antoniolli, 2023). In effect, the Agreement entails long-term commitments, to both developing and developed countries, to reduce their cumulative emissions, with the aim of holding the rise of global temperature below 2°C above pre-industrial levels, preferably below 1.5°C. Yet, it calls on developed countries to assist

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[2] Principle 10 specifically states: "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided." (Rio Declaration on Environment and Development, 1992).

[3] The definition of public authorities under the Convention covers governmental bodies from all sectors and at all levels (national, regional, local etc), bodies performing public administrative functions, as well as privatised bodies having public responsibilities in relation to the environment under the control of the aforementioned actors (UNECE, n.d.).

[4] The Kyoto Protocol recognised that developed countries, which are enlisted in its Annex B, are largely accountable for the current high levels of anthropogenic emissions in the atmosphere, even though it acknowledges the importance of a global commitment in tackling climate change (United Nations, n.d.).

developing countries in their mitigation and adaptation efforts. Additionally, the 195 Parties must submit national climate action plans, the so-called Nationally Determined Contributions (NDCs), to report their strategies to meet the targets every five years (United Nations, n.d.).

Crucial for the purpose of this thesis, while including strong procedural obligations[5], the Paris Agreement does not create binding substantive obligations to achieve NDCs, nor does it impose specific individual obligation to implement them (Bodansky, 2016). Specifically, substantive mitigation provisions are formulated as recommendations or expectations rather than legal obligations. This is exemplified by the use of nuanced language, for instance, in Article 4(4), where the provision recommends that developed countries “should continue taking the lead by undertaking economy-wide absolute emission reduction targets”, or Article 4(19), which suggests that “All parties should strive to formulate and communicate long-term low greenhouse gas emission development strategies [...]”. Therefore, the assessment of compliance is concerned, *inter alia*, with the regular communication of NDCs and other procedural requirements, rather than their effective implementation and achievement of adequate solutions to limit GHGs emissions (Duvic-Paoli & Gervasi, 2023). However, as will be analysed in Chapter 2 in detail, with its landmark verdict in *KlimaSeniorinnen* (2024), the ECtHR sought to overcome the substantive weaknesses of the Paris Agreement by requiring the undertaking of a binding domestic regulatory framework and mitigation measures[6].

On the occasion of the 10-year anniversary of the Paris Agreement, the 30th Session of the Conference of the Parties to the UNFCCC was held in Belém, Brazil, from 10 to 21 November 2025 (United Nations Climate Change, 2025). Defined by the Presidency as the ‘implementation COP’, negotiations envisaged the implementation of former commitments and aspirations (International Institute for Sustainable Development, 2025). A ‘Global Mutirão’[7] was reached, reiterating the Parties' commitment to ensure and strengthen the international fight against climate change, despite the widely recognised moment of geopolitical friction and denial during which this COP transpired (Menezes, 2025). Major accomplishments include the introduction of Global Implementation Accelerator, the launch of the Technology Implementation Program (TIP), together with the adoption of the new Gender and Climate Action Plan and climate finance to support the most vulnerable populations in developing countries (Menezes, 2025). However, disagreement in areas including trade measures and mitigation pathways, coupled with the absence of a concrete roadmap to guide the transition away from fossil fuels, left more ambitious attendees disappointed (IISD, 2025).

[5] Notably, Article 4 requires each party to prepare, communicate and maintain successive NDCs that it intends to achieve (Article 4.2), provide the information necessary for clarity, transparency and understanding of these contributions (Article 4.8), and communicate NDCs every five years, which will represent a progression beyond the current contributions which must reflect its highest possible ambition (Articles 4.3 and 4.9), among other things.

[6] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, Application No. 53600/20, European Court of Human Rights (2024, April 9), paras. 548-550. https://hudoc.echr.coe.int/eng?i=001-233203.

[7] For an extensive analysis of the COP30 Climate Action Agenda, consult https://unfccc.int/sites/default/files/resource/COP30%20Action%20Agenda_Final%20Report.docx.pdf.

1.2 The European Union Framework on Environment and Climate

Over the past decades, the European Union (EU) has been very active in environmental protection, and climate change more generally, with the consequence of producing a vast body of law both internally and at the international stage. In addition to being characterised by a unique, multi-level structure, this system underscores judicial review and effective judicial protection. Moreover, a highly organised, active civil society and Non-Governmental Organisations (NGOs), significantly driving the debate on environmental actions and issues often directed into legal processes (Antoniolli, 2023).

Environmental law is broadly defined as the legal framework which regulates the relationship between human beings, their activities, and the natural environment (van Zeben, 2022). The EU has defined the latter as the conjunction of elements whose complex interactions create the settings, the surroundings, and the conditions of life of the individual and of society as they are left, thus encompassing air, water, and land, together with the surroundings of the workplace (European Environment Agency, n.d.). At the Union level, this domain has expanded exponentially since the 1970s, following the rise of international efforts on environmental protection. It constitutes a technically intricate, vast, and fluid realm, as a full grasp of its scope requires the understanding of its intersections with other policy areas, such as the Union's internal market law, energy law, and transportation policy. This complexity is exemplified by the integration of economic and environmental goals within the European Green Deal (Antoniolli, 2023; van Zeben, 2022).

Before the formalisation of environmental protection and its quality improvement as a proper EU objective, now explicitly stated in Article 3 of the Treaty on the European Union, and prior to the establishment of a dedicated environmental competence by the Single European Act (SEA), the European Economic Community's (ECC) directives were confined to the harmonisation of national product rules, intrinsically linked to environmental quality. The 1972 UN Conference on the Human Environment, which established the UN Environmental Programme, provided the true impetus for action within the ECC, resulting in the 1972 Paris Summit, where the environment was designated as a new field of Community Action. However, during this preliminary phase, the adoption of legislative acts, such as the First, Second, and Third Environmental Programmes (1973–1976, 1977–1981, and 1982–1986, respectively), was grounded on internal market competence (Lainotte & Postu, 2025; van Zeben, 2022). This authority empowered the Council to act unanimously to achieve Community objectives, despite the absence of 'necessary powers' (Article 235 Treaty establishing the European Economic Community).

As previously outlined, new Articles 130r-t of the SEA, the act adopted to reform the Treaty of the European Community, enshrined environmental competence, as they mandate a structural link between the internal market and environmental protection. Despite this, the shift from a purely market-oriented protection towards an independent European policy was enabled by the adoption of the Maastricht Treaty in 1992

(Antoniolli, 2023). Specifically, Article 174 of the Treaty establishing the European Community coupled environmental protection with human health, natural resources, as well as the promotion of measures aimed at tackling regional and worldwide environmental problems.

This evolution culminated with the entry into force of the Lisbon Treaty (2009), through which two fundamental facets were further integrated. Firstly, Article 21(2)(d) and (f) TEU officially added an external dimension to the EU's environmental commitment. Furthermore, by virtue of Article 6(1) TEU, the Charter of Fundamental Rights of the European Union (CFR) acquired the same legal value as the Treaties. Article 37 of the CFR links environmental protection with the protection of fundamental human rights (Massay-Kosubek & Maciejewski, 2025). Along with the cited provisions, overall objectives and legal framework listed in Title XX 'Environment' TFEU, additional environmental references can be found throughout the Treaties. For example, Article 3(3) TEU underscores the significance of "a high level of protection and improvement of the quality of the environment" and sustainable development in the Union's work to create the internal market (WEECOP, 2025).

Under the EU framework, the Union has only competences conferred to it by Member States (MS) via the Treaties in line with the principle of conferral, while all the others remain within the MS. Articles 11 and 191-193 of the Treaty on the Functioning of the European Union (TFEU) vest the EU with the authority to legislate in all fields of environmental policy, including climate change. In fact, the Union's environmental competence is shared, as both the EU and its MS may adopt legally binding acts (Directorate-General for Climate Action, n.d.). It must be noted that MS exercise their own competence where the EU does not or has decided not to do so (Article 4 of the TFEU). Furthermore, the EU's scope of action is limited by the principles of subsidiarity and proportionality (Article 5 of the TFEU), as will be further discussed in detail below. Nonetheless, in most environmental policy domains, especially in the context of transboundary issues including climate change, biodiversity, pollution, waste, and chemicals, the EU remains the primary legislator (van Zeben, 2022).

Article 191(1) TFEU confers upon the EU the authority to act at the international level. This means that, although environmental policy remains a shared competence, the Union has exclusive competence in concluding international agreements when "[...] its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope" (Article 3(2) TFEU). Therefore, if the adoption of international agreements affects the environmental acquis, the EU is conferred with exclusive external competence, whereas in remaining circumstances, Member States still negotiate, sign, and ratify international treaties (van Zeben, 2022). Moreover, the effective performance of this external function is further facilitated by Article 47 TEU and Article 335 TFEU, which explicitly grant legal personality to the EU. In this regard, the EU is party to a vast array of multilateral environmental agreements at global, regional, and sub-regional level, while acting as a driving force in the formation process of environmental milestones adopted under the UN framework, namely the 2030 Agenda for

Sustainable Development, the Paris Agreement, as well as the Sendai Framework for Disaster Risk Reduction (Lainotte & Postu, 2025). These numerous instruments address, inter alia, air, chemicals and waste, climate change and ozone depletion, desertification, and land degradation, but also governance and civil protection (Directorate-General for Climate Action, n.d.).

Focusing on the substantive provisions, the overall objectives and legal framework of environmental policy are now codified in Title XX 'Environment' TFEU: Article 191 TFEU stipulates the policy objectives to be pursued internally and internationally, namely protecting human health, improving the quality of the environment, as well as the rational utilisation of natural resources, and sets out fundamental principles, such as precaution, prevention and the polluter-pays principle. Moreover, Article 192 TFEU outlines the legislative procedure, which is predominantly the ordinary legislative procedure, for adopting legislation to achieve the objectives referred to in Article 191 (Lainotte & Postu, 2025).

Regulations and directives act as the main legal instruments employed within this policy field; however, directives are the prominent legal tool, as the ecological, environmental, and socio-economic disparities across MS require flexibility in the method of implementation, which these legislative acts provide (van Zeben, 2022). Additionally, beyond the responsibility of implementing EU environmental law, MS can adopt stricter environmental measures at national level, a power which must be justified based on internal circumstances or new scientific insight, without obstructing the internal market (Articles 36, 114(4)-(5), and 193 TFEU).

Drawing upon these treaty foundations, the CJEU's interpretation of initial competences, together with its jurisprudential development of environmental principles, has been crucial for the evolution of the EU's environmental acquis. Moreover, the frequent conflicting interpretation and interaction between national, European, and international rules, principles, and requirements usually lead to relevant case law that further defines the scope of EU environmental law (van Zeben, 2022).

1.2.1 Core Principles Guiding EU Environmental Framework

Two corpuses of principles are cardinal in the EU environmental framework. Four specific environmental principles, enshrined in Article 191(2) TFEU, and other general principles of EU law govern structural and procedural rules delineating the relationship between EU and MS' judicial systems in the EU environmental framework (Vomácka, n.d.). Crucially, the jurisprudence of the CJEU has been formative in the evolution and application of each of these principles, both in terms of shaping the interpretation of EU law, as well as in justifying actions by MS in the environmental field (van Zeben, 2022), as in *Nationale Raad van Dierenkwekers en Liefhebbers VZW and Andibel VZW v. Belgische Staat* (2008)[8].

[8] *Nationale Raad van Dierenkwekers en Liefhebbers VZW and Andibel VZW v. Belgische Staat,* Case C-219/07, ECLI:EU:C:2008:353.

Article 191(2) TFEU constitutes the normative core of EU environmental policy. This provision stipulates specific environmental principles which guide the Union's activity in this peculiar realm, namely prevention, precaution, polluter-pays, and rectification at source of damage. Since they are embodied in a broad spectrum of legislative measures, incorrect interpretation or action against them is *contra legem*, therefore may amount to a violation of EU law (Vomácka, n.d.). Notably, an Impact Assessment procedure is now a requisite component in the adoption of legislative measures (Directorate-General for Communication, n.d.). The Commission must demonstrate that legislative proposals comply with these principles, alongside general principles of EU law, as their breach may constitute grounds for the invalidation of a legal act pursuant to Article 263 TFEU. Furthermore, procedural requirements in the legislative process mandate consideration of 'available scientific and technical data, environmental conditions in the various regions of the Union, the potential benefits and costs of action or lack of action, the economic and social development of the Union as a whole and the balanced development of its regions' (Art. 191(3) TFEU). However, given that Art. 191(2) TFEU targets actions taken at the EU level, individuals cannot directly rely on it to impose preventive and remedial measures, as clarified by the CJEU in *Fipa Group and Others* (2015)[9].

The prevention principle mandates preventive measures to avoid and anticipate environmental damage before it happens, and it is invoked when the risk of harm is clear (Lainotte & Postu, 2025). Since its inclusion in the First Action Programme of the EEC (1973), it has been a cornerstone of various areas of environmental regulation, including waste policy, water management requirements, protection of biodiversity, and environmental impact assessment (van Zeben, 2022).

Closely connected to prevention is the precautionary principle, which allows protective measures if an action or a policy has the potential to cause environmental or public harm, but also if it poses potential threat to human health, even in the absence of scientific certainty (Lainotte & Postu, 2025). Case law exemplifying the application of this precept concerns measures enacted both by EU institutions and MS in derogation of rules on free movement, as in *Monsanto Agricoltura Italia SpA and Others v. Presidenza del Consiglio dei Ministri and Others* (2003)[10].

To oblige polluters to pay for environmental and social costs of their actions, the polluter pays principle (PPP) was first implemented through the Environmental Liability Directive (ELD), with the scope of establishing a "framework of environmental liability [...], to prevent and remedy environmental damage" (Article 1 ELD). By virtue of this precept, the disproportionate consequences of pollution are internalised by polluters, rather than making society bear negative externalities afterwards (Vomácka, n.d.). Furthermore, it guides the interpretation of legislative tools, including the Waste Framework Directive, the Landfill Directive, and the Water Framework

[9] *Fipa Group and Others,* Case C-534/13, ECLI:EU:C:2015:140.
[10] *Monsanto Agricoltura Italia SpA and Others v. Presidenza del Consiglio dei Ministri and Others*, Case C-236/01, ECLI:EU:C:2003:431.

Directive. One relevant illustration of this principle is found in *Naturschutzbund Deutschland-Landesverband Schleswig-Holstein eV (NABU) v. Schleswig-Holsteinisches Landesamt für Landwirtschaft, Umwelt und ländliche Räume* (2020)[11], in which the CJEU declined to exempt operators and owners from responsibility on the grounds that damage resulted from previous management measures, an approach which, according to the Court, would have been contrary to the PPP.

Ratification at source prevents the transferring of pollution by compelling polluters to undertake appropriate remedies to combat damages at the earliest stage (Vomácka, n.d.). In *Commission of the European Communities v. Kingdom of Belgium* (1992)[12], the Court stated that "the principle that environmental damage should as a matter of priority be remedied at source [...], entails that it is for each region, municipality or other local authority to take appropriate steps to ensure that its own waste is collected, treated and disposed of; it must accordingly be disposed of as close as possible to the place where it is produced [...]." Moreover, this principle encourages the elaboration of environmentally friendly technology and products with the overall objective of mitigating pollution at the point of origin (Vomácka, n.d.).

Sustainable development, defined by the European Commission as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (European Union, n.d.), lies between specific environmental and general EU law principles. This mainstreaming precept constitutes the basis of all EU policies and initiatives, but also a requirement applicable in all areas of EU law. Its objective is to couple economic prosperity with social inclusion and environmental stewardship, thus encompassing economic, social, and environmental dimensions (Directorate-General for Trade and Economic Security, n.d.). With the entry into force of the Lisbon Treaty, sustainable development became an objective of the EU (Article 3 TEU), to be pursued both in its internal actions, as well as in external relations to "help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources" (Article 21(d)(f) TEU). Furthermore, it acts as a framework to ensure environmental protection, either in specific legislation or integrated in other policies (Vomácka, n.d.).

As stated in the opening paragraph of this section, several general principles of EU law are critical when discussing the Union's environmental governance. First of all, primacy of EU law is pivotal in overcoming procedural obstacles and conflicts arising between national and EU law, as it dictates the latter's predominance over domestic legislation. Additionally, it requires national courts to interpret internal law consistently with EU law, a process which could lead either to modifications in established case law or to the annulment of national

[11] *Naturschutzbund Deutschland-Landesverband Schleswig-Holstein eV (NABU) v. Schleswig-Holsteinisches Landesamt für Landwirtschaft, Umwelt und ländliche Räume*, Case C-297/19, ECLI:EU:C:2020:533.
[12] *Commission of the European Communities v. Kingdom of Belgium*, Case C-2/90, ECLI:EU:C:1992:310.

provisions contrary to EU law with direct effect[13] (Vomácka, n.d.). However, it should be noted that this principle exclusively applies in fields where MS ceded sovereignty to the EU, such as the environment (EUR-lex, n.d.). Already in 1964, in *Costa v. ENEL* (1964)[14], the Court underlined how "the executive force of Community Law cannot vary from one state to another in deference to subsequent domestic laws, without jeopardizing the attainment of the objective of the Treaty [...]."

Pursuant to Article 4(3) TEU, Member States "shall take any appropriate measure […], to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union; [they] shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives." Directly flowing from this provision, the principle of effectiveness imposes an obligation on every state organ to give full effect to EU provisions, interpret national law in line with them, and refrain from applying domestic provisions in contrast with EU law. Furthermore, this principle encompasses two other rules. Primarily, as underscored in Case C-115/09[15] concerning the standing of environmental NGOs, procedural rules governing the enforcement of individual rights must not hinder the exercise of these rights in practice. Secondly, MS must guarantee the same procedural and substantive penalties applied to infringements of national and EU law in cases of similar nature (Vomácka, n.d.).

The principle of direct effect enables individuals to "directly invoke EU law before national and European courts, independently of whether the nation law exists" (EUR-Lex, 2022). In the *Van Gend en Loos* judgment, the Court established the criteria for the applicability of this precept. Specifically, the particular obligation must be precise, clear and unconditional, therefore not calling for additional measures. With regard to secondary law, Article 288 TFEU stipulates that regulations are directly applicable, therefore have direct effect, whereas directives acquire direct effect only if their provisions are unconditional, sufficiently clear and precise, or when the MS fail to transpose them by the deadline, and decisions possess solely vertical direct effect.[16] The CJEU's approach to this principle in the field of environmental protection serves a dual purpose: it enables effective EU law enforcement, while simultaneously ensuring the protection of affected parties. In *Commission of the European Communities v. Federal Republic of Germany* (1991)[17], the Court concluded that "[...] that obligation implies that whenever the exceeding of the limit values could endanger human health the persons concerned must be in a

[13] Exceptions to the obligation to disapply conflicting measures arise where the annulment of such measures would create a legal vacuum. In such circumstances, the maintenance of the effects of the conflicting act may be permitted only for the period strictly necessary to remedy the breach identified (A and Ohters, 2020, as cited in Vomácka, n.d.).

[14] *Costa v. ENEL*, Case 6/64, ECLI:EU:C:1964:66.

[15] In *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen*, the CJEU ruled that "it would be contrary to the objective of giving the public concerned wide access to justice and at odds with the principle of effectiveness if such organisations were not also allowed to rely on the impairment of rules of EU environment law solely on the ground that those rules protect the public interest" (Case C-115/09, 2011, para. 46).

[16] The direct effect of EU law can be either vertical (individuals can invoke a provision in relation to the state), or horizontal (the individual can invoke a provision against another individual). In its case-law, the Court has accepted both a full or a partial direct effect, depending on the act in question (EUR-Lex, 2022).

[17] *Commission of the European Communities v. Federal Republic of Germany,* Case C-59/89, ECLI:EU:C:1991:225.

position to rely on mandatory rules in order to be able to assert their rights." Environmental directives rarely grant rights to individuals, but if they fix limit values to safeguard human health then, according to the Court, they also confer on the relevant person a legally enforceable right.

As referenced in the section on competence, the principles of subsidiarity and proportionality (Article 5 TFEU) apply in shared areas of competence (EUR-Lex, 2024), therefore also in the environmental domain. Subsidiarity authorizes EU's action in cases objectives can be better achieved at the Union level than by MS acting at their national or local level. It can be invoked under three preconditions, meaning non-exclusive competence, necessity, and added value, enlisted in Protocol No2 on the application of the principle of subsidiarity and proportionality, which justify supranational initiative. However, under the principle of proportionality, the content and form of action do not have to exceed what is necessary to fulfil the objectives of the Treaties (EUR-Lex, 2024).

Finally, embodied in Article 11 TFEU, the integration principle secures the integration of environmental safeguarding in the definition and implementation of the Union's operational agenda. This concept was integrated into the EU Sustainable Development Strategy to accomplish climate-related targets, but also to reduce environmental impacts resulting from other major policy areas, including Agriculture, Energy, Fisheries, Transport, and Cohesion (Vomácka, n.d.).

1.2.2 Key Actors and Institutional Dynamics in EU Environmental Governance

A multi-level governance structure characterises the implementation and formation of the EU environmental field. This complex architecture comprises core EU institutions, MS, specialised agencies and bodies, alongside public and private actors which operate both at national and international level (Oberthür et al., 2023). This dense web of participants mirrors the transnational scale of environmental issues, which inevitably necessitate a coordinated answer that goes beyond domestic borders.

To begin with, the European Commission, the European Parliament, the Council of the European Union, the CJEU, and the European Council are central institutions in the development and formulation of environmental policies and laws (van Zeben, 2022). Most legislative acts promulgated in this peculiar field are enacted through the ordinary legislative procedure (Article 192(1) TFEU). Hence, following a proposal of the Commission, which retains its power to initiate the decision-making procedure, laws are jointly adopted by the Parliament and the Council (European Parliament, n.d.). Furthermore, these institutional actors have designated staff specially engaged in environmental dossiers (van Zeben, 2022). However, Article 192(2) TFEU further stipulates that a special legislative procedure must be applied when adopting, inter alia, provisions of fiscal nature, measures affecting water resources and land use, but also measures impacting MS' choice between different energy sources. In line with these sensitive situations, the Council will act unanimously after consulting the Parliament, the Economic and Social Committee (EESC), and the Committee of the Regions (CoR).

Beyond its co-legislative role, the Parliament is also acknowledged as a "key advocate of ambitious climate policy" (Petri, Zapletalova and Biedenkopf, as cited in Oberthür et al., 2023). Furthermore, two other institutional actors play a distinct but fundamental part. The European Council has increasingly acted as supreme arbiter on significant environmental policy dossiers, to overcome major disparities, particularly between Western member countries and Central and Eastern European MS (Wurzel, Di Lullo and Liefferink, as cited in Oberthür et al., 2023). The CJEU, on the other hand, ensures correct interpretation and application of the EU environmental acquis as well as, jointly with the Commission, its public enforcement (van Zeben, 2022).

Regarding Member States, Article 192(4) TFEU mandates that they "shall finance and implement the environment policy." This provision clearly highlights the integral role of national authorities and their actions in this domain. In this respect, the variety of national contexts and the broad spectrum of domestic actors involved underscore the work of specialised agencies and advisory bodies, as they enable information exchange, promote best practice, and foster common understanding of EU law (van Zeben, 2022). These actors include agencies affiliated with the Parliament's Environment Committee, such as the European Environment Agency (EEA), but also the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL), the EESC, the CoR, as well as the European Investment Bank (EIB). All play a significant, although secondary, supportive role to the other main institutional actors in the Union's environmental law (van Zeben, 2022).

Alongside public actors, environmental movements, NGOs, and associations collectively affect policy through lobbying within the governance framework, but also activism, which mobilises people and resources at national and international levels. As the following chapter will explore in detail, they are increasingly exerting pressure from the outside, including with strategic use of litigation (Antoniolli, 2023; Oberthür et al., 2023).

Lastly, economic actors ranging from large multi-nationals to small local businesses represent a source of environmental pollution and exploitation of natural resources. Thus, they constitute essential players for the development and adoption of sustainable economic practices (Antoniolli, 2023).

1.2.3 Secondary Law: Key Legislative Instruments

Over 200 secondary legislative acts of both procedural and substantive nature constitute the EU environmental acquis (WEECOOP, 2025). The Governance Regulation, the European Climate Law (ECL), the Environmental Impact Assessment (EIA) Directive, the Strategic Environmental Assessment (SEA) Directive, and the Aarhus Convention establish key horizontal procedural components to effectively implement substantive climate policies, including planning, targets, monitoring, reporting, and public participation.

Regulation 2018/1999 on the Governance of the Energy Union and Climate Action and Regulation 2021/1119 on Establishing the Framework for Achieving Climate Neutrality delineate common rules to help the EU achieve climate neutrality. It is now a binding goal to be reached by 2050, together with intermediate targets of net greenhouse gas (GHG) emissions reductions set at 55% by 2030 and at 90% by 2040. Additionally, these legislative measures ensure compliance with international commitments under the Paris Agreement and the UNFCCC. (Directorate-General for Climate Action, n.d.). Moreover, these regulations streamline procedures for Member States to track compliance and report progress regarding obligations under other policy instruments. Accordingly, MS are required to devise National Energy and Climate Plans (NECPs), as well as to develop national long-term strategies (Directorate-General for Climate Action, n.d.).

With the scope of guaranteeing environmental protection and transparency in decision-making procedures, the EIA Directive aims at evaluating the impact of public and private projects on the environment. The assessment is carried out based on a wide range of factors, such as land, soil, water, climate, biodiversity, and cultural heritage. (Directorate-General for Environment, n.d.) This is complemented by the SEA Directive, which provides assessment procedures for those public and private plans or programmes 'which are likely to have significant effects on the environment' (Article 1(1) Directive 2011/92/EU).

Public participation, access to justice, and access to information in environmental matters are regulated through a wide legislative agenda related to the so-called Aarhus Convention (Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters), the leading international agreement on environmental democracy adopted in 1998 to which both the EU and its MS are parties. The adoption of Regulation 2021/1767 amending Regulation 1367/2006 improved public scrutiny of EU acts in this specific field by increasing the range of decisions subject to internal review (Directorate-General for Environment, n.d.). Nonetheless, as extensively covered in Chapter 2, the standing of individuals and NGOs before European Courts remains a controversial topic, "raising questions of compliance with the Aarhus Convention" (van Zeben, 2022).

Moving towards substantive climate policy instruments, they were implemented across various sectors to cut GHG emissions, to tackle climate change challenges, and, more generally, to achieve environment-related objectives set at the Union's level (Kulovesi et al., 2024).

Launched in 2005 with the adoption of the so-called ETS Directive (2003), following the obligations of climate change mitigation imposed by the Kyoto Protocol, the EU ETS is an economic and financial instrument that aims at targeting emissions through the allocation of allowances, therefore assigning a price on carbon. After undergoing several revisions, the system is currently in its fourth phase (2018-2030), covering emissions from the electricity and heat generation, industrial manufacturing, aviation sector, and maritime transport emitted in all EU countries plus Iceland, Liechtenstein, and Norway (also linked to the Swiss ETS since 2020) (Directorate-General for Climate Action, n.d.).

A supplement instrument to the ETS, the Effort Sharing Regulation (ESR) instituted tailored, flexible, and cost-effective emissions reduction targets for each Member State, Iceland, and Norway. In total, the ESR encompasses 60% of EU GHG emissions from domestic transport (excluding aviation), buildings, agriculture, small industry, and waste, with the purpose of cutting them by 40% in relation to 2005 levels (Directorate-General for Climate Action, n.d.).

In defining the subject matter of Regulation 2018/841, Article 1(a) provides that it "sets out rules concerning: (c) a 2030 Union target for net greenhouse gas removals in the LULUCF sector; (d) targets for net greenhouse gas removals [...] for Member States for the period 2026 to 2030." The revised LULUCF Regulation aims to augment EU-wide net removals threshold to 310 MtCO2e, together with improved procedures for monitoring, verification, reporting, and compliance, by 2030. In line with this increased ambition, MS are mandated to integrate land use and forestry considerations into NECPs and Cap Strategic Plans under the Common Agricultural Policy (CAP) (European Parliamentary Research Service, 2023).

The newest policy framework on environmental protection was proposed by the von der Leyen Commission in 2019, subsequently adopted in 2020. This ambitious strategy supports the EU in its legally binding goal of becoming the first climate-neutral area in the world by 2050, by delivering measures across sectors ranging from energy and industry to agriculture, biodiversity, forestation, emission trading, sustainable finance, and more (European Council & Council of the European Union, n.d.). Notwithstanding this robust procedural and substantive landscape, gaps in the implementation and enforcement of EU environmental directives and regulations within Member States hinder the fulfilment of the objectives of the Union's acquis in this domain (van Zeben, 2022).

1.2.4 The European Charter of Fundamental Rights

The president of the European Parliament, the Commission and the Council signed the Charter of Fundamental Rights of the European Union (CFR), also referred to as the Nice Charter, at the Nice European Council in 2000. The Charter incorporates a list of fundamental rights and freedoms to which citizens and residents of the EU are entitled (European Parliament, n.d.). At the time of its adoption, it was a sui generis act, as it was only binding for the EU institutions in the exercise of their competences. However, with the entry into force of the Lisbon Treaty in 2009, paragraph 1 Article 6 of TEU was introduced, pursuant to which "1.The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union [...] which shall have the same legal value as the Treaties". As a consequence, with the introduction of this provision, the Charter acquired the same legal strength as the founding Treaties (European Union Agency for Fundamental Rights, 2025).

Title VII deals with the interpretation and appropriation of the Charter's provisions. Article 51 CFR declares that "1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law [...]. 2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties." Nevertheless, in *Åkerberg Fransson* (2013)[18], the CJEU broadened the scope of application of the Charter. In its judgment, the Grand Chamber affirmed that "21. Since the fundamental rights guaranteed by the Charter must therefore be complied with where national legislation falls within the scope of European Union law, situations cannot exist which are covered in that way by European Union law without those fundamental rights being applicable. The applicability of European Union law entails applicability of the fundamental rights guaranteed by the Charter", thereby expanding its application throughout the Union's sphere of action.

When interpreting Charter provisions, if they correspond to rights enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms, "the meaning and scope of those rights shall be the same as those laid down by the said Convention" (Article 52(3) CFR), without precluding the possibility for the Union to provide a more extensive protection. Similarly, fundamental rights resulting from the constitutional traditions common to MS "shall be interpreted in harmony with those traditions" (Article 52(4) CFR). Furthermore, Article 53 CFR addresses the level of protection, underlying that nothing prevents the EU and its member states from applying a higher level of protections to those rights "by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions." Hence, Member States retain the autonomy to apply those instruments if they grant higher substantive protection.

As mentioned in section 1.2, the CFR has a specific provision covering environmental protection (Climate Action Network Europe, 2023). Article 37 states: "A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development", thus coupling environmental stewardship with fundamental rights.

1.2.5 The Court of Justice of the European Union

Since its establishment in 1952, the Court of Justice of the European Union (CJEU) has constituted the judicial authority of the EU. As stated in Article 19 TEU, the Court ensures the uniform application, interpretation, and observance of the *acquis communautaire* by Member States (MS) and institutions, acting in close cooperation with domestic courts and tribunals, to guarantee effective legal protection.

Based in Luxembourg, it is constituted by the Court of Justice, which consists of one judge per MS assisted by eleven Advocates General, and the General Court, which includes two judges from every EU country (Article 19 TFEU).

To ensure that Member States and EU institutions effectively comply with their obligations under EU law, the Court rules upon legal disputes brought before it. However, in exercising its powers, the Court lacks jurisdiction in the generality of Common Foreign and Security Policy area (Article 275 TFEU), nor can it "[...]

[18] Case C-617/10, *Åklagaren v. Hans Åkerberg Fransson*, ECLI:EU:C:2013:105.

review the validity or proportionality of operations carried out by the police or other law-enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security" (Article 276 TFEU). Nonetheless, Articles 40 TEU and 275(2) TFEU provide two exceptions to the Court's general lack of CFSP jurisdiction. Specifically, Article 40 TEU empowers the CJEU to control that CFSP implementation does not affect the application and implementation of other Union's competences, policies, and activities. Consequently, an action for infringement may be brought under Article 263 TFEU, allowing the Court to consider the appropriateness of the legal basis of acts adopted under the CFSP. Furthermore, Article 275(2) exceptionally enables the Court to review the legality of Council's decisions imposing restrictive measures against natural or legal persons. As noted by Masło (2025), in its recent jurisprudence the Court has extended the scope of this specific provision to preliminary questions[19] and actions involving compensation for damage and harm allegedly suffered because of restrictive measures[20].

Among others, the Court's mandate covers infringement proceedings, actions for annulment, and preliminary ruling procedures (European Union, n.d.). Infringement proceedings allow the CJEU to determine whether a Member State has failed to comply with EU law. The subject matter of infringements could be non-transposition or non-notification of a directive, non-conformity of transposition, and the incorrect application of EU provisions (ERA, n.d.). These proceedings may be started either by the Commission (Article 258 TFEU) or another EU country (Article 259 TFEU). If a Member State is then found in violation of EU law, Article 260(1) provides that it must implement the Court's judgment. Furthermore, pursuant to Article 260(3), to address non-compliance with the judgment, the CJEU may impose a lump sum and/or a penalty payment in case the State concerned has not taken the necessary measures.

Moving towards actions for annulment, these proceedings enable the Court to assess the validity of EU legislative acts adopted by the Union institutions, bodies, offices or organisations, producing legal effects on third parties (EUR-Lex, 2010). This action may be brought "[...] on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers" (Article 263(2) TFEU). Furthermore, Article 263 TFEU distinguishes between different categories of applicants. First, Member States, the Commission, the European Parliament, and the Council are referred to as preferential plaintiffs, as they do not have to demonstrate any interest when initiating an action before the CJEU. Contrary to preferential plaintiffs, any natural or legal person must demonstrate individual and direct concern; thus, non-privileged applicants must prove that the "[...] regulatory act is of direct concern to them and does not entail implementing measures" (Article 263(4) TFEU). Third, the Court of Auditors, the European

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[19] *Rosneft Oil Company PJSC v HM Treasury*, Case C-72/15 (CJEU March 28, 2017). https://curia.europa.eu/juris/document/document.jsf?text=&docid=188243&pageIndex=0&doclang=en.

[20] *Bank Refah Kargaran v Council of the European Union and European Commission*, Case C-134/19 P (CJEU October 6, 2020). https://curia.europa.eu/juris/document/document.jsf?docid=232086&doclang=EN.

Central Bank, and the Committee of the Regions may bring action before the CJEU with the purpose of protecting their prerogatives against EU acts which allegedly violate them (Article 263(3) TFEU). Irrespective of the category, Art. 263(6) mandates that all applicants must submit the action within two months of the publication or notification of the contested measure. Nonetheless, Article 277 TFEU permits a party to invoke invalidity of an act in a dispute even after this two-month period has elapsed. Ultimately, if the EU act fulfils the grounds of invalidity established in Article 263(2), the Court may declare the act concerned to be void, or annul certain provisions only (EUR-Lex, 2010). In addition, the institution whose act has been found in breach of EU law or whose failure to act in accordance with the Treaties has been established must comply with the judgment of the Court under Article 266 TFEU.

Pursuant to Article 267 TFEU and Article 19(3)(b) TEU, the Court gives preliminary rulings concerning the interpretation of the Treaties, or the validity and interpretation of acts of EU institutions, bodies, offices or agencies, at the request of any court or tribunal of a Member State. Thus, if a question on the interpretation or validity of an EU law arises before a domestic court, where a decision is essential to give judgment, or where there is no judicial remedy under national law, the judge may request the CJEU to give a ruling (Article 267 TFEU). Consequently, preliminary rulings delivered are binding on all courts in the Member States (EUR-Lex, 2024).

Shifting the focus to procedural aspects, cases before the Court of Justice are processed through a written phase followed by an oral hearing, and assigned a Judge-Rapporteur and, when necessary, an Advocate General. During the written phase, the parties submit their statements to the Court, alongside observations presented by national authorities, EU institutions, and private individuals where necessary. Subsequently, the Court of Justice determines the number of judges dealing with the case (3, 5, or 15), based on the importance and complexity of the case, together with the necessity of an oral hearing and whether an Advocate General's official opinion is required. When dealing with its rulings, the procedure followed by the General Court is similar to the one explained above, with the exception that most cases are heard by a chamber of 3 judges and Advocates-General are not involved, unless the Statute provides for their assistance (European Union, n.d.; Article 254 TFEU).

1.3 The European Convention on Human Rights and the Environment

The escalating intensification and tangibility of climate change impacts in recent decades, as well as their repercussions on socio-economic rights of those affected, have strengthened their nexus with human rights (CAN Europe, 2023). This connection has been increasingly recognised also in international fora, exemplified, inter alia, by the Preamble of the Paris Agreement, which stipulates: "[...] Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity, [...]” (Paris Agreement, 2015).

Various instruments safeguard human rights at the international level, such as the Universal Declaration of Human Rights (UDHR), the UN International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR); however, for the purpose of this chapter, the analysis focuses on the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

The Convention for the Protection of Human Rights and Fundamental Freedoms, commonly known as the European Convention on Human Rights (ECHR), is a landmark in the protection of human rights across Europe (CAN Europe, 2023). It sets out fundamental civil and political rights, including the right to life, the right to a fair hearing, the right to respect for private and family life, together with fundamental freedoms, such as freedom of expression, thought, conscience, and religion. Furthermore, the Convention explicitly forbids torture, inhuman or degrading treatment or punishment, forced labour, arbitrary and unlawful detention, as well as discrimination (Council of Europe, n.d.).

Signed in 1950 by the ten members of the newly established Council of Europe, it entered into force three years later under the foundational commitment to prevent the recurrence of the atrocities of the Second World War. The Convention enacted the rights enshrined in the Universal Declaration of Human Rights, approved by the UN General Assembly in 1948 (European Court of Human Rights, 2022).

Since its adoption, additional rights have been introduced through subsequent protocols. To date, sixteen Protocols have been adopted, which either add provisions to the original text, for instance, the abolition of death penalty, the protection of property, and freedom of movement, or reform pre-existing rights. By ratifying the Convention, States Parties commit to secure and guarantee its fundamental rights and freedoms to all individuals within their jurisdiction, also to non-nationals and non-Europeans. It is important to note, however, that protocols are binding to a State only if signed and ratified by that Party. Currently, the ECHR applies to all 46 members of the Council of Europe; in addition, any state wishing to join must sign and ratify it (ECtHR, 2022).

In conclusion, since its entry into force, the ECHR has been vital for the protection of human rights. Although the Convention binds only 46 States Parties in Europe, the Court’s case-law has been extensively cited far beyond its boundaries (European Convention on Human Rights, 2022).

1.3.1 The European Court of Human Rights

The European Court of Human Rights (ECtHR) was established on a permanent basis under the aegis of the Council of Europe (CoE) in 1950 (European Court of Human Rights, 2021). It ensures that the Contracting Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) fulfil their obligations stemming from the provisions enshrined therein (Article 19 of the Convention for the Protection of Human Rights and Fundamental Freedoms).

With regard to its composition, the Court has four main formations. Hence, it may sit as a single judge, in Committees of three judges, in a seven-judge Chamber, or in a Grand Chamber of seventeen judges (Article 26(1) ECHR), depending on the nature of the application[21].

Under the current system, the ECtHR functions as a single, full-time body and applications can be brought directly before it. The Committee of Ministers, which is the executive organ of the CoE, retains the crucial role of overseeing the execution of its judgments (Article 46(2) ECHR).

To boost efficiency on the one hand, and to address the huge number of cases on the other, States progressively adopted successive reforms. Most notably, Protocol No. 14 introduced a new admissibility criterion (the existence of a "significant disadvantage") and the prioritisation policy, through which the Court decides on the order in which applications are processed based on the importance and urgency of the question raised. Moreover, Protocol No. 15 embedded the principle of subsidiarity and the margin of appreciation to the Preamble. The latest protocol, Protocol No. 16, enables highest-ranking domestic courts to request advisory opinion from the ECtHR on the interpretation and application of the provisions (European Court of Human Rights, 2022).

In defining the jurisdiction of the Court, Article 32 ECHR states that it "[..] extends to all matters concerning the interpretation and application of the Convention and the protocols thereto [...]". Moreover, it adjudicates on cases concerning the alleged breach of ECHR's provisions by one or more contracting parties lodged either from another party (Article 33 ECHR), or "[...] from any person, non-governmental organisation or group of individuals claiming to be a victim of a violation [...]" (Article 34 ECHR). However, the Court only deals with such petitions after the exhaustion of all domestic remedies (Article 35(1) ECHR), while rejecting at any stage of the proceeding those considered inadmissible under the additional criteria laid down in Article 35 ECHR[22]. Additionally, it may also render advisory opinions regarding the interpretation of the Convention, its protocols, and judgments, following a request of the Committee of Ministers (Article 47 ECHR). Finally, Articles 45 and 49 empower judges to deliver separate opinions on a judgment or advisory opinion which, in whole or in part, does not represent the unanimous position of the bench (Article 45(2) and 49(2) ECHR).

When the Court finds a violation of the Convention, it renders a judgment which is essentially declaratory in nature. However, under Article 46, it imposes on the respondent State the legal obligation to put an end to the breach and make reparation for its consequences (European Court of Human Rights, 2025). Hence, pursuant to

[21] Specifically, a single judge or a three-judge Committee rules on inadmissibility or merits of well-established case-law (Articles 27-28 ECHR). If no decision is rendered at those levels, a Chamber decides on the admissibility and merits of petitions. Additionally, in circumstances where "[..] serious questions affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, [...] (Article 30 ECHR), it may decide to relinquish the case before the Grand Chamber. Furthermore, the Court's highest formation may exceptionally be called upon referral within three months of a Chamber judgment (Article 43 ECHR).

[22] Under Art. 35, the Court declares inadmissible petitions if they are, inter alia, anonymous; if the matter has already been submitted to another procedure of international investigation or settlement and contains no relevant additional information; if it is incompatible with the provisions of the Convention; or in case the applicant has not suffered significant disadvantage.

In addition, the application must be submitted within four months after the last judicial decision in the case (Art. 35(2)(a-b), (3)(a-b) ECHR; European Court of Human Rights, 2021).

Article 41, the Court may award just satisfaction if the applicant has sustained damage, comprising a sum of money to be paid to compensate for the actual harmful consequences of a violation. The Court's award may cover pecuniary damage, non-pecuniary damage, and costs and expenses depending on the specific circumstances, provided that the internal law of the High Contracting Party concerned allows only partial reparation to be made (European Court of Human Rights, 2021).

Moreover, the Court may initiate a pilot judgment, as provided by Article 61 of the Rules of the Court, a technique developed to address structural problems underlying repetitive cases. This procedure aims at identifying systemic issues and giving the Government clear indications of the type of measures needed to resolve them. An essential feature of these judgments is the possibility of adjourning related cases for a period, on the condition that the Government acts promptly to adopt the national measure required to satisfy the judgment (European Court of Human Rights, 2023).

Given that the judgments of the Court are binding, parties to a case must adopt all necessary measures to abide by them under Article 46(1) ECHR, a process entrusted to the Committee of Ministers (Article 46(2) ECHR). While States generally are free to choose the means by which to comply with the judgment, the Court may prescribe the type of measures that might be taken to put an end to a violation it has found to exist. Therefore, any State found to have infringed rights is mandated to grant remedy through individual measures, which aim to achieve restitutio in integrum by putting the applicant, as far as possible, in the position they would have been if the requirements of the ECHR had not been disregarded (European Convention of Human Rights, 2025).

Crucially, the State must also prevent the recurrence of similar breaches through general measures in its domestic legal order, to put an end to the violation and to redress its effects. General measures often require the State to fulfil its positive obligations through due diligence, establishing, *inter alia*, a regulatory framework capable of protecting human rights (Pisillo Mazzeschi, 2021). This often leads to a change in domestic legislation to align national law with the provisions of the Convention[23] (European Court of Human Rights, 2021). The specific nature of States' positive obligations within the context of climate litigation will be further examined and expanded upon in Chapter 2.

1.3.2 Core principles and methodology guiding the interpretation of the ECHR

As already discussed in section 1.3.1, the ECtHR was established "to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and Protocols thereto, [...]" (Article 19 ECHR), and therefore to adjudicate if there has been a breach of a provision stipulated therein.

[23] Illustrative examples are the abolishment of the criminal offence of homosexual relations between consenting adults in Cyprus, the recognition of an equality of succession rights between legitimate children and children born out of wedlock in France, and finally the prohibition of corporal punishment in State schools in the United Kingdom (European Court of Human Rights, 2022).

In the fulfilment of its role, the Court recognises that the main responsibility of ensuring the rights and freedoms entailed in the ECHR rests within the States Parties. Codified in Protocol No. 15, the principle of subsidiarity limits the supervisory role of the Strasbourg Court. Specifically, its duty is to determine if a particular ruling culminated in a violation of a clause, and not to act as a fourth instance. However, given that the ultimate objective of the Convention is the protection of fundamental rights, subsidiarity does not prevent the Court from mandating that signatory parties implement the undertakings arising from it (McBride, 2021).

Furthermore, general rules in the application of the rights and freedoms enshrined in the Convention and its Protocols are non-reciprocity and non-retroactivity. These principles apply unless, inter alia, specific conduct or circumstances, which occurred before the ECHR's entry into force, are crucial in the understanding of a peculiar situation, or continue to persist after its ratification (McBride, 2021).

Another pivotal criterion in the interpretation of the ECHR is the margin of appreciation doctrine, that is "the space of manoeuvre that the Strasbourg organs are willing to grant national authorities, in fulfilling their obligations under the European Convention on Human Rights" (Council of Europe, 2000, as cited by The Lisbon Network, n.d.). By appealing to this principle, the Court acknowledges that domestic authorities are better equipped to assess if restrictions to a particular freedom or right are deemed "necessary in a democratic society" (e.g. Article 10 ECHR). This balances Member States' sovereignty with their mandates under the Conventions. (The Lisbon Network, n.d.). In case of *Brannigan and McBride v. The United Kingdom* (1993), the Court stated that: "43. [...] By reason of their direct and continuous contact with the pressing needs of the moment, the national authorities are in principle in a better position than the international judge to decide both on the presence of such an emergency and on the nature and scope of derogations necessary to avert it. Accordingly, in this matter a wide margin of appreciation should be left to the national authorities [..]"[24].

Nevertheless, there are requisites for the application of this doctrine, which have evolved in line with the ECtHR's jurisprudence. First, the "European Consensus" standard legitimises a broader or narrower breadth in the application of the margin of appreciation. Consequently, the presence of a common ground on a particular matter in the law and state practice of the Council of Europe's Members will justify a wider margin (The Lisbon Network, n.d.). Second, any limitation imposed must always have a legal basis[25]; otherwise, it will be considered a violation of the specific provision. Finally, other relevant parameters in this respect comprehend the aim being pursued by the limitation in question, the significance attached to a particular right, as well as the existence of a conflict between two of them (McBride, 2021). In fact, the implementation of the Convention requires a fair

[24] *Brannigan and McBride v. United Kingdom*, Applications Nos. 14553/89 and 14554/89, European Court of Human Rights (1993, May 26), para. 43. https://hudoc.echr.coe.int/eng?i=001-57879.

[25] It should be stressed that, in defining the rule of law, the Court requires: rules of general application (applicable to classes of persons and behaviours), observance of the regulations in practice, and effective supervision. Moreover, accessibility (ability to establish the content), foreseeability (ability to determine the consequences), as well as precision in the scope of power (absence of any discretion), are further quality conditions to be met for the purpose of the Convention (McBride, 2021).

balance between different rights and freedoms, which is subject to the principle of proportionality. Disproportionate interference is adjudicated when it hinders the very essence of the provision in question, or if its justification cannot be proven (The Lisbon Network, n.d.).

By reason of their absolute nature, certain rights are non-derogable, namely, the right to life, the prohibition of torture, inhuman and degrading treatment or punishment, the prohibition of slavery, servitude, and of punishment without law, together with the abolition of the death penalty and the right not to be punished twice. As stated in *Saadi v. Italy* with regard to Article 3 of the Convention, "127. [it] prohibits in absolute terms torture and inhuman or degrading treatment or punishment, enshrines one of the fundamental values of democratic societies. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15, even in the event of a public emergency threatening the life of the nation […]". Thus, even though the Court envisages the possibility of additional limitations of rights and freedoms due to a state of emergency pursuant to Article 15, the above-mentioned provisions don't fall under this possibility.

When interpreting the Convention, the Strasbourg organ considers the ordinary meaning of words, as well as their relation with the purpose of the specific provision. Additionally, to ensure the protection of human rights, the maintenance and promotion of democracy, and the practical and effective interpretation of the overall objectives of the Convention, the Court underscores the necessity of going beyond the text of a single provision and reading it in toto, to establish its proper meaning. For example, in *Golder v. United Kingdom* (1975), the Court found that: "35. [...] It would be inconceivable, in the opinion of the Court, that Article 6 para. 1 […] should describe in detail the procedural guarantees afforded to parties in a pending lawsuit and should not first protect that which alone makes it in fact possible to benefit from such guarantees, that is, access to a court. The fair, public and expeditious characteristics of judicial proceedings are of no value at all if there are no judicial proceedings. 36. Taking all the preceding considerations together, it follows that the right of access constitutes an element which is inherent in the right stated by Article 6 para. 1 […].

Furthermore, as repeatedly reiterated in the Court's case-law[26], in view of the fact that the Convention was adopted more than 75 years ago, it requires an interpretation that aligns with changing circumstances and contemporary attitudes. Through its jurisprudence, the Court managed to enforce provisions also to circumstances that were unpredictable at the time of its signature (European Court of Human Rights, 2022).

The dynamic reading of the Convention's provisions can be supported by the existence of a shared understanding among the Parties on a specific issue, a European consensus, which contributes to the evolution of a particular right or freedom. Accordingly, in *Marckx v. Belgium* (1979), the Court held that the participation of Council members in two international treaties (the UN Convention on the Rights of the Child (UNCRC) and the

[26] *Matthews v. the United Kingdom*, No. 24833/94, Eur. Ct. H.R. (1999). *Ferrazzini v. Italy*, No. 44759/98, Eur. Ct. H.R. (2001). *X and Others v. Austria*, No. 19010/07, Eur. Ct. H.R. (2013).

European Convention on the Legal Status of Children born out of Wedlock) "denotes a common ground in these areas among modern societies [...]"[27], thus demonstrating a refusal towards the distinction between "legitimate" and "illegitimate" families in cases of unmarried mothers.

In addition to the interpretative criteria cited above, the Court also factors the travaux préparatoires of the ECHR, along with other international instruments and judgments by other regional or international bodies, while generally following its own jurisprudence, although it does not amount to binding precedent if dynamic interpretation is needed (McBride, 2021).

Last in sequence, yet equally crucial, in ratifying the Convention, the Parties not only commit not to hinder the exercise of the rights and freedoms entailed, but they also undertake positive obligations[28]. In this regard, as argued by Pisillo Mazzeschi (2012), the theory of human rights has produced significant changes in the traditional field of State responsibility, as it has challenged the classical principle of the exclusive interstate nature of responsibility. Moreover, the practice of international human rights monitoring bodies has confirmed and further specified the distinction between negative and positive obligations, contributing to clarifying the categories of States' international obligations, which is particularly significant for the purpose of this research. Namely, on the one hand, there is an immediate obligation of result when the international norm requires the State to achieve, through active conduct, an immediate result, the realization of which does not involve a particular risk. On the other hand, the immediate obligation of due diligence requires the State to adopt a certain conduct regardless of the result, as the latter is inherently uncertain. Finally, there is an obligation of progressive realization when the international norm requires the state to act with the aim of gradually ensuring the achievement of the result intended by the norm. In this case, the State is obliged to proceed as quickly and effectively as possible, and to use all appropriate means and available resources to this end (Pisillo Mazzeschi, 2012).

Over more than 70 years of mandate, the ECtHR has been required to address issues and the consequent cases that were unpredictable at the time of its establishment, including environmental concerns (European Court of Human Rights, 2021). In this light, although the ECtHR was neither originally conceived nor later amended to safeguard the environment or to guarantee an autonomous right to a healthy environment, the Strasbourg Court's evolutive interpretation of certain civil and political provisions has indirectly contributed to environmental protection (Kobylarz, 2025).

As reiterated in *KlimaSeniorinnen*, with reference to the 'living instrument' doctrine, the Court interprets the Convention and its Protocols in the light of present-day conditions and developments in international law, aiming

[27] *Marckx v. Belgium*, para. 41.

[28] Examples are the implicit obligation to protect individuals against inhuman or degrading treatment (*Pretty v. United Kingdom*, 2002, para. 51), or procedural obligations concerning the effective investigation of alleged infringements of the Convention (*Nicolae Virgiliu Tănase v. Romania*, 2019, para. 89).

to reflect the increasingly rigorous standards required for the protection of fundamental rights (*KlimaSeniorinnen*, 2024)[29].

Furthermore, reliance on the Convention's civil and political rights to address petitions involving environmental concerns is commonly labelled in the literature as the indirect doctrine or the 'greening of human rights' (Chalabi, 2023, as cited in Kobylarz, 2025). Notably, this concept is commonly used to refer to applications concerning environmental harm (including climate change), decision-making in environmental matters, or measures of environmental protection, which negatively affect, specifically, the right to life (Article 2), the right to respect for private and family life (Article 8), the right to property (Article 1 of the Protocol No. 1), the right to a fair trial (Article 6), and the rights of freedom of expression or assembly (Articles 10 and 11) (Kobylarz, 2025). The practical application of these provisions and the emerging case law in climate-related petitions will be examined and discussed in the second chapter of this thesis.

[29] *KlimaSeniorinnen*, para. 434.

Chapter 2

The Architecture of Climate Protection in Europe: A Comparative Analysis of Procedural and Substantive Dynamics between the CJEU and the ECtHR

The second chapter examines the legal architecture of European climate protection through a dual analytical lens, procedural and substantive, to determine whether a unified European framework of climate protection is emerging. By scrutinising the jurisprudence of both the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR), this chapter first investigates the developments concerning the access to justice. Subsequently, it focuses on the positive obligations imposed on States by the two Courts.

2.1 Procedural Threshold and Standing: The Interplay between EU Law, the Aarhus Convention and the European Convention on Human Rights

Access to justice in the European Union is guaranteed by a twofold structure which involves both the CJEU and domestic courts of its Member States, aimed at establishing a complete system of legal remedies (Krężel, 2023). This arrangement encompasses two procedural possibilities: the direct action procedure (Article 263 TFEU), brought directly before the CJEU, and the preliminary ruling procedure (Article 267 TFEU), which, as discussed in the previous chapter, originates within national courts but is adjudicated by the CJEU. Firstly, Article 263 TFEU provides natural and legal persons, subject to specific criteria, with direct access to the CJEU by initiating an action for annulment. Specifically, an entity may institute an action '[…] against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures (Article 263(4) TFEU).' Secondly, pursuant to Article 267 TFEU, the CJEU is empowered to give preliminary rulings on the interpretation or validity of an EU legal act. Thus, this provision provides indirect access to the Court through requests to national courts or tribunals where, *inter alia*, '[…] it considers that a decision on the question is necessary to enable it to give judgment (267(2) TFEU).' Nevertheless, it is crucial to remark that the institution of a preliminary ruling remains a discretionary prerogative of the national judge. Yet, as clarified by the ECtHR (*Dhahbi v. Italy,* 2014), the refusal to refer a question by a court of last instance must be duly reasoned to ensure compliance with Article 6 ECHR[30].

To ensure the closure of this 'complete system', any party to a proceeding, in which an act of general application adopted by the Union is called into question, may invoke the inapplicability of such an act on the grounds of its illegality (Article 277 TFEU). In this framework, Article 47 of the Charter of Fundamental Rights (CFR) and Article 19 TEU further safeguard effective legal protection and access to justice in the EU (Eliantonio & Richelle, 2024). While Article 19 TEU assigns the CJEU and Member States with the duty to ensure the

[30] *Dhahbi v. Italy*, No. 17115/11, Eur. Ct. H.R. paras. 31-33 (2014).

observance of the law and effective legal protection in the fields covered by Union law, Article 47 CFR enshrines the right to an effective remedy and to a fair trial.

Beyond the aforementioned constitutional provisions, this European architecture is reinforced by the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (AC), adopted in 1998 under the auspices of the UN Economic Commission for Europe (UNECE). This international treaty was concluded with the aim of empowering civil society in environmental protection, while at the same time increasing the accountability and transparency of public authorities (Martins, 2025). The Convention is legally binding upon both the European Union and its Member States, involving EU institutional and national authorities under EU law (Eliantonio & Richelle, 2024).

Central to the Convention's expansive approach is its subjective scope. Pursuant to Article 2(4) AC, 'the public is defined as 'one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organisations, or groups.' Particularly salient in the context of climate litigation, this provision must be read in conjunction with Article 2(5), which delineates 'the public concerned' as 'the public affected or likely to be affected by, or having an interest in, the environmental decision-making.' This definition specifically encompasses non-governmental organisations (NGOs) promoting environmental protection, provided that they meet the requirements under national law.

The third pillar of the Aarhus Convention, explicitly dedicated to access to justice, is codified in its Article 9. Accordingly, Article 9(1) guarantees access to review procedures concerning information requests (Article 4), complemented by Article 9(2) which ensures the right to challenge acts or omissions related to public participation (Article 6), as well as other relevant provisions where so provided. Crucial for the purposes of climate litigation, Article 9(3) allows members of the public to have standing to challenge acts or omissions of private persons or public authorities that contravene provisions of national law relating to the environment. Finally, paragraphs 4 and 5 require such procedures be adequate, effective and timely, while explicitly obliging Parties to minimize financial and other barriers to ensure access to justice.

Within the European Union, the implementation of Article 9 has been characterised by a 'sector by sector legislative approach', visible in various proposals and adopted pieces of legislation[31] (Eliantonio & Richelle, 2024). While Articles 9(1), 9(2), and the requirements of Article 9(4) have been transposed into EU secondary legislation[32], there is, to date, no legislative instrument operationalising Article 9(3) with respect to procedural law in Member States. Consequently, access to justice remains heavily influenced by existing national law, leading to diversity across legal systems and lack of clarity (Darpö, 2013, as cited in Eliantonio & Richelle, 2024).

[31] For a detailed overview of the EU institutions' positions regarding access to justice provisions within secondary legislation, see the summary table in Eliantonio and Richelle (2024, pp. 273-274).

[32] Key examples of such transposition include Directive 2003/4/EC on public access to environmental information, Directive 2011/92/EU (EIA Directive) and Directive 2010/75/EU on industrial emissions (IED), both of which incorporate the participation and remedy requirements.

This legislative vacuum has been so far filled by CJEU case-law[33] and soft law measures issued by the Commission[34]. However, as extensively highlighted by Eliantonio and Richelle (2024), neither the Court's intervention, nor soft law instruments can 'conceal the pressing need for a more comprehensive regime', to harmonize access to justice within a system that 'cannot be regarded as fulfilling the objective of ensuring wide access to justice promise of the Aarhus Convention' (Eliantonio & Richelle, 2024).

In contrast to the sectoral legislative landscape of the European Union, the purpose and 'spirit' of the Convention have proven to be of fundamental importance for the European Court of Human Rights (ECtHR) in its interpretation of the European Convention on Human Rights (ECHR) (Eckes & Trapp, 2024). In this light, when the AC is read through a 'purposive approach' (Barritt, 2022; Kelleher, 2022, as cited in Eckes & Trapp, 2024), it functions as a key international benchmark to broaden the procedural scope of the ECHR provisions and bypass traditional standing rigidities. This interpretation is particularly evident in *KlimaSeniorinnen v. Switzerland* (2024)[35], where the ECtHR relied on the AC in its legal reasoning. Specifically, the Court drew inspiration from the normative choices enshrined in the AC to refine the definition of victimhood and the consequential question of standing for environmental NGOs (Eckes & Trapp, 2024). The complexities surrounding this shift in *locus standi*, and its specific application to such organisations, will be further elaborated upon in the following analysis.

Moving towards the procedural architecture of the ECHR, a structured set of provisions, namely Articles 34, 35, 6 and 13 of the Convention, is of paramount importance in the context of climate litigation. Primarily, Article 34 sets out the right of individual application to any person, NGO or group of individuals claiming to be a victim of a violation by a member State of the rights set forth in the Convention and the Protocols thereto[36]. Subsequently, Article 35 establishes the admissibility criteria, most notably, the exhaustion of all domestic remedies before the application to the Court, and, furthermore, the grounds for inadmissibility delineated in its paragraphs 2 and 3, such as the applications that are anonymous, substantially the same as a matter already examined, manifestly ill-founded, or lack significant disadvantage. Moreover, the procedural dimension of climate protection is further reinforced by Articles 6 and 13 of the ECHR. While these provisions do not directly outline admissibility criteria before the Strasbourg Court, they entail procedural guarantees that High Contracting Parties must ensure at national level. These include, *inter alia*, the judicial duty to provide sufficiently reasoned decisions, the impartiality and independence of the tribunal, and the right to an effective remedy before a national

[33] In the *Lesoochranárske zoskupenie VLK v. Ministerstvo životného prostredia Slovenskej republiky case* [2011], the so-called LZ I case, the CJEU held that national courts must interpret domestic procedural rules, as far as possible, in accordance with the objectives of Article 9(3).
[34] See, for instance, the 2017 Commission Notice on access to justice in environmental matters, where the Commission provided guidance to national courts on how to operationalise access to justice, or its 2020 Communication "Improving access to justice in environmental matters in the EU and its member states" (2020), in which it underscores the necessity of including access to justice provisions within alle new or revised EU legislative proposals pertaining to the environment.
[35] ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53300/21, 9 April 2024, paras. 490-494, 501, 539.
[36] ECtHR, *Practical Guide on Admissibility Criteria*, 2025.

authority[37]. Specifically, the Court's finding of a violation of Article 6(1) in *KlimaSeniorinnen*, where it noted that the domestic authorities' decision to reject the applicants' complaint was based on 'inadequate and insufficient considerations' (*KlimaSeniorinnen*, 2024)[38] demonstrates how procedural rights might be leveraged to ensure effective access to justice in climate litigation before national courts.

Building upon these normative foundations, the following sections will scrutinise the substantive application of these provisions. By examining the evolving case-law of both the CJEU and the ECtHR, the analysis will explore how the two courts have interpreted standing and procedural guarantees to address the unique challenges posed by climate litigation, starting with the restrictive interpretation historically adopted by the CJEU, crystallised in the Plaumann formula.

2.1.1 Procedural Hurdles and Judicial Restraint: the CJEU's Response to Environmental Standing

To undertake a thorough examination of the procedural barriers in European climate litigation, the analysis must necessarily begin with the foundational interpretation of "individual concern" set down by the Court of Justice of the European Communities in 1963. In the pivotal case *Plaumann & Co. v. Commission*, the Court held that: "Persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed."[39]

Although this formula has more than sixty years of age, its twofold requirement continues to dictate the interpretation of Article 263(4) TFEU (Kramer, 2019). This restrictive reading of individual concern remains the primary hurdle for direct actions brought by private parties against EU institutions. Consequently, its limited scope has been strongly criticised and contested in the context of annulment actions (Krężel, 2023).

The Plaumann formula appears to be anachronistic within the evolving EU legal order. This is particularly evident when considering, on the one hand, the urgency of climate crises and the rise of climate litigation, and on the other, the requirements of environmental democracy and higher-ranking international instruments, such as the Aarhus Convention or the Paris Agreement (Krężel, 2023). The inherent contradiction of the Plaumann test was famously articulated by Advocate General Jacobs in his Opinion on the *Unión de Pequeños Agricultores v. Council* (2002) case[40], where he noted that "the greater the number of persons affected by a measure, the less likely it is that judicial review will be available" (Opinion of AG Jacobs, 2002, as cited by Agrati, 2021).

[37] ECtHR. (2025). *Guide on Article 6 of the European Convention on Human Rights: Right to a fair trial (civil limb)*. ECtHR. (2025). *Guide on Article 13 of the European Convention on Human Rights: Right to an effective remedy.*
[38] ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53300/21, 9 April 2024, para. 637.
[39] Court of Justice of the European Communities. (1963). *Plaumann & Co. v Commission of the European Economic Community* (Case 25/62). ECLI:EU:C:1963:17.
[40] Court of Justice of the European Communities. (2002). *Unión de Pequeños Agricultores v Council of the European Union* (Case C-50/00 P). ECLI:EU:C:2002:462.

The lack of standing in the Carvalho case confirms the high barriers to direct access to the CJEU (Winter, 2020). In 2018, an action was brought against the European Parliament and the Council of the EU by thirty-six individuals and one association representing young indigenous Sami people active in the agricultural and tourism sectors. Pursuant to Article 263(1) and (4), the purpose of the application was to annul relevant provisions of three GHG acts[41]. They argued that those acts enabled emissions exceeding the limits established by higher-ranking law, including the Charter of Fundamental Rights of the EU, the Aarhus Convention, and the Paris Agreement[42] (Application, Carvalho v Parliament and Council, 2018).

The case was dismissed by the General Court, ruling that the applicants lacked standing because they failed to meet the requirement of 'individual concern' as interpreted in the settled case-law. According to the Court, the fact that effects of climate change may be different from one person to another does not grant standing to challenge measures of general application; therefore, standing was denied. Reiterating established jurisprudence, the General Court held that while the Plaumann test of standing may hinder direct access, indirect access remains available, either through the plea of illegality under Article 277 TFEU, or via the preliminary ruling procedure under Article 267 TFEU[43]. Consequently, when faced with the attempt to overcome this restrictive approach, the central role of national courts is emphasised (Krężel, 2023). However, Member States' governments, who enjoy privileged standing, are often those with the least political interest in doing so. Conversely, private parties who possess the genuine interest to challenge such acts in defence of their fundamental rights do not have standing in actions that touch upon the ambitions of the EU's climate aims (Agrati, 2021).

Furthermore, in the appeal against the first-instance judgment, the applicants challenged the finding of inadmissibility by highlighting the failures of the Plaumann formula in this context. Their arguments, which expose the inadequacy of both direct and indirect paths to justice, can be outlined into four key points[44]. First, by invoking Article 6(3) TEU, they argued that the Court is required to interpret the Treaties in accordance with the constitutional traditions of Member States. Accordingly, they noted that no national legal system imposes a requirement of 'individual distinctiveness' in the stringent sense of the Plaumann formula. Second, they underscored a procedural paradox: due to the narrowness of the formula, the widespread nature of environmental harm means that as the number of people affected increases, the less access to courts is provided. With regard to indirect remedies, the applicants contested the Court's reliance on Article 277 TFEU. They claimed that challenging national implementing measures would be futile, as national courts would apply the same restrictive

[41] The acts challenged by the applicants and referred to in this text are Directive (EU) 2018/410 amending Directive 2003/87/EC (the "ETS Directive"), Regulation (EU) 2018/482 ("the Effort Sharing Regulation"), and Regulation (EU) 2018/841 ("the LULUCF Regulation").
[42] Carvalho and Others v. Parliament and Council, Case T-330/18, Application (24 May 2018).
[43] Carvalho and Others v. European Parliament and Council, Case T-330/18, ECLI:EU:T:2019:324.
[44] Case C-565/19 P, *Armando Carvalho and Others v European Parliament and Council of the European Union*, Appeal brought on 23 July 2019 by Armando Carvalho and Others against the order of the General Court (Sixth Chamber) delivered on 8 May 2019 in Case T-330/18.

EU test, therefore leading to a denial of standing at the domestic level. Finally, they argued that an application via Article 267 TFEU is ineffective in the climate context. Since Member States are entitled to adopt more stringent protective measures under Article 193 TFEU, a national court might declare a measure compatible with domestic law while it remains insufficient under EU standards. Thus, ensuring effective legal protection would require applicants to initiate proceedings in all 27 Member States based on national fundamental rights, which is unbearable in terms of effective judicial protection (Winter, 2020).

In the light of the foregoing, a 'real cure' for these procedural limitations would necessitate a revision of the Plaumann requirements, reconciling them with international obligations entailed in higher-ranking international law, specifically the Aarhus Convention and the Paris Agreement, which as international agreements concluded by the Union, occupy a position between primary and secondary EU law. This shift would also reflect the evolving nature of a more engaged and informed civil society (Krężel, 2023). As argued by Agrati (2021), there is an urgent need to embrace a more elastic interpretation of 'individual concern' in the environmental field to ensure consistency with these international benchmarks. One potential avenue is suggested in the *Carvalho* appeal, where the applicants proposed that 'individual concern' should mean 'serious personal concern' or an 'interference with the essence of the right'.

Notwithstanding the rigidity shown in *Carvalho*, in the *Deutsche Umwelthilfe* judgment[45], the Court explicitly addressed the necessity of reconciling the restrictive procedural rules with the Union's international obligations. Specifically, the Grand Chamber ruled that "Article 9(3) of the Aarhus Convention, read in conjunction with Article 47 of the Charter, imposes on Member States an obligation to ensure effective judicial protection of the rights conferred by EU law, in particular the provisions of environmental law."[46] Consequently, the Court deemed it necessary to interpret the procedural rules relating to the conditions in a manner consistent with the objectives of the AC[47]. The Court concluded that an environmental association must be entitled to challenge a national administrative decision, even where national law restricts such a right of action, thereby granting NGOs a procedural path denied to individual applicants under the traditional Plaumann test[48].

As highlighted by Reiners and Versluis (2022), while this case illustrates how the role of NGOs has evolved into that of 'decentralized enforcers' and 'guardians of the Treaties', resorting to litigation to fulfil the enforcement gap left by EU institutions and Member states, private enforcement is not a universal remedy to compliance problems, as it can never substitute centralised infringement procedures (Hofmann, 2019 as cited in Reiners and Versluis, 2022). Ultimately, the absence of a legal reform presages the continuation of legal

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[45] Case C-873/19, *Deutsche Umwelthilfe eV v Bundesrepublik Deutschland,* ECLI:EU:C:2022:857.
[46] *Ibid*., para. 66.
[47] *Ibid*., para 75.
[48] *Ibid*., paras. 79-81.

uncertainty. Without a more formally framed path to justice, it will be provided for in some Member States, but obstructed in others (Martins, 2025).

2.1.2 The ECtHR's Approach to Standing: Victim Status and 'Greening' Interpretation of Procedural Rights

As discussed in section 1.3.2 of the previous chapter, the principle of dynamic interpretation, coupled with judicial willingness has progressively allowed specific fundamental rights entailed in the ECHR to encompass environmental concerns (Kobylarz, 2025). Specifically, this section analyses how the ECtHR has redefined the concepts of victim status and access to justice in the context of climate litigation.

Having regard to the specific features of climate change, in relation to complaints concerning alleged failures by State to combat its impacts, the Court ruled that applicants need to show that they are personally and directly affected by the impugned omissions (Admissibility Guide, 2025). In this regard, the Court established two key criteria to define the threshold for claiming victim status under Article 34 of the Convention. Firstly, "[…] the applicant must be subject to a high intensity of exposure to the adverse effects of climate change, that is, the level and severity of (the risk of) adverse consequences of governmental action or inaction affecting the applicant must be significant; and there must be a pressing need to ensure the applicant's individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm" (*KlimaSeniorinnen,* 2024)[49]. Secondly, the Court will carefully assess the concrete circumstances of the specific case, such as "[…] the actuality/remoteness and/or probability of the adverse effects of climate change in time, the specific impact on the applicant's life, health or well-being, the magnitude and duration of the harmful effects, the scope of the risk (localised or general), and the nature of the applicant's vulnerability" (*KlimaSeniorinnen,* 2024).[50]

The application of this stringent bar to standing led to the finding of inadmissibility for the four individual applicants in *KlimaSeniorinnen* (2024). The Court ruled that these individuals, elderly Swiss women vulnerable to heatwaves, did not fulfil the criteria to constitute victim status under Article 34 (Admissibility Guide, 2025; Kobylarz, 2025; *KlimaSeniorinnen,* para 531). A consistent procedural rigor was applied in *Carême v. France* (2024)[51], where the Court refused to recognize the victim status to the former mayor of a French municipality, who no longer had a relevant link to the jurisdiction in question (*Carême,* 2024)[52]. Again, in *Engels and Others v Germany* (2025)[53], the Court held that the applicants' submissions described climate impacts too broadly and lacked individualised, high-intensity risk, with no specific vulnerability or exceptional circumstances (*Engels*, 2025)[54].

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[49] *KlimaSeniorinnen*, cit., para. 487.
[50] *Ibid*., para 488.
[51] *Carême v. France*, App. No. 7189/21, Eur. Ct. H.R. (2024).
[52] *Ibid*., para. 83.
[53] *Engels and Others v. Germany*, App. No. 46304/21, Eur. Ct. H.R. (2024).
[54] *Ibid*., para. 10.

Notably, the ECtHR placed significant weight on the availability of adaptation measures in Germany and 'reasonable' personal adaptation (*Engels*, 2025)[55]. This focus has been criticized for potentially shifting the burden form State obligations to individual resilience, providing a 'shield' for States and risking to a further narrowing of the scope of climate protection (Rundel, 2025).

In this context, the pending case of *Müllner v. Austria*[56] serves as crucial a test for the Court's jurisprudence. In his individual application, Max Müllner, an Austrian with multiple sclerosis and Uthoff's Syndrome, argues that Austria's failure to adopt effective mitigation directly affects his heated-aggravated disability (Rundel, 2025). Unlike the applicants in *Engels*, Müllner presents medically verified, person-specific evidence of current and foreseeable harm directly tied to increasing temperatures. Moreover, the personal adaptation emphasis seems inappropriate in this case, since it would imply that an individual with severe disability must rely on self-help, potentially detaching him from his settled life, medical and social support system (Rundel, 2025). In the light of these specificities, Rundel (2025) suggests that the high degree of individualisation and medically-supported evidence, previously missing in other applications, provide promising prospects, at least from an admissibility standpoint.

With regard to legal standing for associations in the specific context of climate change, while the Court maintains its strict prohibition on *actio popularis*, it has also relied on 'special considerations' to grant standing to associations representing the interests of direct victims (*KlimaSeniorinnen*, 2024)[57]. Crucially, this procedural path is available even when the members, taken individually, would not have qualified as victims of a violation of substantive rights (*KlimaSeniorinnen*, 2024)[58]. For an association to have the right to lodge an application on behalf of individuals, the Court has identified three cumulative criteria that such an association must satisfy: firstly, it must be lawfully established within the jurisdiction concerned; secondly, it must pursue a dedicated purpose in accordance with its statutory objectives related to the protection of human rights against the threats of climate change; finally, it must demonstrate that it can be regarded as genuinely qualified and representative to act on behalf of those allegedly affected (Admissibility Guide, 2025).

When assessing those requirements, the ECtHR considers factors such as the purpose of the association, its non-profit character, the nature and the extent of its activities, as well as its membership and representativeness in the particular circumstances of a case (*KlimaSeniorinnen*, 2024)[59]. In its subsequent jurisprudence, the Court specified that these principles are strictly confined to the very specific context of climate change and do not apply in other environmental-related cases (*Cannavacciuolo and Others v Italy,* 2023)[60].

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[55] *Ibid*.
[56] *Müllner v. Austria*, App. No. 18859/21, Eur. Ct. H.R. (2024).
[57] *KlimaSeniorinnen,* paras. 475-477.
[58] *Ibid*., paras. 521-526.
[59] *Ibid*., para. 502.
[60] *Cannavacciuolo and Others v. Italy*, App. No. 43509/19, ECtHR (2023) paras. 220-222.

The procedural dimension of climate protection is further reinforced by Article 6 ECHR (right to a fair trial). In line with the Court's case law, its applicability is contingent upon specific requirements. As noted by Kobylarz (2025), it applies where domestic law grants the individual access to proceedings before a superior court to examine a direct appeal against a law; furthermore, the dispute before the national jurisdiction must concern a civil right or obligation whose outcome is directly incisive for the right in question. Additionally, applicants must demonstrate personal exposure to a serious, specific danger, or the existence of potential for severe and irreversible consequences resulting from the absence of adequate corrective measures (Koblylarz, 2025; *KlimaSeniorinnen*, paras. 608, 614). Moreover, as a matter of principle, this provision can also be relied upon by associations which defend their members' substantive rights (*KlimaSeniorinnen*, 2024)[61], or their own rights, such as access to information or participation in the decision-making procedure (Melox, 2007 as cited in Kobylarz, 2025).

Although the Court concluded that the action brought by an environmental association before the national court had a direct and sufficient link to its members' civil rights, it nevertheless refused to acknowledge that domestic proceedings were 'directly decisive' for the individual applicants, as the effects of the government's inaction were not deemed 'imminent and certain' (Guide on Article 6, 2025).

Finally, Article 13 ECHR ensures the right to an effective remedy. However, this provision "does not go as far as to guarantee a remedy allowing a Contracting State's laws to be challenged before a national authority on the ground of being contrary to the Convention" (*Hatton and Others v. United Kingdom*, 2003)[62], nor does it allow for a challenge to a general policy as such (Guide on Article 13, 2025). Consequently, the absence of a recognized right to a healthy environment, combined with the impossibility of directly challenging States' laws or general policy failures, continues to hinder the possibility of enhancing protection for both human rights and the environment (Kobylarz, 2025).

2.2 The Substantive Dimension of Climate Obligations under the ECtHR Jurisdiction

In the first section of this chapter, the analysis focused on the procedural aspects of climate litigation in Europe, through the investigation of both CJEU and ECtHR jurisprudence. This second part aims to delineate the positive and negative obligations imposed on Contracting Parties to the ECHR and on EU Member States by the two Courts.

Starting with the Strasbourg Court's jurisdiction, it is important to highlight that, especially in the recent landmark *KlimaSeniorinnen* case, the Court reiterated the fundamentally subsidiary role of the Convention. It acknowledged the national authorities are best placed to assess and act on environmental issues, and that judicial intervention cannot substitute measures that must be taken by the legislative or executive breaches of government.

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[61] *KlimaSeniorinnen,* paras. 621-623.
[62] *Hatton and Others v. United Kingdom*, App. No. 36022/97, ECtHR (2003) para. 138.

This is formally recognized through the subsidiarity principle and the margin of appreciation (Grasso & Stevanato, 2024; *KlimaSeniorinnen*, para. 412; Milanovic 2024; van Zeben, 2021). However, when complaints are raised before the Court regarding an issue affecting the rights enshrined in the ECHR, "[...] this subject matter is no longer merely an issue of politics or policy but also a matter of law having a bearing on the interpretation and application of the Convention" (*KlimaSeniorinnen*, 2024)[63]. Consequently, the Court continues: "[...] the margin of appreciation for the domestic authorities is not unlimited and goes hand in hand with a European supervision by the Court" (*KlimaSeniorinnen*, 2024)[64]. Based on these considerations and on the urgent threat posed by climate change, the Court firmly concluded that it has competence in the context of climate change litigation (*KlimaSeniorinnen*, 2024)[65].

The Court ruled that mitigating climate change is an obligation stemming from Articles 2 and 8 ECHR, concerning the right to life and the right to private and family life (Milanovic, 2024). As per ECHR Article 2, the positive obligation on Parties to take appropriate measures to safeguard the lives of those within their jurisdiction results from the first paragraph of this provision, which, in the framework of an environmental case, was first clarified by the Court in *Öneryıldız v. Turkey* (2004)[66]. Specifically, this provision entails, above all, the primary duty to institute a legislative and administrative framework to provide effective deterrence against threats to the right to life. Furthermore, it requires that the State establishes an effective judicial system capable of determining the facts, holding accountable those at fault, and providing appropriate redress to the victim[67].

In this context, a significant example is provided by *Cannavacciuolo and Others v. Italy* (2025)[68], where the Court held Italy in violation of Article 2 ECHR. Although this case concerns localised environmental degradation rather than climate change, it demonstrates the core duties of the State to protect the right to life. Notably, the ECtHR concluded that the Italian authorities failed to implement adequate measures to protect the life of the applicants, thereby failing to fulfil their positive obligations. These duties, as interpreted by the Court, include the identification of polluted areas and the verification of contamination levels, as well as the adoption of measures to mitigate the risks. Moreover, the Court highlighted the failure to investigate public health impacts and ensure territorial monitoring. (Acconciamessa, 2025; *Cannavacciuolo*, 2023). While pollution and climate change represent distinct legal challenges, the principles established in pollution cases regarding positive obligations have provided a crucial conceptual bridge for the Court's subsequent jurisprudence in climate-related obligations (KlimaSeniorinnen, 2024)[69].

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[63] *KlimaSeniorinnen,* para. 450.
[64] *Ibid*., para. 450.
[65] Ibid., para. 451.
[66] Öneryıldız v. Turkey [GC], no. 48939/99, ECHR 2004-XII.
[67] European Court of Human Rights (ECtHR, 2025), *Guide to the case-law: Environment.*
[68] *Cannavacciuolo and Others v. Italy*, no. 43509/19, 2025.
[69] *KlimaSeniorinnen*, paras. 435-438.

Having examined the obligations arising from Article 2 ECHR, the analysis now turns to Article 8 ECHR, whose environmental case-law largely developed from the Court's finding in *López Ostra v. Spain* (1994)[70]. In that case, the ECtHR concluded that severe environmental pollution may adversely affect individuals' private and family life (ECtHR, 2025). This provision creates a duty for Contracting States to ensure effective protection for individuals from serious adverse effects of climate change through two distinct types of action: mitigation and adaptation. More precisely, in terms of mitigation, a Contracting State is required to undertake measures for the substantial and progressive reduction of their respective GHG emission levels, progressively leading towards climate neutrality. Parallel to this, States must implement adequate adaptation measures aimed at alleviating the consequences of climate change on individuals' life, health, well-being and quality of life. Such measures must be incorporated into a binding regulatory framework at the national level, supported by adequate implementation and relevant targets and timelines (ECtHR, 2025; *KlimaSeniorinnen*, 2024)[71].

To verify whether a State has fulfilled the aforementioned obligations, and to assess whether it has remained within its margin of appreciation[72], the Court has outlined in its jurisdiction a set of specific indicators. In this vein, it will examine whether the competent domestic authorities: "[...] (a) adopt general measures specifying a target timeline for achieving carbon neutrality and the overall remaining carbon budget for the same time frame, or another equivalent method of quantification of future GHG emissions [...]; (b) set out intermediate GHG emissions reduction targets and pathways (by sector or other relevant methodologies) that are deemed capable, in principle, of meeting the overall national GHG reduction goals within the relevant time frames undertaken in national policies; (c) provide evidence showing whether they have duly complied, or are in the process of complying, with the relevant GHG reduction targets [...]; (d) keep the relevant GHG reduction targets updated with due diligence, and based on the best available evidence; and (e) act in good time and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures" (*KlimaSeniorinnen*, 2024)[73].

Two significant cases exemplify Article 8 violations in environmental matters, illustrating the evolution from localized pollution to climate change risks. In the first, *Tatar v. Romania* (2009)[74], the Court adjudicated upon an incident involving the release of contaminated water into the environment, finding Romania in breach of its duty to assess the risks posed by company activities and to take adequate measures to ensure the rights enshrined in Article 8 (Quirico, 2023). Similarly, within the ambit of the *KlimaSeniorinnen v. Switzerland*

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[70] *López Ostra v. Spain*, no. 16798/90, 1994.
[71] *KlimaSeniorinnen*, paras. 519, 538-540, 544-552.
[72] The margin of appreciation enjoyed by Contracting Parties entails, on the one hand, the State's commitment to combat climate change and, on the other hand, the choice of means designed to achieve those objectives. The former aspect calls for a reduced margin of appreciation, in view of the nature and gravity of the threat and the overall commitment to achieve climate neutrality (*KlimaSeniorinnen*, para. 543).
[73] *KlimaSeniorinnen*, para. 550.
[74] *Tătar v. Romania*, no. 67021/01, 2009.

judgment, the Court found Switzerland in violation of Article 8, having identified several critical lacunae in the process of establishing the relevant domestic regulatory framework. The State thus exceeded its margin of appreciation and failed to comply with its positive obligations under this specific provision (*KlimaSeniorinnen,* 2024)[75].

As delineated in paragraphs 427-429 of the *KlimaSeniorinnen* case, the Court engaged with a body of complex scientific evidence, relevant international standards concerning the effects of environmental pollution, as well as studies and reports by international bodies to consider whether the rights of an individual have been affected and, thus, to declare Switzerland in violation of its duties[76] (Hösli & Rehmann, 2024).

Complementing the substantive protection discussed above, Article 10 ECHR (freedom of expression) has been held applicable in cases concerning environmental defenders and associations claiming to have been denied access to precise and reliable environmental information for public dissemination (Cangi, 2019; Burestop, 2021, as cited in Kobylarz, 2025). However, while this provision does not impose on States to *proprio motu* collect and disseminate information, such an active obligation has been recognized under Articles 2 and 8 ECHR, as they encompass the duty to provide affected individuals with information, also within decision-making procedure, regarding life-threatening situations or risks to the applicants' well-being or health (Brincat, 2014; *KlimaSeniorinnen*, 2024, as cited in Kobylarz, 2025).

2.3 From Procedural Discretion to Substantive Enforcement: The CJEU's Role in Defining State Environmental Duties

Building upon the legal framework examined in the first chapter, which addressed the varied regulatory approaches developed by the European Union for environmental protection, this section investigates the specific substantive obligations imposed on Member States in environmental matters. While the normative foundations of these duties were analysed in section 1.2, the following paragraphs re-examine how their practical application ranges from implementation duties to specific substantive requirements derived from secondary legislation.

Although environmental competence is shared between the Union and its Member States (Articles 2(2) and 4(2) TFEU), the primary responsibility for the practical application of the EU environmental framework rests with the States. Accordingly, they are explicitly mandated to take all appropriate measures to ensure the fulfilment of Treaty obligations and the acts of the Union's institutions, while they shall refrain from any action that could jeopardize the attainment of the Union's objectives (Article 4(3) TEU). Moreover, they are required to finance and implement the Union's environmental policy (Article 192(4) TFEU), and to transpose EU directives into national legislation, even though they enjoy flexibility in the choice of form and methods of implementation

[75] *KlimaSeniorinnen*, para. 573.
[76] This thematic intersection will be further explored in the comparative analysis of the European Courts' systems in the third chapter of this study.

(Article 288 TFEU). To complete the picture, the four specific environmental principles enshrined in Article 191(2), alongside other general principles of EU law and the relevant jurisprudence of the CJEU, govern and shape the interpretation of these obligations[77] (van Zeben, 2022).

EU environmental legislation employs a broad array of regulatory approaches, even with respect to the same environmental issue. As noted by Peeters and Eliantonio (2020), while certain instruments provide 'hard' substantive obligations for Member States, such as the EU Emission Trading System (ETS) or the Effort Sharing Regulation, which impose clear environmental targets, others concentrate on procedural requirements. In this respect, the 2018 Governance of the Energy Union and Climate Action Regulation exemplifies an approach which is 'hard' in its procedural commitments, but more flexible with regard to its substantive content (Brosset & Maljean-Dubois, as cited in Peeters & Eliantonio, 2020). Furthermore, other provisions are designed to encourage Member States to take action and, hence, can be classified as 'soft governance', such as certain obligations in the Waste Directive or the Energy Efficiency Directive (Peeters & Eliantonio, 2020).

This multifaceted regulatory framework enables, on the one hand, Member States to consider optimal solutions and develop policies tailored to national circumstances, even in the case of harder law approaches, or when applying stricter standards pursuant to Article 193 TFEU. However, this broad diversity of approaches entails significant efforts and difficulties in understanding and applying the regulatory package necessary to achieve the envisaged environmental aims (Peeters & Eliantonio, 2020). Evidence of this trend is the longstanding and widespread state of poor implementation and application of EU environmental law at national level, as well as the top ranking of the Commission's infringement activities against Member States failing to adhere to their obligations (Hedemann-Robinson & Smith, as cited in Peeters and Eliantonio, 2020).

Within this fragmented landscape, the CJEU has undoubtedly played an instrumental function in strengthening compliance with EU environmental law. First, the Court paved the way for a more robust enforcement toolkit by enabling the EU legislator to mandate that Member States introduce criminal sanctions to ensure the effectiveness of environmental rules in cases of non-compliance (*Commission v. Council*, 2005; Faure, as cited in Peeters and Eliantonio, 2020)[78]. Secondly, it has been pivotal in providing clarifications of established legislative provisions, such as in the field of nature conservation, access to information and waste (Cliquet, Etemire Beckes, as cited in Peeters and Eliantonio, 2020). Furthermore, the Court has significantly furthered the harmonization process by providing an interpretation of the provisions which have been disparately implemented by Member States, specifically with regard to the Environmental Impact Assessment legislation and the Environmental Liability Directive (Garcia-Ureta & Bándi, as cited in Peeters and Eliantonio, 2020). More generally, its progressive and active jurisprudence is widely recognised for shaping higher environmental

[77]For a comprehensive analysis of the core principles guiding the EU environmental framework, see Section 1.2.1, *supra*.
[78] Case C-176/03, *Commission v. Council*, ECLI:EU:C:2005:542.

standards and empowering citizens to challenge violations of EU environmental law (Peeters and Eliantonio, 2020).

The practical implications of the CJEU's role in environmental protection can be traced through several landmark rulings which, among others, exemplify its judicial activism. In particular, in *Commission v. France*[79] (2019), the Court enforced compliance by holding the relevant State in violation of its obligations under Articles 13(1) and 23(1) of the Directive 2008/50/EC. Crucially, the CJEU underscored that when a state has failed to fulfil its obligations under the Treaties or secondary law, it is irrelevant whether the infringement resulted from intention, negligence or from technical or structural difficulties encountered (*Commission v. France,* 2019)[80]. As the seminal *Janecek* ruling[81] (2008) illustrates, the mandatory nature of environmental obligations empowers individuals with the right to demand state action. In fact, the Court held that whenever a failure to comply with measures required by directives, specifically those related to air quality and drinking water designed to protect public health, natural and legal persons directly concerned must be granted standing to require the competent authorities to enact an action plan (*Janecek,* 2008)[82].

Building on this prior jurisprudence, the Court clarified the substantive requirement of such plans. In the *ClientEarth* case[83] (2014), while recognizing that Member States retain a degree of discretion in selecting the specific measures to adopt, the Court stated that the period of non-compliance must be kept 'as short as possible', and that any measures must strictly comply with the conditions laid down in the relevant directives (*ClientEarth*, 2014)[84]. The critical nature of the effectiveness of these plans was subsequently reiterated in *Craeynest*[85] (2019), where the Court underlines the crucial role of judicial review by national courts. Specifically, it held that domestic courts must determine whether national legislature has ensured the effectiveness of the specific directive and respected the state's limit, directly invoking the right to an effective remedy and to a fair trial enshrined in Article 47 of the Charter of Fundamental Rights of the EU (*Craeynest,* 2019)[86].

Following this sectoral jurisprudence, the adoption of Regulation (EU) 2021/1119 established the comprehensive regulatory framework to achieve carbon-neutrality by 2050, alongside a net internal reduction of GHG emissions of at least 55% by 2030 compared to 1990 levels, in alignment with the objectives of the Green Deal (Rossodivita, 2024). Accordingly, Article 1 enshrines climate neutrality within the Union as a binding objective, intended to fulfil long-term temperature goals and adaptation aims of the Paris Agreement. In line with this mandate, Article 2 obliges EU institutions and Member States to adopt necessary measures to implement

[79] Case C-636/18, *Commission v. France*, ECLI:EU:C:2019:905.
[80] *Ibid*., paras. 37-43.
[81] Case C-237/07, *Janecek v. Freistaat Bayern*, ECLI:EU:C:2008:447.
[82] *Ibid*., paras. 38-39.
[83] Case C-404/13, *ClientEarth v. The Secretary of State for the Environment, Food and Rural Affairs,* ECLI:EU:C:2014:2382
[84] *Ibid*., paras. 57-58.
[85] Case C-723/17, *Craeynest and Others v. Brussels Hoofdstedelijk Gewest,* ECLI:EU:C:2019:533.
[86] *Ibid*., paras. 34, 46, 54.

national strategies and plans to reach this target, with particular focus on the vulnerability of sectors such as agriculture, water, and food systems (Quirico, 2023; Rossodivita, 2024). Moreover, states are required to periodically update their strategies and provide reports to the Commission, which is empowered to issue recommendations should these measures be found inconsistent with the 2050 goal (Carta, 2020; Rossodivita, 2024).

That climate neutrality has evolved into a binding and enforceable obligation for Member States is clearly demonstrated by the *Commune de Grande-Synthe* case[87] (2021). In this ruling, the French Conseil d'État affirmed the mandatory nature of emission targets, effectively anticipating the European Climate Law's legal force (Quirico, 2023). Specifically, the Conseil d'État issued a judicial injunction directly ordering the Prime Minister "de prendre toutes mesures utiles permettant d'infléchir la courbe des émissions de gaz à effet de serre produites sur le territoire national afin d'assurer sa compatibilité avec les objectifs de réduction [...]' in line with European law (Article 2), as interpreted in the light of the UNFCCC and the Paris Agreement (Quirico, 2023).

2.3.1 The Role of the Charter of Fundamental Rights in Climate Litigation: From Marginality to Interpretative Tool

As previously observed in Chapter 1, the Charter of Fundamental Rights of the European Union (CFR) entails a specific provision dedicated to environmental protection, namely Article 37. This distinguishes it from the ECHR, even though the article is not formulated as an individual right. Nevertheless, the Charter has thus far played a limited role in environmental cases brought before the CJEU (Krommendijk & Sanderink, 2023; Quirico, 2023).

This marginal role can be explained, first of all, because invoking the Charter is often unnecessary from a substantive point of view; indeed, EU environmental secondary law encompasses strict obligations and specific value limits, such as those found in the Air Quality Directive or the Waste Framework (Krommendijk & Sanderink, 2023). In *Commission v. Germany* (1991)[88], the Court interpreted these limit values as 'silent rights', hence provisions that are not formulated as fundamental rights but nonetheless create individual entitlements, as they are imposed to protect human health. Consequently, individuals must have standing to assert their rights when those are violated (*Commission v. Germany*, paras. 18-19; Krommendijk & Sanderink, 2023). Moreover, national courts, litigants, and environmental lawyers often prefer to rely on the ECHR. Another crucial aspect is that, pursuant to Article 51, the Charter applies only when Member States are implementing EU law. Finally, as we already analysed in the sections on standing, it remains difficult for national or legal persons and environmental or human rights NGOs to gain direct access to the CJEU via Article 263 TFEU.

Nonetheless, the provisions of the Charter have been deployed in litigation both as a 'shield' and a 'sword'. In the first case, Articles 16 (freedom to conduct a business), 17 (right to property), and 20 (equity before the law)

[87] *Commune de Grande-Synthe v. France,* No. 427301 (Conseil d'État, 2021).
[88] Case C-361/88, *Commission v. Germany* [1991] ECR I-2567, ECLI:EU:C:1991:224.

have been invoked by companies to protect their interests against government measures. In the second, Articles 2 (right to life), 7 (respect for private and family life), 35 (health care) and 37 have been used to further environmental protection or counter pollution. In *Standley* (1999)[89], for instance, a group of UK farmers unsuccessfully challenged the Nitrates Directive (91/676/EEC) for infringements of their right to property. The Court ruled that such rights are not absolute and may be restricted, "[...] provided that those restrictions in fact correspond to the objectives of general interest pursued by the Community" (*Standley*, 1999)[90] and thus, must not prevail over the general interest in environmental protection (Krommendijk & Sanderink, 2023).

Article 2 was referenced in Advocate General Kokott's Opinion in the *Craeynest* case (2019). She held that the rules on ambient air quality put in concrete terms the Union's obligations to provide protection deriving from the fundamental right to life under Articles 2(1) and 37 of the Charter, and the high level of environmental protection required under Article 3(3) TEU (Opinion of Advocate General Kokott in *Craeynest*, 2019). Even though the Court did not explicitly refer to these provisions, it resorted to this Opinion to link air quality with the protection of human health (*Craeynest,* 2019)[91]. In *Commission v. Austria* (2011)[92], the defendant Member State relied on Article 7 to claim that this provision obliges the authorities to protect citizens against harm to health and quality of life as a result of air pollution. This argument was used to justify an interference with the free movement of goods resulting from air pollution (*Commission v. Austria,* 2011)[93]. While recognizing that environmental and health objectives could justify this interference, the Court concluded that "a measure so radical as a total traffic ban" was disproportionate, especially since alternative measures had not been adequately considered (Commission v. Austria, 2011)[94].

Contrary to the other substantive 'sword' rights, Article 37 has received relatively frequent attention from the CJEU. This principle is rooted in existing primary law, namely Article 3(3) TEU and Articles 11 and 191 TFEU. While the case law prior to mid-2019 reveals a marginal role of this article, subsequent jurisprudence demonstrates an increased engagement by the Court, which has mainly utilised the provision as a key interpretative tool (Krommendijk & Sanderink, 2023). This trend is exemplified by the Court's reasoning in cases such as *One Voice and Ligue pour la protection des oiseaux* (2021)[95], where the CJEU used Article 37 to interpret the Birds Directive in a manner which favours environmental protection and animal welfare (*One Voice*, 2021)[96]. Moreover, the provision has been used to underscore the importance of environmental protection as a justification

[89] Case C-293/97, *The Queen v Minister of Agriculture, Fisheries and Food and Commissioners of Customs and Excise, ex parte H.A. Standley and Others*, [1999] ECR I-2603, ECLI:EU:C:1999:215.
[90] *Ibid*., para. 54.
[91] *Craeynest,* para. 33.
[92] Case C-28/09, *European Commission v. Republic of Austria*, [2011] ECR I-13525, ECLI:EU:C:2011:854.
[93] *Ibid*., paras. 118-121.
[94] *Ibid*., para. 140.
[95] Case C-470/20, *One Voice and Ligue pour la protection des oiseaux v Ministre de la Transition écologique et solidaire*, ECLI:EU:C:2021:209.
[96] *One Voice*, para. 65.

for interferences with the four freedoms or other fundamental rights, as is seen in four cases concerning emission allowance trading scheme[97] (Krommendijk & Sanderink, 2023).

However, the procedural and substantive limits of this interpretative trend were demonstrated by the most important climate change case to date, *Carvalho v. Parliament and Council* (2021). As previously discussed regarding the procedural hurdles of the Plaumann test, the substantive potential of the Charter remains constrained by standing requirements. Despite the applicants invoking a wide range of fundamental rights, including the right to life, the rights of children, and the right to an occupation (Articles 2, 24, and 15 CFR), in its final judgment the Court of Justice upheld that the appellants failed to establish individual concern. Thus, the Court effectively precluded a substantive examination of whether the EU's 2030 climate targets were sufficient to safeguard those rights (*Carvahlo*, 2021)[98].

In conclusion, as argued by Krommendijk and Sanderink (2023), human rights may potentially catalyse more rigorous judicial scrutiny of both national and EU measures, thereby promoting the rule of law, and ensuring a higher level of protection across the Union. The explicit reference to Article 37 in the interpretation of the European Climate Law signals the potential shift towards the 'greening' of CJEU's jurisprudence and other rights enshrined in the Charter. Moreover, when interpreted in synergy with Articles 2 and 7 and other principles of EU environmental law, this provision could impose positive obligations, requiring EU institutions to proactively mitigate environmental risks.

[97] Case T-614/13, *Romonta v Commission*, ECLI:EU:T:2014:835; Case T-630/13, *DK Recycling und Roheisen v Commission*, ECLI:EU:T:2014:833; Case T-631/13, *Raffinerie Heide v Commission*, ECLI:EU:T:2014:830; Case T-634/13, *Arctic Paper Mochenwangen v Commission*, ECLI:EU:T:2014:828.
[98] *Carvalho v. Parliament and Council*, paras. 73-78.

Chapter 3

Towards a Unified Framework? Frictions, Synergies, and Judicial Cross-fertilization in European Climate Litigation

After having analysed and compared procedural frameworks and substantive state obligations within both the EU and the ECHR systems, it is evident that, in this writer's view, a unified European framework for environmental protection has yet to be established. Despite this lack of formal unity, significant points of convergence are beginning to emerge. The first section specifically aims to highlight the primary points of friction, while also exploring potential avenues to overcome these obstacles, drawing inspiration from the example and cross-fertilization provided by other international courts. Following this, the chapter will analyse the elements of convergence that are increasingly shaping the evolving landscape of strategic climate litigation in Europe. Moving beyond the current status quo, the third section will examine the emergence of the principle of intergenerational equity, assessing its potential to be recognized as a general principle of EU law. Finally, the chapter will conceptualise the autonomous right to a healthy environment. Building upon recent literature and global legal trends, the last section will argue that the formal recognition of this right offers a powerful solution to current environmental shortcomings, significantly improving domestic policies, strengthening procedural rights, and counteracting the traditional anthropocentric limits of human rights law.

3.1 Mapping the Frictions: Asymmetries in Standing, Territorial Framing of Jurisdiction, and Substantive Divergences

The starting point of this discussion is inevitably the most significant point of friction: the criteria for *locus standi*, especially concerning individual applicants. As already assessed in section 2.1, the 'Plaumann doctrine' remains a formidable barrier to access before the CJEU. As demonstrated in the Carvalho case (2018), non-privileged applicants must prove they are "individually and directly concerned" to directly challenge an EU act under Article 263(4) TFEU. This test creates a significant procedural hurdle in climate litigation, leading to what has been described as a 'procedural paradox' where the more widespread the harm, the less likely judicial review is possible (Agrati, 2021). Moreover, as we have already noted, the exercise of the preliminary ruling procedure under Article 267 TFEU, often presented by the Court as a complementary part of the 'complete system of remedies', is discretionary for national judges and it has been criticised as ineffective for addressing the urgent nature of climate matters (Krężel, 2023; Winter, 2020).

Although founded on different legal bases, a similar restrictive trend regarding standing can be observed within the ECtHR framework. Pursuant to Article 34 ECHR, the Court has traditionally required applicants to satisfy the 'victim status', namely the necessity of being directly and personally affected by a violation (Admissibility Guide, 2025). This requirement often demands person-specific evidence of harm, to preclude *actio* *popularis* and grant standing, thereby creating an additional obstacle for climate litigants (Rundel, 2025). However, as substantiated in the previous chapter's analysis of *KlimaSeniorinnen*, with this landmark judgment the ECtHR has granted standing to NGOs, acknowledging that the very specific context of climate change requires a more flexible interpretation of procedural rules, even though its individual members do not satisfy the strict victim threshold (*KlimaSeniorinnen*, 2024)[99].

Despite the recent and gradual widening of standing for associations, the European judicial landscape remains characterised by the exclusion of almost any public interest litigation and a remarkably burdensome access to justice path, particularly for individuals. It is at this juncture that, as explored by Murcott et al. (2023), there is a significant opportunity to draw insights from the Global South, specifically from the post-apartheid South African Constitution. However, a methodological caveat is necessary when deploying domestic law analogies within international and regional legal systems, as the international order operates under its own distinct systemic logic and consensual constraints (Hertogen, 2018). To maintain analytical rigour, the constitutional experience of South Africa is not leveraged here as a direct template to be transposed onto European architecture. Rather, it is utilized as an advanced judicial laboratory whose persuasive authority lies in its capacity to address shared, systemic challenges that both the CJEU and the ECtHR are currently facing.

In this regard, the South African operational framework demonstrates how a constitutional system can untie the procedural knots that paralyze European environmental litigation. Notably, Section 38(d) of the Constitution grants standing to anyone acting in the public interest. This provision has been extended to Section 32 of the National Environmental Management Act 107 (1998), which empowers any individual or group to seek judicial redress in their own interest, on behalf of others, in the interest of a specific class. Crucially, this framework allows for litigation undertaken in the public interest or in the interest of protecting the environment. Consequently, civil society actors and organisations are empowered to initiate climate litigation without the need to satisfy onerous victim requirements (Murcott et al. 2023).

The small number of cases shows that South Africa's broad standing rules support struggles for climate justice without necessarily opening the floodgates of litigation, a concern that has long deterred European Courts from granting more permissive standing rules (Ngcukaitobi, as cited in Murcott et al., 2023). Furthermore, evaluating the Courts' provisions on standing through a climate justice perspective does not necessarily mean abandoning the standing requirement altogether. Instead, this approach calls for an interpretation of standing criteria that avoids being 'rigid, mechanical and inflexible'. As specifically argued by Murcott et al. (2023) in relation to the ECtHR system, an excessively formalistic interpretation of such rules would render the protection of rights ineffectual and illusory. Moreover, in the specific context of climate change, it is essential to take into account the vulnerability of the most affected persons, because the adoption of a narrow approach to potential

[99] *KlimaSeniorinnen* (2024), paras. 475-477, 521-526.

victimhood risks preventing judicial action until it is too late. In this light, granting effective access to courts becomes a cornerstone for both the substantive effectiveness of human rights and the broader pursuit of climate justice.

Transboundary impacts of climate change disrupt the traditional concepts of jurisdiction, raising questions about global climate injustice and challenging the dominant territorial framing of the international legal order (Murcott et al., 2023). Against this backdrop, a stark dichotomy appears to persist within the European judicial architecture: while an 'attachment' to strict territorial jurisdiction continues to hinder the protection of individual rights in climate litigation, the CJEU appears more inclined toward an extraterritorial approach when EU secondary law serves as a vehicle for the Union to project its external environmental mandate.

Specifically, as discussed in the preceding chapter, the ECtHR requires a concrete link to a State's jurisdiction for an applicant to claim victim status, as exemplified by the inadmissibility decision in *Carême v. France* (2024). Within the CJEU system, while a similar fate befell the *Carvalho* case, the entry into force of the Lisbon Treaty officially added an external dimension to the EU's environmental commitments (Article 21(2)(d) and (f) TEU). In furtherance of these objectives, secondary law provides examples of a 'territorial extension', as seen in the *Air Transport Association of America and Others v. Secretary of State for Energy and Climate Change* (2011)[100]. In this instance, the CJEU accepted jurisdiction over extraterritorial emissions to ensure the effectiveness of EU environmental regulations, thereby fulfilling the Union's broader protection objectives and marking a significant departure from strict territoriality (*Air Transport Association of America*, 2011; Quirico, 2023)[101].

However, while *Carvalho* exposed the rigid domestic barriers of *locus standi*, climate litigation increasingly faces a distinct, preliminary hurdle regarding the restrictive definition of state jurisdiction over transboundary environmental harms. Even in this context, in order to overcome the limits of the European framework, it seems necessary to look beyond the European borders. Indeed, regional and international courts are beginning to apply theories of extraterritorial applicability of international obligations when the actions of one state have negative impacts on the environmental rights of people in another country (Murcott et al., 2023; Raible, 2025). The most striking example is the 2017 Advisory Opinion on Human Rights and the Environment[102] drafted by the Inter-American Court of Human Rights (IACtHR). Reflecting on the transboundary nature of environmental harm, the IACtHR became the first human rights court to recognise an extraterritorial jurisdictional link based on two requirements: a (i) factual nexus between a conduct within a State's territory and an extraterritorial human rights violation, established through the State's effective control over the activities and its

[100] *Air Transport Association of America and Others v. Secretary of State for Energy and Climate Change*, Case C-366/10, ECLI:EU:C:2011:864 (2011).
[101] *Ibid*., paras. 128-129.
[102] IACtHR, Advisory Opinion OC-23/17 Concerning the Interpretation of Article 1(1), 4(1) and 5(1) of the American Convention on Human Rights, Adopted on 15.11.2017.

ability to prevent the harm; and (ii) a causal link between the damage or injury and the action or omission of that State[103]. Crucially, this landmark clarification does not alter the procedural rules of *locus standi* itself; rather, it redefines the spatial scope of state responsibility. Consequently, this link imposes a positive obligation on States, reflecting their responsibility for failing to exercise due diligence within its territory when human rights elsewhere are at stake (Berkes, 2023; as cited in Murcott et al., 2023).

In a more recent resolution[104] specifically addressing climate change and GHG emissions, the Inter American Commission on Human Rights (IACHR) further extended the notion of extraterritorial responsibility. Within Resolution No. 3/2021, the Court clarified that polluting activities within a state's jurisdiction contribute cumulatively to the emergence of adverse effects in other states[105]. By doing so, it directly counters the argument frequently employed by states to justify the failure to reduce emissions: the claim that their individual contribution does not significantly affect the global climate crisis (Murcott et al., 2023). The influence of this advisory opinion is evident in *Sacchi v. Argentina* (2021)[106], a decision by the United Nations Committee on the Rights of the Child (CRC). Although the petition was ultimately dismissed for failure to exhaust domestic remedies, the CRC adopted the IACtHR's logic, concluding that "when a state's act or omission is sufficiently connected to the violation, the person suffering the violation is considered within the state's jurisdiction" (Tigre and Lichet, 2023, as cited in Murcott et al., 2023). Despite acting within different legal frameworks, the specific context of the climate crisis suggests that cross-fertilization is essential to overcome the current limits of the European system, drawing on how judges elsewhere have addressed these shared global challenges (Murcott et al., 2023).

In line with jurisprudential developments from across the Atlantic, an important suggestion regarding how this spatial jurisdiction should be understood is found in the work of Raible (2025). Particularly in the area of climate change, the author supports a different understanding of this concept, specifically shifting the focus to include control over the source of harm instead of control over the rights-holder. In this way, states exercise jurisdiction when their activities impact individuals abroad and they have the capacity to prevent the harm. By decoupling jurisdiction from physical territory, this approach redefines the *ratione loci* scope, ensuring that foreign applicants are not dismissed at the threshold of jurisdiction. Moreover, the author underscores the necessity for the exhaustion of domestic remedies to become a less rigid criterion within the ECtHR system when addressing extraterritorial claims related to climate change. This is based on the premise that those most affected by climate change should have access to reparations and remedies in the States that continue to emit disproportionately, including European States (Raible, 2025).

[103] *Ibid*., note 107, paras 95, 101–102.
[104] IACtHR and REDESCA, Resolution No. 3/2021: Climate Emergency Scope of Inter-American Human Rights Obligations, 2021.
[105] *Ibid*., paras. 39-40.
[106] CRC, *Sacchi, et al. v. Argentina, et al.,* Decision of 23.9.2021, App. No. CRC/C/88/D/108/2019.

Last but not least, the differing substantive approaches to environmental protection represent the final point of friction to be analysed in this section. As observed in the normative and substantive analysis of the preceding chapters, the EU system is heavily sectoral and legislative; it relies on specific targets and environmental secondary law, alongside core environmental principles, to impose both positive and negative obligations on Member States (Kulovesi et al., 2024; Lainotte & Postu, 2025; Peeters & Eliantonio, 2020; Vomácka, n.d.). Conversely, the ECtHR must rely on the 'dynamic interpretation' of the Convention to 'green' existing civil and political rights for the same purposes (Kobylarz, 2025).

In this context, we saw that a 'rights turn' trend in climate change litigation, where litigants invoke the rights enshrined in the Charter of Fundamental Rights of the EU (CFR), is emerging also at the Union's level (Peel & Osofsky, as cited in Bogojević, 2020). However, Bogojević (2020) offers a critical perspective on this interplay. Aligning with the findings of the previous chapters (Krommendijk & Sanderink, 2023; Quirico, 2023), the author argues that any attempt to enforce EU climate change law ultimately depends on the specific legal details and statutory obligations outlined within secondary law. Specifically, by examining successful enforcement cases related to the EU air quality legislation[107], Bogojević demonstrates how the CJEU creates a pathway for individual applicants when they pursue targets and obligations codified in EU law. Ultimately, this underscores the central importance of the political decision-making procedure: when climate targets are translated into clear, precise, and unconditional obligations, they can be effectively enforced within the CJEU system, trumping recourses to human rights (Bogojević, 2020).

The divergence between the technical-legislative strength of the CJEU and the rights-based approach of the ECtHR is further intensified by the ongoing delay in the EU's accession to the European Convention of Human Rights (ECHR). As Kuijer (2020) highlights, the lack of a formal link between these mechanisms increases the risk of diverging interpretations of interrelated human rights norms, potentially leading to conflicting obligations for States under various instruments of international law. Indeed, since the coming into existence of the CFR, the CJEU's increasing reliance on the Charter has become detrimental to the ECHR's original role as the primary source of inspiration for the Union's fundamental rights. This shift inevitably implies that the CJEU is increasingly ruling on matters that the ECtHR has traditionally qualified as being within the jurisdiction of its High Contracting Parties, thereby creating a 'dual' landscape of human rights protection in Europe (Kuijer, 2020).

[107] *Craeynest* (2019), Case C-723/17, ECLI:EU:C:2019:533.

While the *Bosphorus* (2005)[108] and *Aranyosi* (2016)[109] rulings can be viewed as attempts to bridge the gap between the two legal orders, the *Avotiņš v. Latvia* case (2016)[110] underscores the friction (Kuijer, 2020). In this judgment, the ECtHR explicitly clarified that application of EU legal concepts, notably the principle of mutual recognition, may endanger the protection of Convention rights in specific cases, reaffirming its competence to intervene if the need arises (*Avotiņš v. Latvia*, 2016)[111]. This stance, coupled with Opinion 2/13 (2014)[112], in which the CJEU held that the draft Accession Agreement was incompatible with the Treaties, as it does not sufficiently safeguard the autonomy of EU law, demonstrates the increasingly problematic interaction between the two European courts. Therefore, the purpose of the EU's accession to the Convention is considered the only institutional modality to ensure long-term coherence between the two systems working in the same geographic area and interpreting similar human rights standards (Kuijer, 2020). By creating a single European legal space, accession would establish a unified framework of protection throughout Europe (Lecerf, 2024). In this context, as noted by the European Parliament (2023), the principal benefit lies in providing individuals with the possibility of challenging the actions of the Union's institutions, agencies, and bodies before an independent international court.

3.2 Nascent Synergies: Shared Normative Benchmarks and the Evolving Role of NGOs

Despite the tensions previously discussed, it can be argued that two factors are driving nascent synergies within the specific field of climate litigation in Europe. First, there is a shared reliance on international environmental instruments, namely the Paris Agreement and the Aarhus Convention, which serve as common international normative benchmarks guiding the legal reasoning and substantive interpretation of both Courts. Second, a gradual evolution is occurring regarding the standing of non-governmental organisations (NGOs), further aligning the procedural landscapes of the two European legal orders.

As extensively analysed in the first two chapters, the Paris Agreement establishes the current global framework for emissions reduction and mitigation. While legally binding, its substantive mitigation provisions are formulated as recommendations or expectations rather than legal obligations (Bodansky, 2016). Nonetheless,

[108] *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland*, No. 45036/98 (Eur. Ct. H.R. June 30, 2005). Specifically, in this case, the ECtHR held that if an international organization is considered to protect fundamental rights in a manner considered equivalent to that for which the Convention provides, the presumption will be that the State does not depart from its requirements when implementing obligations arising from its membership to that organization (*paras*. 155-156).
[109] *Pál Aranyosi and Robert Căldăraru v. Generalstaatsanwaltschaft Bremen*, Joined Cases C-404/15 and C-659/15 (CJEU April 5, 2016). More precisely, the CJEU established that the protection of fundamental rights, in this specific case the absolute prohibition of inhuman or degrading treatment, may require national authority to postpone the execution of an EU mandate if a real risk of such violation exists. Such a risk must be assessed based on reliable information obtained from, inter alia, judgments of the ECtHR and other international bodies (*paras*. 88-98).
[110] *Avotiņš v. Latvia*, No. 17502/07 (Eur. Ct. H.R. May 23, 2016).
[111] *Ibid*., paras. 113-116.
[112] Opinion 2/13 of the Court (Full Court) on the Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms (CJEU December 18, 2014).

the ECtHR in *KlimaSeniorinnen* (2024) referenced the Agreement and its national and/or global commitments as benchmarks to assess whether a State has exceeded its margin of appreciation or failed to fulfil its positive obligations. Moreover, by integrating international commitments under the UNFCCC and the Paris Agreement into the ECHR, the Court mandated that Contracting Parties "put in place the necessary regulations and measures aimed at preventing an increase in GHG concentrations in the Earth's atmosphere and a rise in global average temperature beyond levels capable of producing serious and irreversible adverse effects on human rights" (*KlimaSeniorinnen*, 2024)[113].

Even in the absence of findings of a direct non-compliance ruling affirmed based on the Paris Agreement, a comparable tendency can be identified within the CJEU's system. The Agreement increasingly operates as an interpretative benchmark informing the interpretation of EU climate legislation, particularly evident in light of the European Union's incorporation of the Paris objectives into secondary legislation, including the European Climate Law and the broader regulatory architecture of the European Green Deal (Carta 2020; Quirico 2023; Rossodivita, 2024). Of no less importance, the Paris Agreement provides litigants within both systems with quantifiable temperature goals and emission reduction pathways representing legally binding targets for the signatory States. These figures serve as metrics that activists can leverage to hold governments accountable, as exemplified in both the People's Climate Case[114] and the Portuguese Youth Case[115] (Colli, 2024).

The Aarhus Convention, which is legally binding on the EU and its Member States, has been integrated into various instruments of EU secondary legislation (as detailed in section 1.2.3). Its influence was instrumental in acknowledging the importance of bringing environmental decisions-making closer to citizens, a shift that materialised in the adoption of the Amending Regulation (EU) 2021/176711, which modifies the original Aarhus Regulation (EC) No 1367/2006. As asserted by key EU institutional actors, the public is the driving force for the transition to a climate-neutral EU under the European Green Deal (Cenevska, 2024). This transition must be carried out in a manner compatible with the system of judicial review under EU law (European Commission, 2020)[116]. In line with this objective, the amending regulation expands the options available to private parties to seek administrative review of administrative acts of 'individual scope', directly addressed to a person or where the person affected can be distinguished individually, and acts of 'general scope,' adopted by the Union institutions and bodies (Cenevska, 2024).

Beyond its role in shaping access to justice in the EU and administrative review, in the ECtHR's system the Court used the Convention to broaden the procedural scope of the ECHR (Barritt, 2022; Kelleher, 2022, as

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[113] *KlimaSeniorinnen*, paras. 543, 546-550.
[114] *Carvalho and Others v. Parliament and Council*, Case T-330/18, Application (24 May 2018).
[115] *Duarte Agostinho and Others v. Portugal and 32 Others* (dec.) [GC], No. 39371/20, European Court of Human Rights (April 9, 2024).
[116] European Commission. (2020). Explanatory memorandum to the proposal for a regulation of the European Parliament and of the Council on amending Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention to Community institutions and bodies (COM (2020) 642 final), p. 1.

cited in Eckes & Trapp, 2024). This interpretation proved pivotal in *KlimaSeniorinnen*, where the Court redefined the criteria for victimhood, effectively granting standing to environmental associations in climate-related grievances (*KlimaSeniorinnen,* 2024)[117]. Similarly, while the CJEU continues to apply the restrictive Plaumann formula to individuals, a significant opening emerged in the *Deutsche Umwelthilfe* case (2022). Here, the Court, specifically referencing Member States' obligations stemming from the Aarhus Convention, affirmed the right of environmental NGOs to challenge administrative acts that contravene EU environmental law (*Deutsche Umwelthilfe*, 2022)[118]. This procedural shift underscores the critical role of NGOs, and of social movements in general, as drivers of political and social change directly engaging with the judicial system (Cummings, 2018, as cited in Colli, 2024).

Applying the legal opportunity structures (LOS) approach, Colli (2024) analyses the role of courts and judicial activity in the EU, drawing attention to the role of social movements in bringing litigation. This is done either to create new legal rights for a particular group or in a particular field, or to change rules and procedures on legal standing, thereby facilitating future cases before national or supranational courts. This perspective is particularly relevant within the European legal order, where the study of EU law has long acknowledged the political implications of rulings and the role of supranational courts as policy entrepreneurs. Ultimately, the author underlines how courts serve as vital arenas in acknowledging and addressing significant societal concerns (Colli, 2024).

3.3 The Principle of Intergenerational Equity: From Global Judicial Trends to the European Legal Order

The long-term interests of future generations in a liveable planet, a stable climate, prosperity, and social stability are intrinsically jeopardised by the challenges of climate change (UNFCCC Secretariat, 2022). This crisis is inherently intergenerational, given that the present generation has limited time to alter the current course of action and avert irreparable harm to posterity (Lee et al., 2023, as cited in Sulyok, 2025). Rooted in the 1980s, the principle of intergenerational equity has become unprecedentedly relevant in recent legal discourse, establishing that future generations have the same right to a healthy environment as the present generation has (Sulyok, 2025). This principle was recently reinforced by the United Nations Committee on the Rights of the Child in its General Comment No. 26 (2023)[119] on children's rights and the environment, with a specific focus on climate change, thereby formally recognising it. Furthermore, this trend has found an authoritative validation through the landmark Advisory Opinions issued by the International Court of Justice (ICJ)[120] and the Inter-American Court

[117] *KlimaSeniorinnen*, paras. 475-477.
[118] *Deutsche Umwelthilfe*, paras. 66, 75, 79-81.
[119] UN Committee on the Rights of the Child (2023), para. 11.
[120] International Court of Justice. (2025). *Obligations of States in respect of climate change* (Advisory Opinion of March 2025).

of Human Rights (IACtHR)[121], which have firmly anchored the rights of posterity within the architecture of state obligations, and whose specific contents will be examined in detail later in this section.

The concepts of intergenerational equity and rights of future generations were first extensively discussed by Professor Weiss, who articulated intergenerational equity as the obligation of each generation to "pass on the natural and cultural resources of the planet in no worse condition than received and to provide reasonable access to the legacy for the present condition" (Weiss, 1988, as cited in Quising, 2023). This conceptual framework was further elaborated by Catherine Redgwell, who submitted that intergenerational equity generates five distinct duties: to conserve planetary resources, to ensure equitable use, to avoid adverse impacts, to prevent disasters, minimise damage, and provide emergency assistance, and to compensate for environmental harm. Moreover, these rights are related to other principles of international law, namely the precautionary principle and the trust principle, which provide an 'intertemporal perspective' and deal with issues that transcend generations (Redgwell, 1999, as cited in Quising, 2023).

Specifically, the trust principle ought to preserve natural resources for its beneficiaries, present and future (Sulyok, 2024). From this legal title directly flows the duty of each generation to protect the environment for the next, an obligation which was reiterated by the UN Committee on the Rights of the Child in General Comment No. 26 (2023), precisely stating that States should bear responsibility for environmental harm in the foreseeable future caused by present acts or omissions. On the other hand, the precautionary principle seeks to prevent environmental harm by prohibiting the postponement of measures aimed at averting environmental degradation in case of 'lack of full scientific certainty' (Kiss, 1996, as cited in Quising, 2023). Within the European Union, the Commission itself stressed the importance of this principle in considering the long-term horizon and the well-being of future generations, also allowing for the consideration of the costs of inaction in the long term (European Commission, 2000)[122].

The principle of intergenerational equity, through either express declaration or implied endorsement by provisions or statements advocating for the conservation, quality and access for the environment, is embedded into several domestic laws, international treaties[123], and judicial decisions from both domestic and international jurisdictions that promote or support this concept (Quising, 2023). On the domestic front, courts have been applying the intergenerational equity principle worldwide. Courts in the Philippines and the United States, after having recognized the tenet, granted legal standing to youth and 'generations yet unborn' to sue the government

[121] Inter-American Court of Human Rights. (2017, November 15). *The Environment and Human rights* [Advisory Opinion OC-23/17]. Series A No. 23.
[122] European Commission. (2000). Communication from the Commission on the precautionary principle (COM (2000) 1 final), para. 6.
[123] Notable examples include the 1992 UN Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, which both enshrine intergenerational equity, together with the 1992 UN Convention on Biological Diversity (CBD) and the Aarhus Convention.

for environmental harm in *Oposa* (1993)[124] and *Cape May* (1971)[125] respectively. Within Europe, the Dutch court in the landmark *Urgenda* case (2015), held the possibility of remedies for those whose interests were represented by Urgenda, an environmental NGO, including current and future generations of Dutch nationals. In 2021, the Federal Constitutional Court of Germany ruled that the national Climate Law violated the constitutional freedoms of future generations, enshrined in the Basic Law of Germany[126].

This trend demonstrates that pleading with the interests of future generations appears to be a useful litigation strategy, prompting courts to curtail the almost unrestricted ability of governments to favour immediate economic gains while ignoring the harmful future consequences of which they are clearly aware based on scientific warnings. In fact, science is often seen as a source of objective knowledge in the courtroom, thus enabling adjudicators to make robust assessments of the magnitude and imminence of future risks, while leveraging soft law goals and policy commitments to assess whether governments harm the interests of posterity[127]. Therefore, through novel interpretations, courts can inject a long-term perspective into states' traditionally short-termist decision-making (Sulyok, 2024). In this respect, the judiciary has been playing a critical role in developing the principle of intergenerational equity by providing the young with the space to defend their environmental rights and those of future generations. Courts have used this principle as a 'stepping stone' in expanding the concept of *locus standi* by recognising the legal personality of minors and unborn children, thereby resulting in cases decided in favour of plaintiffs who were able to show that the actions or negligence of their government would result in the violation of rights of future generations (Quising, 2023).

A parallel evolution can be observed within international adjudicatory bodies. With regard to decisions of international courts, in the *Gabcikovo-Nagymaros Project* case (1997), the ICJ held that the 'growing awareness of risks for mankind for present and future generations' should be taken into account by States when contemplating new activities or continuing old ones for economic or other reasons[128]. Additionally, in its Advisory Opinion (2025), the Court clarified that intergenerational equity must be considered in interpreting applicable rules and that interests of future generations need to be factored in when States decide on and implement policies and measures in the fulfilment of their obligations stemming from treaties and customary international law[129]. Furthermore, in the section specifically entitled Equity and Protection of Present and Future Humanity of its Advisory Opinion OC-23/17, the IACtHR pointed out that the principle of intergenerational equity imposes on

[124] *Oposa v. Factoran* case (1993).
[125] *Cape May County Chapter, Inc., Izaak Walton League of America v. Tito Macchia et al.,* 329 F.Supp. 504 (1971) (U.S.).
[126] German Constitutional Court, BVerfG, Order of the First Senate of 24 March 2021–1 BvR 2656/18 -, headnote 4.
[127] See, for example, the *Hungarian Forest* case Constitutional Court of Hungary. (2020) [Decision 14/2020. (VI. 15.) AB határozat. Magyar Közlöny.] and *Milieudefensie v. Royal Dutch Shell*, ECLI:NL:RBDHA:2021:5337 [District Court of The Hague, 2021].
[128] *Gabcikovo-Nagymaros Project* (1997), para. 140.
[129] ICJ, Obligations of States in Respect of Climate Change [Advisory Opinion] (2025), para. 157.

States the duty to adopt measures and policies to actively contribute "to protect the global climate system for the benefit of humanity as a whole, and both the present and future generations are part of it."[130]

Within the current text of the founding treaties of the European Union, there is no provision that explicitly imposes an obligation on EU institutions to safeguard the long-term needs of future generations. Consequently, long-term interests are discriminated against short-term preferences across numerous Union policies (Lawrence, 2021, Casassus, 2023, as cited in Sulyok, 2025). Nonetheless, Sulyok (2025) argues that several elements in EU legislation, together with recent shifts in the international legal landscape, justify providing stronger and more effective protection of long-term interests. These developments may influence EU law either as customary law or by contributing to the emergence of new general principles of EU law.

Specifically, the author refers to several key elements: Article 3(3) of the TEU, which envisages striking a fair balance between short- and long-term interests; the understanding of the principle of solidarity as 'intergenerational solidarity,' which requires ensuring equity among generations while protecting environmental integrity and sustainable use. Moreover, scientific studies attest that people belonging to younger cohorts will experience an increase in exposure to climate change-induced weather extremes compared to earlier birth cohorts. Therefore, these marked differences between the living conditions and safety of older and younger generations within the EU could be legally framed as discrimination based on age (Gosseries, 2015; Kaya, 2019, as cited in Sulyok, 2025). Furthermore, protecting the interests of future generations is inherently embedded in the concept of sustainable development (Sulyok, 2025).

Notwithstanding the fact that future generations are not yet recognised as rights holders under human rights law, legal experts are increasingly highlighting the necessity of interpreting human rights obligations with a view to posterity. This approach is strengthened by the fact that human rights guarantees have no temporal limitations under major international treaties, including the ECHR. This trend is exemplified by the recently adopted Maastricht Principles on the Human Rights of Future Generations[131], as well as the Strasbourg Principles on International Environmental Human Rights Law[132], both stressing that intergenerational equity must be respected and that interference with the rights of future generations should be deemed unlawful. Moreover, several constitutions of EU Member States[133] also recognise future generations as a legal qualifier of the right to a healthy environment, or national courts interpret other provisions in a way that protects posterity's interests[134]. In addition, the Preamble of the Charter of Fundamental Rights of the EU (CFR) unequivocally states that the rights

[130] IACtHR, The Environment and Human Rights [Advisory Opinion OC-23/17] (2017), Series A No. 23, paras. 305-313.
[131] Maastricht Principles on the Human Rights of Future Generations (2023).
[132] Global Network for Human Rights and the Environment, 'Strasbourg Principles on International Environmental Human Rights Law' (2022), section 32.
[133] See e.g. France (Preamble of the Charter for the Environment), Norway (Norwegian Constitution, Article 112) Czech Republic (Preamble to the Charter of Fundamental Rights and Basic Freedoms).
[134] In the Netherlands, see judgment of *The Hague District Court Milieudefensie v Shell* (202), para 4.2.4, where the court bundled the interests of present and future generations of the Waddensee region and allowed their claim to proceed.

guaranteed in the Charter "entail responsibilities and duties with regard to other persons, to the human community and to future generations" (CFREU, 2012). These developments in national laws and jurisprudence, together with the international trend towards the recognition of rights towards posterity and the wide range of international conventions imposing an express obligation on the EU to consider the long-term implications of its actions, may justify declaring intergenerational equity a general principle of EU law. As a consequence, Member States and EU institutions would have to duly consider and protect future generations' interests in legislative acts and policies (Sulyok, 2025).

Against this backdrop, the CJEU could also exercise a crucial role in future-proofing EU law. Since the CFR acknowledges that fundamental rights pose correlative obligations for EU institutions and States vis-à-vis future generations at the level of primary EU legislation, the Court could develop a more future-oriented dimension to certain rights enshrined in the Charter. This jurisprudential evolution would serve as an essential tool in balancing competing short-term and long-term interests (Winter, 2020, as cited in Sulyok, 2025). Ultimately, this could justify finding short-termist policies disproportionate, and consequently, unlawful under the Charter (Sulyok, 2025).

Turning our attention to the ECtHR, the Strasbourg Court has emphasised the 'importance of intergenerational burden-sharing' in the *KlimaSeniorinnen* case (2024). In this judgement, the Court imposed an obligation for Contracting Parties, stating that "immediate action needs to be taken and adequate intermediate reduction goals must be set for the period leading to net neutrality" in order to "avoid a disproportionate burden on future generations"[135]. Although the Court held that Contracting Parties owe their obligations under the Convention to those currently alive, who fall within their jurisdiction, it nonetheless stressed that "the intergenerational perspective underscores the risk inherent in the relevant political decision-making processes, namely that short-term interests and concerns may come to prevail over, and at the expense of, pressing needs for sustainable policy-making, rendering that risk particularly serious and adding justification for the possibility of judicial review"[136]. Moreover, in case the ECHR is amended with a standalone right to a healthy environment, such a normative development would advocate in favour of stricter protection of long-term environmental interests by the ECtHR (Sulyok, 2025).

[135] *KlimaSeniorinnen*, para. 549.
[136] *Ibid* para 420.

3.4 Conceptualizing the Right to a Healthy Environment: From Global Recognition to European Integration

The human right to a clean, healthy, and sustainable environment (R2HE) formally recognised in July 2022 by the UN General Assembly in a landmark resolution, is not enshrined in a universally agreed definition. This right has now been acknowledged by all major regional human rights systems[137] (Heri, 2024), and it is generally understood to include substantive and procedural dimensions. The substantive elements include, *inter alia*, clean air, a safe and stable climate, access to safe water and adequate sanitation, together with healthy biodiversity and ecosystems. On the other hand, the procedural elements include access to justice and effective remedies, access to information and the right to participate in decision-making[138]. The recognition of this right additionally requires international cooperation, solidarity and equity in environmental action, as well as the recognition of extraterritorial jurisdiction over human rights infringements caused by environmental degradation[139]. The UN Special Rapporteur has described the right based on long-established principles as derived from the right's codification in numerous national constitutions and laws, the implementation of the provision by the IACtHR, and other world apex courts[140] (Kobylarz, 2025).

The R2HE introduces a fundamentally innovative approach to environmental human rights, as it entails both a subjective and an objective dimension. The subjective dimension is anthropocentric, as it aims at ensuring that the environment is 'healthful', meaning that it is conducive to healthy living for people. Conversely, the objective dimension conceives the environment as 'healthy in itself' and free of diseases that hinder its ecological balance and sustainability (Ksentini, 1994, as cited in Kobylarz, 2025). By adopting this dualistic perspective, human dependence on environmental benefits is not viewed solely in terms of direct short-term utility for individuals (Kobylarz, 2025). Instead, the relationship between humans and the environment is understood through the principles of sustainability, intergenerational equity, prevention, precaution, solidarity, international cooperation and the principle *in dubio pro natura* (Kobylarz, 2022, 2023, as cited in Kobylarz 2025).

The Council of Europe (CoE) instituted a formal procedure that could lead to the adoption of a legally binding instrument. However, Member States insisted that the adoption of a Protocol on the right to a healthy environment would be redundant, since the ECHR system already indirectly contributes to environmental protection through the so-called 'greening' of existing civil and political rights in the case law of the Strasbourg

[137] This includes the African Charter on Human and Peoples' Rights (adopted in 1981, entered into force 21 October 1986) 1520 UNTS 217, Art. 24; the San Salvador Protocol to the American Convention (adopted in 1988, entered into force in 1999) Organization of American States Treaty Series No 69, Art. 11; Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (adopted in 2018, entered into force in 2021) 3397 UNTS, Arts 1, 4(1) (the Escazú Agreement); League of Arab States, Arab Charter on Human Rights (adopted in 1994, entered into force in 2008) Arts 38, 39(2); and the Association of Southeast Asian Nations Human Rights Declaration (2012) Arts 28(f), 35–36.
[138] UNGA Res. 76/300 (2022).
[139] United Nations Human Rights Council. (2019). Good practices on the right to a safe, clean, healthy and sustainable environment (Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/43/53).
[140] *Ibid*.

Court, a position which led to the rejection of three former recommendations of the Parliamentary Assembly in 1999, 2003, and 2009 (Kobylarz, 2025). Furthermore, the CoE ordains that Member States should confront the triple planetary crisis of climate change, biodiversity and nature loss, and pollution with ‘enhanced protection’ of human rights and ‘strengthened action’ regarding environmental protection, with the intended goals of establishing a “clear responsibility to maintain a good state of the environment that is compatible with life in dignity […] and the full enjoyment of fundamental rights”, and supporting “much more effective protection of a safe, clean, healthy, and sustainable environment at national level”[141].

As already noted, the current ECHR framework provides a degree of environmental protection through civil and political rights. The obvious limitation of this is that environmental harm that does not directly affect the enjoyment of one of these rights falls outside the Court’s purview. With a formal recognition of the R2HE, this right could come into play in cases concerning significant disturbance or destruction of ecosystems and their living entities (Kobylarz, 2025). Under this new framework, the Court, in principle, could no longer reject cases, such as the *Kyrtatos v Greece* (2003)[142], or *Ogloblina v Russia* (2013)[143], where the claims concerning the destruction of natural habitat or the logging of a forest were declared inadmissible based on the lack of any prejudice to the well-being or health of the applicants.

Moreover, it would no longer be necessary to demonstrate a subjective, personal impact or danger stemming from climate change, pollution and so on. In cases of serious objective ecological damage that has not yet materialised, judicial reasoning would have the option to rule under both the right to a healthy environment and a proxy right. Therefore, the adoption of the Protocol on the R2HE would make a real difference in the ECHR framework, allowing the Court to ensure better protection against environmental harm. In addition, the ECtHR could also reinforce its preventive function, enabling the ECHR framework to incorporate measures to mitigate environmental degradation or climate change. The new Protocol could legitimise the Court and the Committee of Ministers to actuate general measures for the prevention or redress of environmental harm as such, shifting the focus from solely ‘restoring’ individuals (Kobylarz, 2025).

Additionally, research has shown that the recognition of this right has practical implications. First, it is effective in helping applicants in environmental proceedings win their cases, contributing to placing environmental interests on an equal footing with other human rights, and creating a meaningful role for civil society (Palmisano, 2022, as cited in Heri, 2024). Furthermore, studies have shown that recognizing the R2HE brings both better environmental protection in domestic policy, legislation and jurisprudence, and strengthens procedural rights for environmental defenders and victims of violations (Boyd, 2011; Rodríguez-Garavito, 2017, as cited in Heri, 2024). For all the above-mentioned reasons, it is argued that the adoption of a new protocol to

[141] CoE Committee of Ministers Rec. CM/Rec(2022)20 (2022).
[142] *Kyrtatos v Greece* App no. 41666/98 (ECtHR, 11 January 2000, 13 September 2001; and (judgment) 22 May 2003).
[143] *Ogloblina v Russia* App no. 28852/05 (ECtHR, 26 November 2013).

the ECHR would be the most desirable option for the protection of rights, providing the ECtHR with an explicit mandate to examine environmental cases, thereby counteracting the Convention's anthropocentrism (Heri, 2024).

Shifting our attention to the European Union, the adoption of such a Protocol within the Council of Europe's system could lead to the right to a healthy environment becoming a general principle of EU law. Alternatively, as a separate legal avenue, the CJEU could declare the right a general principle of law considering that the majority of Member States, specifically 15 countries, already acknowledge the right to a healthy environment as a constitutional right[144]. Despite the slight variations due to the different legal formulations, these declarations signify a clear trend in the constitutional traditions of Member States, as individuals are afforded a standalone right to sustain a functioning and healthy natural environment (Sulyok, 2025).

[144] See constitutions of Belgium, Bulgaria, Czech Republic, Croatia, Estonia, Finland, France, Greece, Hungary, Latvia, Romania, Slovakia, Slovenia, Spain, and Portugal.

Conclusions

Dissatisfaction with the inadequate climate policies and measures adopted by states in response to worsening environmental degradation has transformed climate litigation into a rapidly expanding global phenomenon. Specifically, following the entry into force of the Paris Agreement in 2015, the third wave of European climate disputes has seen the proliferation of lawsuits leveraging constitutional and human rights law to argue that governments bear positive obligations to pursue ambitious climate action, thereby fostering climate justice. At the regional level, these legal challenges have increasingly been brought before supranational courts, namely the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR). Both jurisdictions have experienced, and continue to witness, a substantial surge in climate-related cases, a trend which is expected to intensify as environmental impacts become more frequent and severe. Given the profound resonance of this litigation both within Europe and worldwide, it is crucial to question whether this recent phenomenon, characterized by complex interactions and institutional tensions between the two European regional courts, is ultimately contributing to the emergence of a unified framework of European climate protection.

While always bearing in mind that these two regional courts operate within distinct judicial and structural frameworks and possess different institutional mandates, the foundational instruments of which were comprehensively examined in the first chapter of this dissertation, a comparative analysis conducted through a dual methodological lens reveals both procedural and substantive divergences.

Within the CJEU system, stringent procedural barriers to standing constitute the primary hurdle that individual applicants face when bringing direct actions. Indeed, in the pivotal case *Plaumann & Co. v. Commission* (1963), the Court interpreted the requirement of "individual concern" in an exceptionally restrictive manner. This long-standing doctrine has been highly criticized as anachronistic, given the urgency of the climate crisis, the principle of environmental democracy, and the commitments enshrined in higher-ranking international instruments, most notably the Aarhus Convention (1998). The dismissal for lack of standing in *Carvalho* (2018) confirms the persistence of this high threshold. Furthermore, while the Court has consistently maintained that indirect access remains available, either through the plea of illegality under Article 277 TFEU or via the preliminary ruling procedure under Article 267 TFEU, thereby emphasising the central role of national courts, the inadequacy of both direct and indirect access pathways demonstrates an urgent need to embrace a more elastic interpretation of individual concern to ensure effective judicial protection.

Shifting focus to the ECtHR system and having regard to the specific features of climate change, the Strasbourg Court has established that to meet the threshold for victim status, individual applicants must demonstrate that they are personally and directly affected by the impugned state omissions. This stringent bar to standing led to finding of inadmissibility not only for the four individual applicants in the landmark *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (2024), but also in *Carême v. France* (2024) and in *Engels* *and Others v Germany* (2025). Within this evolving landscape, the pending case *Müllner v. Austria* serves as a crucial test for the Court's jurisprudence: the high degree of individualisation and medically-supported evidence, previously missing in other applications, provide promising prospects for a different outcome. Nonetheless, concerning the *locus standi* of environmental associations, while the ECtHR maintains its traditional prohibition on *actio popularis*, it has introduced 'special considerations' to grant standing to entities representing the interests of direct victims. When specific cumulative criteria are fulfilled, these associations are permitted to litigate on behalf of individuals. In its subsequent jurisprudence, the Strasbourg Court has underscored that this peculiar standing exception is confined to the very specific context of climate change.

Turning to the substantive dimension of climate obligations, the ECtHR has ruled that mitigating climate change constitutes an obligation arising from Articles 2 and 8 of the European Convention on Human Rights (ECHR), which protect the right to life and the right to respect for private and family life, respectively. Through this mechanism, the civil and political rights enshrined in the Convention are interpreted in an evolutive manner, an approach conceptualised in literature as the "greening of human rights", rooted in the doctrine of the Convention as a "living instrument". Specifically, the climate obligations derived from ECHR provisions encompass taking appropriate measures to safeguard individuals within a state's jurisdiction, instituting legislative and administrative frameworks to effectively deter threats to life, and establishing an effective judicial system, Furthermore, states are required to ensure effective protection against the severe adverse effects of climate change through mitigation and adaptation, notably through the progressive reduction of GHG emissions. Complementing this substantive dimension, Articles 10 ECHR (freedom of expression) has been applicable in scenarios concerning the lack of precise and reliable environmental information for public dissemination.

With respect to the European Union, the primary responsibility for the practical application of the varied environmental regulatory framework lies with the Member States. Accordingly, they are required to take all appropriate measures to ensure the fulfilment of the Union's environmental objectives alongside financing and implementing its climate policies and transposing EU directives into national legislation. As outlined in the first chapter of this research, EU environmental law employs a broad array of regulatory approaches. These encompass both 'hard' substantive obligations, such as the EU Emission Trading System (ETS) or the Effort Sharing Regulation, and 'soft governance' instruments that encourage states to take action, as seen in certain provisions of the Waste Directive or the Energy Efficiency Directive. However, this diversity of approaches entails significant complexities in understanding and realising the envisaged goals. Within this landscape, the role of the CJEU is instrumental both in strengthening compliance with EU environmental law and in clarifying legislative provisions through authoritative interpretation. The practical implications of the Court's oversight are demonstrated by several landmark rulings; in particular, *Commission v. France* (2019), *Janecek* (2008) or the *ClientEarth case* (2014) illustrate the Court's progressive and active jurisprudence.

Although the Charter of Fundamental Rights of the European Union (CFR) contains a specific provision dedicated to environmental protection, Article 37, it has played a limited role in cases brought before the CJEU. Nonetheless, certain Charter guarantees have been deployed both as a ‘shield’ to protect corporate interests against state regulatory measures (notably Articles 16, 17 and 20) and as a ‘sword’ to further environmental protection or counter pollution (specifically Articles 2, 7, 35). Contrary to these ‘sword’ rights, Article 37 itself has increasingly been utilised as a key interpretative tool to underscore the importance of environmental protection within the Union’s legal order.

After analysing and comparing the procedural and substantive dimensions within the EU and ECHR systems, it emerges that a unified European standard for environmental protection has yet to be established. Several main points of friction have been identified. Foremost among these are the criteria for *locus standi*, particularly concerning individual applicants. These requirements, reflected in the Plaumann doctrine and the ‘victim status’ threshold, respectively, constitute a formidable and impenetrable barrier to justice in both judicial regimes. Furthermore, even though the transboundary impacts of climate change challenge traditional concepts of jurisdiction and disrupt the dominant territorial framing of the international legal order, the two courts diverge in their response: while the ECtHR maintains a strict adherence to territorial jurisdiction, the CJEU appears more inclined toward an extraterritorial perspective to protect Union’s external environmental mandate. Another point of friction lies in their substantial methodologies. On the one hand, the EU relies on a highly sectoral, technical-legislative approach rooted in secondary law, specific targets, and core environmental principles. On the other hand, the ECtHR must depend on the ‘dynamic interpretation’ of the Convention to achieve the ‘greening’ of civil and political rights. This divergence is further intensified by the ongoing delay in the EU’s accession to the ECHR. Ultimately, EU accession to the Convention remains the primary institutional modality to ensure long-term coherence between the two systems and to foster the establishment of a unified framework for human rights protection throughout Europe.

Despite these tensions, two factors are driving nascent synergies within European climate litigation. First, both regional courts rely on international environmental instruments, most notably the Paris Agreement and the Aarhus Convention, to guide their legal reasoning and substantive interpretations. These international benchmarks are utilised either to assess whether States exceed their margin of appreciation, as demonstrated by the ECtHR, or to operationalise legislative objectives within the Union, as exemplified by the adoption of the Aarhus Amending Regulation (EU) 2021/176711. Second, a gradual evolution regarding the standing of environmental NGOs is occurring, deeply tied to state obligations derived from the Aarhus Convention. This shift is further aligning the procedural landscape of the two European supranational legal orders, a convergence illustrated by the rulings in *KlimaSeniorinnen* (2024) and *Deutsche Umwelthilfe* (2022).

Lastly, this dissertation culminates in the exploration of future prospects in climate governance, notably focusing on the principle of intergenerational equity and the right to a healthy environment (R2HE). The former establishes that future generations possess the same entitlement to a healthy environment as the present cohort. This concept has found authoritative validation through the Advisory Opinions of both the International Court of Justice (ICJ) and the Inter-American Court of Human Rights (IACtHR), as well as the General Comment No. 26 of the UN Committee on the Rights of the Child. Globally, courts have increasingly been applying this tenet; landmark cases in the Philippines and in the United States, for instance, have granted legal standing to youth and 'generations yet unborn' to sue governments for environmental harm. Within Europe, domestic tribunals, such as the Dutch courts and the Federal Constitutional Court of Germany, have likewise recognised the viability of remedies for those representing the interests of posterity. Albeit EU treaties lack provisions explicitly mandating institutions to safeguard long-term needs of future generations, several elements in EU legislation, coupled with recent international developments, may justify elevating intergenerational equity as a general principle of EU law. This would impose a binding duty on both Member states and EU institutions to consider and protect the interests of posterity when enacting legislation.

The human right to a clean, healthy, and sustainable environment (R2HE) was formally recognised by the UN General Assembly in 2022 and is now acknowledged across all major regional human rights systems. It is generally understood to include both substantive and procedural dimensions, ranging from clean air and safe water to access to justice and effective remedies, while introducing a more ecocentric approach[145] by conceiving the environment as 'healthy in itself'. However, the adoption of an additional Protocol explicitly enshrining this right within the ECHR framework has been resisted by the member states of the Council of Europe. These states argued that the Convention already contributes to environmental preservation through the evolutive interpretation of its existing civil and political guarantees. In reality, the formal codification of the R2HE would prove transformative, particularly in cases concerning the destruction of ecosystems and their living organisms, as it would no longer be necessary to demonstrate a subjective, personal impact or danger. Consequently, such a Protocol would allow the Strasbourg Court to ensure better environmental protection, while simultaneously encouraging the EU to embrace the R2HE. Alternatively, the CJEU could independently declare the R2HE as a general principle of law, given that 15 Member States already afford it constitutional status. Ultimately, the simultaneous integration of both intergenerational equity and the R2HE within these European supranational regimes would undoubtedly serve as a catalyst for deeper judicial alignment. Consequently, a comprehensive investigation into how these emerging paradigms might structurally reshape the cooperative dialogue between the CJEU and the ECtHR represents a compelling and necessary avenue for future legal research.

[145] On the necessity of moving towards ecocentrism in international law, see De Vido (2021), where the author effectively highlights the limits of the existing anthropocentric legal framework to respond to contemporary challenges.

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Dichiarazione del ricorso a strumenti di Intelligenza Artificiale (IA)

La sottoscritta Giorgia Riva, 899677, iscritta presso Ca' Foscari al Corso di Laurea magistrale in Relazioni Internazionali Comparate, autrice della tesi di laurea ***Towards a Unified Path of Environmental Protection? European Regional Courts and Climate Litigation***, relatore Gabriele Asta, consapevole delle sanzioni previste dall'art. 76 del Testo unico, D.P.R. 28/12/2000 n.445, e della decadenza dei benefici prevista dall'art. 75 del medesimo Testo unico in caso di dichiarazioni false o mendaci, sotto la propria personale responsabilità a sensi degli artt. 46 e 47 del D.P.R. D.P.R. 28/12/2000 n.445,

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di non aver fatto ricordo a tecnologie di intelligenza artificiale generative per supportare vari aspetti della ricercar e della scrittura della sua tesi di laurea;

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