



# **TOWARDS THE EMERGENCE OF ENVIRONMENTAL HUMAN RIGHTS?**

A discussion of the relevance of  
the right to a safe and healthy environment.

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## DECLARATION FORM

*The work I have submitted is my own effort. I certify that all the material in the Dissertation which is not my own work, has been identified and acknowledged. No materials are included for which a degree has been previously conferred upon me.*

Signed: Morgane Dussud

Date: 23 May 2013

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## Abstract

This dissertation focuses on the link between human rights and the environment and the emergence of environmental human rights in the form of an individual, substantive, third generation right to a safe and healthy environment.

It aims at formulating a working definition of the right to a safe and healthy environment (RSHE). To do so, I first discuss the *theoretical* relationship between human rights and environmental concerns and the key issues arising from diverse sources (such as academic debates, international law and human rights documents, etc.) when discussing the nature and content of the right to a safe and healthy environment. Then, I analyze the feasibility and the relevance of its legal recognition in the European context, thanks to a case-study aiming at assessing to what extent environmental protection is embedded in the European Court of Human Rights' jurisprudence.

The analytical discussion is based on a general content analysis and I build the case-study on Yin's methodology. My main material are theories and the review of literature, as well as legal cases with an environmental component submitted to the European Court of Human Rights.

This study concludes that the nature and content of the RSHE are highly debated, even among its defenders, and that it is rather a principle of interpretation of existing fundamental rights by the Court, than a new human right recognized as such.

Believing that the European Convention on Human Rights is a “living instrument” and that the growing interactions between human rights and environmental concerns are moving towards the recognition of environmental human rights, I present my own contribution to the general development of human rights by suggesting a working definition of the right to a safe and healthy environment and practical guidelines on how to implement it in the European context.

**Key words:** Human Rights, Environment, Right to a Safe and Healthy Environment (RSHE), European Court of Human Rights, European Convention on Human Rights.

*“Whatever career you may choose for yourself - doctor, lawyer, teacher - let me propose an avocation to be pursued along with it. Become a dedicated fighter for civil rights. Make it a central part of your life. It will make you a better doctor, a better lawyer, a better teacher. It will enrich your spirit as nothing else possibly can. It will give you that rare sense of nobility that can only spring from love and selflessly helping your fellow man. Make a career of humanity. Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country and a finer world to live in.”*

- Martin Luther King, Jr

## **LIST OF ABBREVIATIONS**

**ECtHR** European Court of Human Rights, “the Court”

**ECvHR** European Convention on Human Rights, “the Convention”

**EU** European Union

**HUDOC** Human Rights Documentation Online Database

**OP** Optional Protocol

**RSHE** Right to a safe and healthy environment

**UN** United Nations

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# CHAPTER

## 1 Introduction, problem formulation

### 1.1 Contextualization of the thesis

Human rights and the environment are now clearly interconnected fields. This phenomenon started in the early 1970s with the recognition of the connection between the environment and development issues at the 1972 Stockholm Conference on the Human Environment. The historical context of birth of this sub-discipline of human rights is highly relevant. Indeed, the 1970s saw a shortage in energy supplies and the rising awareness around the concept of inter-generational responsibility in protecting the planet (Brown Weiss, 1989).

It is only with the emergence (and the institutionalization) of the concept of sustainable development that the discussion over the potential recognition of environmental human rights took off (Boyle, 2008). According to the Brundtland Report, “[s]ustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs” (World Commission on Environment and Development, 1987:41). It was the first attempt to define development as a combination of social, economic and environmental aspects. The 1992 Rio Declaration crystallized this new approach to development and suggested that it leads to new progress in international law, recognizing that “[t]he major goals in international law on sustainable development should include: the development of universally negotiated agreements that create effective international standards for environmental protection (...)” (UNGA, 1992, § 39).

It is essential to mention that the discussion on the development of environmental human rights has emerged only very recently in comparison to other human rights. The academic changes (for instance the emergence of new (sub-)disciplines such as environmental sociology), along the institutional and legal movements opened the path for the debate on environmental human rights. There are now several approaches to the nature of these rights, sometimes strongly opposed<sup>1</sup>. Alan

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<sup>1</sup> See for instance the debate on a procedural vs. substantive environmental human right, two approaches respectively defended by Kravchenko (2007) and Günther Handl (in Trindade, 1992: 117).

Boyle argued that an environmental human right is based on the belief that a safe and healthy environment is a prerequisite to the fulfillment of other human rights, and that a human-centered approach to environment could reconcile the social and environmental fields by recognizing once and for all their interdependence (Boyle, 2008).

## **1.2 Motivations of the study and its relevance for the human rights discipline**

### 1.2.1 Contribution to the human rights field

This paper finds its relevance in the lacks identified when handling together the social and environmental aspects, notably within the sustainable development field. In order to reaffirm those two approaches as equally essential to the economic one, and to reconsider them in relation to economics under the broader concept of sustainable development, it is relevant to first consider the link between human and environmental concerns.

The claim for environmental human rights accompanied the awareness regarding climate change issues, the construction of environmental problems by societies and the design of strategies to handle them (Taylor and Buttel, 1992).

This growing awareness can also be found within international law. There are growing interactions between the international human rights law and the international environmental law. Moreover, a human rights approach to environmental issues emerged within the work of major international organizations, especially the United Nations. Therefore, the interconnection of these two branches of international law appears to be a current subject of research of fundamental importance (OHCHR & UNEP, 2012).

From this interconnection arises the question of the right to a safe and healthy environment (from here on, referred to as “RSHE”). This right first appeared in reaction to environmental catastrophes (Weston and Bollier, 2011). This paper defends that the right to a safe and healthy environment is a means to protect people from environmental suffering, and it focuses on the individual (as member of a community) as the rights holder within the international human rights

structure. Several arguments and counter-arguments have erupted at this thought. For instance, certain authors recognize an approach via the (national) constitutional law rather than international law (Hayward, 2005).

International courts have produced abundant case-law regarding environmental cases. Despite the non-recognition of environmental human rights as legally binding, the courts' interpretations ought to feed the discussion on the development of a right to a safe and healthy environment. Among them, the European Court of Human Rights (ECtHR) has been the most progressive in handling environmental cases.

### 1.2.2 Motivations of the dissertation

This study focuses on the linkage between human and environmental concerns and defends a human-rights based approach to environment. It is indeed motivated by the will to report on the progression of the interconnection between human rights and the environment and to contribute to the reorientation of the current discourse on (sustainable) development towards a human rights approach. Indeed, human rights will be the core concern of this dissertation, in relation to environmental issues.

Moreover, what motivates this study is to explore the right to a safe and healthy environment (RSHE) and to discuss the major legal and political implications it could induce within the human rights scheme, if it is recognized along the existing human rights.

Several international courts have produced judgements and decisions related to the interactions between human rights and the environment. However, covering up all international legal systems was not possible within the scope of this study, hence the choice of the European context (delimitations 1.4.3). This paper focuses then on major cases that are representative of the evolution of the European Court of Human Rights' approach towards environmental human rights<sup>2</sup> (chapter 3). It allowed us to determine whether the Court is opening up the path for the recognition of such rights in the European context.

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<sup>2</sup> Among which *X and Y v. Federal Republic of Germany* (1976), *Lopez-Ostra v. Spain* (1994), *Hatton and others v. the UK* (2001/2003) or *Fadeya v. Russia* (2005). A full list of the cases analyzed in this paper is provided in Appendix 2.

### 1.3 Aim and research questions

The aim of this study is to formulate a working definition of the right to a safe and healthy environment (RSHE), by discussing the nature of this right and the different options regarding its content, and to analyze the feasibility and the relevance of its legal recognition in the European context.

The following research questions have been drafted:

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|--|
| ➤ A) What is the <i>theoretical</i> relationship between human rights and environmental concerns? What indications does it give regarding the nature and content of the right to a safe and healthy environment? |
| ➤ B) How does the European Court of Human Rights handle cases in which resorting to the right to safe and healthy environment could be relevant?   |
| ➤ C) What formulation of a working definition of the right to a safe and healthy environment emerges when merging theoretical debates and the Court's ruling on the subject?                                     |
| ➤ D) What would be the scope of this right?  |

### 1.4 Research design and delimitation

#### 1.4.1 Objectives

The objectives of this problem-oriented dissertation is to position itself in the ongoing discussion when defending an **individual, substantive, third generation right to a safe and healthy environment** in the European context. To do so, a critical analysis of the main theoretical debates within the academic field (chapter 2) will be provided in order to identify the current lacks when dealing with environmental human rights. The objective is to analyze how environmental legal cases are handled within the framework of the European Convention on Human Rights (ECvHR) (chapter 3). It will allow us to discuss the key issues arising when designing a working definition of the right to a safe and healthy environment. Indeed, one of the final objectives is to use

the findings of the case-studies to formulate a working definition of the RSHE to be used in the future in the European context (chapter 4) and to analyze the contribution of such definition to the human rights field (chapter 5).

#### 1.4.2 Why formulating a working definition of the RSHE is relevant?

This dissertation has an advocacy motive: it aims at contributing to the current and relatively new debate on the recognition of an environmental human right. A traditional way to do so would have been to confront the case-study findings (chapters 3 and 4) to the theoretical framework (chapter 2) in order to formulate recommendations in regards to the formulation of a RSHE. Yet, I decided to go further and formulate a working definition of this right. The idea of a working definition is introduced from the beginning as a pedagogical tool allowing us to question the nature and the content of the right all along this study and to address the choices in order to formulate it. Moreover, it is a creative way to answer the research questions and to open up the debate on the general development of human rights.

#### 1.4.3 General comments on the study's design

This study is a qualitative research project, mainly theoretical. However it confronts theories to the practical reality in the European context through the analysis of case-studies (ECtHR case-law).

I have prioritized a top-down approach and chosen to first discuss a general human rights problem (chapter 2) – which is the linkage between human rights and environmental concerns and the debate on the right to a safe and healthy environment, and then I focused down to the practice of the European human rights law when it comes to dealing with these two concepts.

Since they first emerged, environmental human rights have been studied from an interdisciplinary angle. They have been discussed by international (environmental) law (Brown Weiss, 1989) as well as constitutional law experts (Hayward, 2005), environmental sociologists (Catton and Dunlap, 1978), economists or social scientists (Zarsky, 2002), but also by researchers in

conflict studies or development studies (Puvimanasinghe, 2007). I look into all those disciplines.

#### 1.4.4 Scope of the study

For the purpose of this study, the following delimitations have been chosen:

- What? As mentioned above, the right to a safe and healthy environment (RSHE) will be the core of this study, aiming at contributing to the development of human rights by addressing a relatively new issue. However, I am not providing an historical overview of the subject, but rather explaining how major events and trends led to the current situation regarding environmental human rights.
- Why? The debate on environmental human rights and specifically on the right to a safe and healthy environment is highly interesting for the general progress of human rights. Therefore I decided to contribute to its development by discussing its feasibility and relevance in the European context and eventually proposing a working definition of the RSHE. Even though this dissertation is touching upon sustainable development, it will not provide an in-depth discussion of this concept, and rather focus on the human rights field.
- When? The 1972 Stockholm Declaration and the 1992 Rio Declaration were groundbreaking moments. They opened a new era for environmental human rights, by initiating the institutionalization of the concept of sustainable development. The Rio Declaration crystallized for the first time the interconnection between social/human and environmental concerns at the international level. Therefore, this thesis will focus on the progress of environmental human rights in the period 1972-nowadays.
- Where? Despite very interesting contributions to the topic from other regional legal systems such as the African Court on Human and People's Rights or the Inter-American Court of Human Rights, I made the active choice to focus solely on the States of the Council of Europe, parties to the European Convention on Human Rights. Other systems will only be used for the discussion on the generalization of the findings of the case-study.

This approach seemed reasonable for several reasons. First of all, the European human rights system is currently the most advanced regional system protecting human rights through legal means. I expected to find among the proliferous jurisprudence enough relevant cases for my analysis. Secondly, it is the system I felt the most competent to interpret, thanks to my undergraduate studies and my professional experiences. Therefore, I voluntarily excluded all the other regional or international systems and courts' jurisdiction. I am aware of the limitations regarding the context. My study is mainly based on the European academic and legal context, yet, the findings could prove to be relevant in other contexts too.

## **1.5 Methodology and discussion of the material**

### 1.5.1 The data collection process

In order to conduct this study, I collected three types of data: academic data regarding the disputes on the subject and human rights and environmental documents (conceptual framework) and case-law data for the case-study.

For the conceptual framework of the study (chapters 1 and 2), I reviewed the existing **research literature**. I used both university library resources and online resources. The targeted documents gathered are of diverse natures: books, academic articles, think tanks or international organizations publications, newspapers articles, international law documents, etc. Doing so allowed me to identify “specific lines of research” and lacuna in the field of environmental human rights (Yin, 2011:62). I chose to conduct a *selective* literature review, aiming at reporting “in greater detail about a specific array of previous studies directly related to [my] likely topic of study” (Yin, 2011:62). It allowed me to situate my study in the academic field, and to identify the academic disputes to be addressed.

I used theories in order to shed light on the meaning of the case-studies. According to Yin, a “search for meaning is in fact a search for *concepts*”. I use a deductive approach, which means that I “tend to let the concepts (...) lead to the definition of the relevant data that need to be collected”



(Yin, 2011:94). I first compiled relevant theories and then confronted them to the case-study data.

Secondly, I opted for a case-study dissertation, in order to explore a contemporaneous phenomenon (potential recognition of a RSHE) in its context (in Europe). The objective was to confront the theories presented in chapter 2 to the European human rights legal system (chapter 3). I wanted to assess “whether and how the empirical results supported or challenged the theory”, in order to be able to make choices regarding the formulation of a working definition of the right to a safe and healthy environment (Yin, 2011). Indeed, I focused on the “how” and “why” aspects of the European Court of Human Rights' case-law and I selected several judgements in order to illustrate the Court's interpretation of the Convention over time.

The case-studies are unique cases, but at the same time they are “intended to inform other situations or cases” (Yin, 2011:18). They are called *instrumental* case-studies (Yin, 2011:310). I used the online Hudoc<sup>3</sup> database to collect my data<sup>4</sup>.

### 1.5.2 The analysis process

My analytical contribution to the field of environmental human rights was broken in two sets of analysis: of the theoretical framework, and of the case-studies.

In order to extract the meaning on the theoretical framework (chapter 2), I conducted a general content analysis, in its conceptual form, of international legal documents and theoretical scholars' productions. It implies the identification of certain concepts<sup>5</sup> and main disputes (such as the three generations of human rights, the opposition between individual and collective rights, the conceptualization of the environment and climate change, etc.) in documents (books, academic articles, publications, etc.) allowing deep interpretations based on the extraction of the very meaning of the text (Wilson, 1993). My understanding of these interpretations is also enlightened by my previous knowledge of general human rights debates (such as the indivisibility or universality of human rights) acquired during my studies.

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<sup>3</sup> <http://www.echr.coe.int/echr/en/hudoc>

<sup>4</sup> A list of all cases used is available in Appendix 3.

<sup>5</sup> Most key concepts are presented in a glossary (Appendix 1).

As for the analysis of the jurisprudence, I aimed at both *describing* the current situation in the European context and at *calling for action*. In Yin's words, a particular “type of description occurs when a study also tries to promote some subsequent action – typically calling for changes in public policy” (Yon, 2011: 214). There has been an “advocacy motive” from the beginning of my study, influencing the research process, and “the call for action is likely to dominate the study's conclusions” (Yin, 2011:215). I integrated my “call for action” in the context of the academic disputes, and of the case-studies findings, before giving it the form of a working definition of the RSHE.

It was not realistic given the scope of this study to focus on the feasibility and relevance of such right in every single regional context. To overcome this difficulty, a focus on the European context has been chosen (see delimitations 1.4.4). However, because of this limitation, the question of the extent of generalization of the findings arose. It will be discussed in the section about further research (5.3).

## **1.6 Chapters Overview**

Chapter 1: Introduction. After introducing the problem area and presenting the dissertation in the theoretical framework, this chapter introduces the research questions, as well as the objectives. It outlines the delimitation, the methodology and the chapters overview.

Chapter 2: Theoretical framework: This chapter initiates a theoretical discussion of the conceptual relationship between human rights and environmental concerns. The idea is to build on a critical analysis of the ongoing (academic) debates regarding the right to a safe and healthy environment, in order to present the key issues arising when designing the definition of the RSHE.

Chapter 3: Analysis of the ECtHR's jurisprudence, and of *practical cases* in which the RSHE could be relevant as a human right. The objective is to analyze the European practical legal reality, and to assess to what extent environmental protection is embedded in the ECtHR's case-law.

Chapter 4: Case-study findings and formulation of a working definition. The conclusions emerging from chapter 3 are confronted to the theoretical conclusions from chapter 2, and add more content for the formulation of the RSHE. A working definition of the right is formulated, contextualized in the global field of human rights, and interpretative guidelines are provided to implement the right in the European context.

Chapter 5: The final analytical discussion reflects on the aim of this dissertation, building on the answers provided for each research question. It is an opportunity to reflect on my work (on the limits and difficulties I had), as well as to provide recommendations for further research on this topic, and on the general development of human rights.

# CHAPTER

## 2 Theoretical and analytical framework

The objectives of this chapter are to introduce a theoretical discussion on the nature and content of the right to a safe and healthy environment (RSHE).

This chapter first reports on the situation of international environmental human rights within the field of international law. Secondly, it analyzes the issues that would arise with the theoretical recognition of an individual, substantive, third generation RSHE and positions this dissertation within the ongoing academic debate. Finally, the legal and political implications of such a right in the European context are presented, in order to be confronted to the European case-law in chapter 3.

### **2.1 The integration of two fields of international law: international human rights law and international environmental law**

#### 2.1.1 The legal weight of the concept of sustainable development

As presented in chapter 1, the discussion over the right to a safe and healthy environment emerged along the concept of sustainable development (Boyle, 2008). International human rights courts, such as the European Court of Human Rights, often reference in their judgements international law documents relevant in the environmental field. References are made to the 1972 Stockholm Declaration on the Human Environment and to the 1992 Rio Declaration on Environment and Development. Those documents are the cornerstones of the concept of sustainable development and have influenced environmental human rights.

Whereas the substance of the RSHE is clearly influenced by sustainable development, its legal weight does not rely on it. Indeed, “sustainable development” is legally very weak. Sands

wrote that “[i]t is not an independent and free-standing body of principles and rules and it is still emerging. As such, it is not coherent or comprehensive, nor is it free from ambiguity or inconsistency” (Sands, 1994:303). Indeed, the Stockholm and Rio declarations are soft law, non-binding instruments.

Yet, some scholars have argued that sustainable development could become a principle of customary law (Puvimanasinghe, 2007). Indeed, it inspires policies and laws both at the national and international levels and it is guiding the decision-making process in many States (Puvimanasinghe, 2007). Even though it is not crystallized as a principle of international law, dozens of countries have integrated environmental *rights* in their constitutions<sup>6</sup>, and constitutional environmental *provisions* exist now in more than a hundred countries (Hayward, 2000).

Some of the principles from those two declarations are recognized by courts<sup>7</sup>, such as Principle 2 of the Rio Declaration, stating that “States have (...) the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”. Some scholars have argued that these documents recognize an *indirect* right to a safe and healthy environment (Fitzmaurice, 2009). Yet, they seem to mainly build environmental rights on other rights (Fitzmaurice, 2009).

### 2.1.2 The sociological conceptualization of environmental issues

Environmental issues only quite recently became societal concerns. Sociologists have identified two main approaches to the societal-environmental interactions. Catton and Dunlap have been precursors in studying the realist vs. constructivist debate over the scientific proofs of climate change (Catton and Dunlap, 1979). On the one hand, the constructivist approach, mainly developed in Europe, is based on a symbolic and cultural relation to environmental matters, and on an interpretative approach to climate change-related events. On the other end, the realist or materialist approach, which emerged in North America, focuses on the interactions between the factors responsible for environmental issues and social phenomena.

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<sup>6</sup> Such as the Philippines, Slovenia and Czech Republic.

<sup>7</sup> Such as the European Committee of Social Rights.

This debate within the sub-discipline of environmental sociology shades lights on the sociological conceptualization of environmental change. Environmental sociologists are interested in the biological and physical factors that affect the social structures and influence the power relations. They explain that the environment “matters to Homo Sapiens” because it supports their livelihood (Redclift & Woodgate, 2010: 33). They blame the “global aspect for (...) obscuring the more local processes, i.e. how societies are affected by climate change” (Taylor & Buttel, 1992). They denounce the difficulty to define universally the concept of environmental change when the local realities are so different. Yet, they recognize the importance of environmentalism as a citizen movement across the Western world, and the apparition of post-modern societal values, valuing the quality of life over the quantity.

Because human beings would like to free themselves from the occurrence of environmental destruction (Redclift & Woodgate, 2010), they tend to reject the physical variables<sup>8</sup> (Durkheim, 1897). They denounce the anthropocentric bias of the “Human Exceptionalism Paradigm”, a dominating sociological concept (Catton & Dunlap, 1978). Catton and Dunlap argue that our society has turned its past ecological abundance into a force thanks to technologies. Yet, by doing so, it has underestimated the importance of the environment as a shaping factor of social realities. The current social-environmental relationship is such that the consequences of human actions are leading to an environmental decline, influencing negatively the quality of living standards. They encourage to take into account the social costs of environmental degradation, human-induced or not (Catton & Dunlap, 1978), and to learn how to adapt.

The ongoing discussion on climate change and general environmental issues is spread within different disciplines. What is at stake here are the choices made by societies when dealing with the institutionalization of environmental changes. In democratic States, this is done through a broad range of actions, from national policies to local initiatives, but also through the national and international legal frameworks. Laws shape policies and their interpretations also follow the societal progress. There is a reciprocal relationship between the laws and the concrete reality (values, policies) that makes the legal framework a dynamic process in constant evolution (4.1.3).

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<sup>8</sup> According to the French sociologist Émile Durkheim, social facts can only be explained by other social facts. This theory and the inherent methodological framework leave no room for the physical or biological factors (of environmental changes) in explaining social facts.

While the international human rights law emerged with the creation of the United Nations and the ratification of the Universal Declaration of Human Rights (1948), the consolidation of the international environmental law started in 1972 with the Stockholm Conference and the creation of the United Nations Environment Program (UNEP). After evolving as two contemporaneous but distinct disciplines, international human rights and environmental laws have been converging and are today interconnected (Puvimanasinghe, 2007). The 2002 non-binding New Delhi Declaration mentions “the balanced integration of laws and policies at the intersection of international environmental, social and economic law” (International Law Association, 2002).

### 2.1.3 Different approaches to the nature of the right to a safe and healthy environment

For a long time, environment and human well-being have been seen as two opposite norms. The complexity of the linkage between human rights and environmental concerns led to the development of conflicting approaches to its nature.

Alan Boyle identifies three approaches to this linkage (Boyle, 2008). The **first** one relies on the empowerment of individuals and communities through *procedural rights* such as participation, information and access to justice regarding environmental concerns (2.2.3). This approach is based on the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, developed by the United Nations Economic Commission for Europe (UNECE), which aimed at reinforcing the global environmental governance<sup>9</sup>. A **second** approach argues in favor of *collective* environmental rights to decide upon the protection and management of natural resources<sup>10</sup>. The **third** approach, defended in this study, focuses on an *individual* right to a safe and healthy environment along the line of other human rights recognized in the bill of rights<sup>11</sup>. This human-centered approach is based on the belief that a healthy environment is a prerequisite to the fulfillment of human rights (Boyle, 2008), and recognizes the interdependence of environmental and social concerns.

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<sup>9</sup> This multilateral agreement has been warmly welcomed because it was designed in strong collaboration with numerous NGOs. Moreover, it is legally binding for the States that have ratified it.

<sup>10</sup> It is mainly following this approach that indigenous groups have claimed their environmental rights.

<sup>11</sup> The Bill of Rights is composed of the UDHR, the ICESCR, the ICCPR and its two Optional Protocols.

However, the rights-based approach to environmental protection has been the subject of strong critics, mainly blaming its anthropocentrism or utilitarianism. In Grezcyn words,

“[a]ccording to the utilitarian perspective, an action that brings greater good than bad is a good action. [...] Some utilitarian thinkers conceptualize "good" from an anthropocentric viewpoint, excluding from their focus benefits to any animals other than *Homo sapiens*” (Greczyn, 2009-2010:236).

A strict utilitarian approach to environmental human rights is criticized by environmentalists for defending a short-term protection of the environment and thus limiting the environmental opportunities for future generations. Utilitarianism and anthropocentrism are interconnected. In its strictest form, “[a]nthropocentrism refers to a world-view based on the concept that human beings are the most important entity in the universe.”, which is opposed to “biocentrism [which] stems from a focus on nature” (Hayward, 2005, Greczyn, 2009-2010:237).

Whereas Shelton recognizes that “the ultimate aim of environmental protection remains anthropocentric”, she also mentions the “duties to protect and conserve all elements of nature, whether or not they have known benefits or current economic utility” (Shelton, 1991-1992:110). In line with Hayward's argument that “environmental rights are valid, necessary, practicable [and] desirable” (Hayward, 2000:568), this thesis supports environmental human rights that include environmental protection. I recognize the importance of a long term strategy regarding environmental matters and the inter-generational equity aspects (4.3.1). Therefore, I would position this study in Grezcyn's “weak anthropocentrism” category. Indeed, according to Grezcyn:

“in situations where a weak or insignificant human concern conflicts with a vital environmental concern, weak anthropocentrism dictates that the human concern must yield to the vital environmental (and non-human) concern” (Greczyn, 2009-2010:237).

A critical analysis of the academic disputes regarding the right to a safe and healthy environment helps to fully understand the key issues on this topic. They will enlighten the formulation of **an individual, substantive, third generation right to a safe and healthy environment** (4.2). The challenges and different options regarding this right are presented in the following discussion, which also contributes to assessing where the existing body of research stands regarding environmental human rights, and help positioning this study in the discipline.



## **2.2 Theoretical discussion of an individual, substantive, third generation right to a safe and healthy environment**

### 2.2.1 A third generation of human rights?

Since they first emerged, human rights have been crystallized into a bill of rights that covers two generations of human rights, respectively civil and political rights and economic, social and cultural rights (Vasak, 1979).

Experts' opinions are opposed on whether environmental human rights should, once and if recognized, be integrated as a third generation of “solidarity rights” (Vasak, 1979) or included within the two existing generations of human rights (Merrills in Boyle and Anderson, 1996). For instance, Dupuy argues that a third generation of human rights would dissipate the movement of protection of the two previous generations and that the recognition of environmental human rights is “unnecessary regarding the extent to which international environmental law has already developed” (P.M. Dupuy in R.J. Dupuy, 1979:409).

Other scholars have presented alternatives such as the recognition of constitutional environmental rights at the national level (Hayward, 2005) or their integration within the legal framework of sustainable development (Giorgetta, 2002).

Nevertheless, as demonstrated earlier, environmental issues cross borders. Therefore one might argue that they need to be handled at the international level, at least on a regional scale. An integrated inter-states response is required in order to properly tackle the effects of environmental degradation. Furthermore, it also relates to the vision of human rights that is defended, either *expanding* or *contracting* human rights (Zarsky, 2002), i.e. recognizing new rights such as environmental rights or strengthening the protection of existing rights. An integration of human rights and environmental ethics through the agreement on a third generation of human rights would also prove that human rights are a dynamic concept, able to adapt to societal evolutions.

### 2.2.2 Individual vs. collective environmental human rights

It was first admitted that societal-environmental interactions are of interest because human livelihood relies on nature. But from the very beginning, the opposition between individual and collective human rights appeared. It is an intense debate in the broader field of human rights, and it is all the more interesting regarding environmental human rights because it is one of the few sub-disciplines of human rights where collective rights are so debated. A large part of the discussion on the environment and human rights has been addressed in terms of a collective right (Shelton, 1992). Environmental human rights were thus first recognized as collective rights (Shelton, 1992), especially for indigenous peoples, whose way of life particularly relies on their access to land and on its traditional use. In the 1980s, indigenous peoples started claiming their right to administer themselves collectively (Eide, 2006). The right of national groups to self-determination is an example of a human right that applies to a collective entity (peoples or groups) rather than states or individuals (Kymlicka, 2001).

Another movement, claiming an individual right to a safe and healthy environment, appeared simultaneously (Donnelly, 2012). Those two approaches are opposed to a certain extent, but it appears to me that they could coexist (4.3.1). In fact, I am arguing here for an individual RSHE. However, even individual rights have collective components. Indeed, there is both a collective interest and responsibility in individual environmental rights. For instance, I would say that people have the *individual* right to *collectively* engage in the decision-making process. Some international documents, among which the ILO 169 Indigenous and Tribal Peoples Convention (ILO, 1989), recognize the collective aspect of environmental rights. For instance, the rights to participation and information present in the Aarhus Convention have a collective aspect, inherent to the democratic organization of the society where they are recognized.

The context of emergence of environmental human rights is also relevant in order to situate them in the individual-collective debate. Other regional structures, such as the Inter-American human rights system, have tended to recognize environmental human rights for groups. This is due to the historical presence of numerous indigenous peoples in the Americas explaining the relevance of groups rights. On the opposite, individual environmental human rights seem to have been preferred in Europe, with the recognition of a collective aspect.

### 2.2.3 Substantive vs. procedural environmental human rights

There is an ongoing sharp discussion on the nature of environmental human rights. Whereas some authors claim that the existing recognition of *procedural* environmental rights (with instruments such as the Aarhus Convention) is enough, others argue for the creation of a *substantive* content to this right (Handl in Trindade, 1992: 117).

The Aarhus Convention “recognizes that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations” (Preamble). It mentions the three aspects of procedural rights (information, participation and legal redress) and argues that “to be able to assert this right and observe this duty, citizens must have access to information” (Preamble). It also aims for an “early” and “effective” public participation (article 6.4) and gives grounds for environmental justice (article 9.1). This is more a policy statement providing an indirect protection to environmental human rights (Hayward, 2005). It seems to me that the advantage of procedural rights is that they are easier to implement and less rigid. Yet, while they are praised for being very democratic, they might lead to an unequal participation to the decision-making process, as lobbying groups might have more influence in the process than isolated citizens for instance (Hayward, 2005).

Whereas procedural rights are necessary to successfully implement substantive rights, they are not sufficient to ensure the right to a safe and healthy environment. In order to be sure that the RSHE is equally guaranteed for each individual, a substantive content to the right, i.e. its essential contribution to the protection of the human dignity of the rights holder, has to be recognized.

### 2.2.4 The RSHE: relevant as a fundamental right?

It is relevant to question whether environmental protection can be recognized as a fundamental right. It was claimed so by the Brundtland Report (1987), which stated that “[a]ll human beings have the fundamental right to an environment adequate for their health and well being” (World Commission on Environment and Development, 1987:286). Sax argues that “a

fundamental right to a substantive entitlement which designates minimum norms should be recognized” (Sax, 1990:100 in Hayward, 2000:568). This implies its recognition in international law so that it can become enforceable. This would not mean giving it an absolute weight over other human rights, but on the contrary recognizing its equal importance (4.1.3).

Because the structure of the international human rights law has been successfully existing for a longer time, I would argue that environmental human rights should be defended, in a short-term perspective at least, through the international human rights structure rather than through the environmental law procedures. Indeed, the main difference between the European human rights system and international environmental law is the absence of any petition procedure<sup>12</sup> open to individuals within the framework of the latter. Indeed, only States can bring an environmental case before the responsible courts. That explains the trend to bring cases related to the impact on individuals of environmental degradation before international human rights bodies, such as the European Court of Human Rights. Indeed, the ECtHR accepts, since 1998, “individual applications lodged by any person, group of individuals, company or NGO” (Council of Europe, 2009:5), as well as inter-states applications (2.3.3).

## **2.3 Legal and political implications of the right to a safe and healthy environment**

### 2.3.1 Discussion on the wording of an environmental human right

Different wordings have been used about environmental human rights: “safe”, “healthy”, “secure”, “clean”, etc. (Shelton, 2009). The “right to a safe and healthy environment” and the “right to a clean environment” are the two main formulations. Whereas they seem quite similar at first, they represent two opposing views on the purpose of an environmental human right.

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<sup>12</sup> The *international petition procedure*, also known as the *individual complaint procedure*, allows anyone to bring a complaint alleging a violation of treaty rights to the body of experts set up by the treaty. The Office of the United Nations High Commissioner for Human Rights recalls that “[i]t is through individual complaints that human rights are given concrete meaning. (...) When applied to a person's real-life situation, the standards contained in international human rights treaties find their most direct application.”

On the one hand, the wording “the right to a clean environment” refers to the right to enjoy clean air or clean water for instance. It is recognized in the Article 24(2)(c) of the International Convention on the Rights of the Child (UNOHCHR, 1989), and in several national acts or laws<sup>13</sup>. This approach has been encouraged by ecologists on the ground that it is less anthropocentric than other formulations focusing on human beings as main units. To a certain extent, it takes into account the environment itself (Shelton, 2009), as the criteria for assessing the respect of the right is the level of cleanness of the air or water.

On the other hand, the “right to a safe and healthy environment” was first referred to by the former United Nations Human Rights Commission<sup>14</sup> (UNHR Commission) in several resolutions. In its Resolution 2001/65 (“Promotion of the Right to a Democratic and Equitable International Order”), the Commission affirmed that “a democratic and equitable international order requires, inter alia, the realization of ... [t]he right to a healthy environment for everyone”. It aims at defending an adequate level of environmental protection for the health and safety of human beings. In this approach, the core actor is the individual, and an environmental human right is in place through the implementation of safety measures and policies aiming at protecting people's health (as argued by the UNHR Commission). This wording has been adopted by the UN, as stated in a report from the High Commissioner on Human Rights (UNHR Council, 2009, § 18):

“While the universal human rights treaties do not refer to a specific right to a safe and healthy environment, the United Nations human rights treaty bodies all recognize the intrinsic link between the environment and the realization of a range of human rights, such as the right to life, to health, to food, to water, and to housing.”

Moreover, environmental human rights, despite a focus on civil and political rights (first generation), also results from economic, social and cultural rights (second generation), among which the right to health. In its General Comment 14 on “The right to the highest attainable standard of health<sup>15</sup>”, the Committee on Economic, Social and Cultural Rights explains that the right to health, which results from the right to life, embraces a healthy environment (§ 4) (UNHCHR, 2000). The fact that the RSHE is a combination of the right to life and the right to health proves the indivisibility of human rights (Donnelly, 2012:24). The (civil and political) right to life and the (economic, social and cultural) right to health are interdependent, inherent components of the RSHE.

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<sup>13</sup> Such as The U.S. Clean Air Act of 1970.

<sup>14</sup> In 2006, the UN Human Rights Commission became the UN Human Rights Council.

<sup>15</sup> Article 12 of the International Covenant on Economic, Social and Cultural Rights

Therefore, the formulation “right to a safe and healthy environment” (RSHE) has been preferred in this study, which defends individuals as holders of the RSHE.

### 2.3.2 Three types of environmental issues included in the RSHE

In order to provide the right to a safe and healthy environment with a legal weight, the issue of responsibilities has to be discussed. The legally responsible actor is easier to identify in cases where the causal relationship between the occurrence of environmental degradations and the actions that led to it can be traced back to a person or a company. Courts cases regarding what the European Court of Human Rights calls “dangerous activities” can then lead to both *negative* (stopping the wrongful activities) and/or *positive* reparations (financial compensation).

In other cases, it might be very hard to identify the causality of the environmental degradation. This is the case with climate change-related events, which are by nature unforeseeable. Without going into the scientific debate, it is broadly accepted that human activities are responsible for accelerating the cyclic change of the atmospheric conditions on earth (IPCC, 2007). The Human Rights Council Resolution 7/23 recognizes that “climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights” (HRC, 2008). However, the causal link is too indirect to allow the identification of a particular actor responsible for the occurrence.

It is often the same with environmental catastrophes, or “natural disasters” as the European Court of Human Rights calls it. However, even in such cases, some scholars have argued that States could be responsible for not ensuring a sufficient threshold of protection to their citizens, and failing to protect the right to life for instance (Churchill, 1996:90). Others have argued that the rationale of the right to life defended in Article 2 of the European Convention on Human Rights (ECvHR) may imply “the protection of life from all possible threats”, including environmental disasters (Stefan Weber, 1991).

Therefore, I identified three types of environmental occurrences for which environmental rights could apply: dangerous activities, natural disasters and among those, climate change-related events. In any situation, the case can theoretically be brought before the ECtHR.

### 2.3.3 Who are the rights holders of the RSHE?

Typically, human rights are held by individuals against States. Even if inter-states applications are also permitted by the status of the Court, mainly individual complaints have been lodged since the establishment of the Court (either by a person, a group of individuals, NGOs or companies). And in any case, no matter by whom the complaint is lodged, the right holder always remains the individual.

While the discussion on the rights recognized to individuals is essential, it might also raise the question of duties (Hayward, 2000:560). Yet, for the purpose of this dissertation, the discussion on duties will focus mainly on *States'* duties, rather than on *individuals'* duties. States can have both positive (to do) and negative obligations (not to do) (Hayward, 2000:560). Indeed, States have to avoid violations of human rights but they also have the duty to “implement and enforce laws that secure to the individuals the enjoyment of what is intended as the substance of the right” (Hayward, 2000:560).

Then, the right to a safe and healthy environment, if recognized for individuals, could lead to positive and negative obligations for States. Indeed, individuals can hold States responsible before the ECtHR for violating their rights – and potentially their RSHE. Even though the RSHE is essentially understood in this study as an individual right, the notion of “public interest” in environmental individual claim is also relevant (3.2.2). Indeed, according to Brubaker, “environmentalist” claims are sometimes done in the name of the general interest (Brubaker, 1995).

## **2.4 Conclusion of chapter 2**

The objectives of this chapter were to situate the debate on the right to a safe and healthy environment in the broader field of sustainable development as well as in the international law discipline and to initiate a discussion on the nature and content of an environmental human right. It aimed at answering the first research question:

A) What is the *theoretical* relationship between human rights and environmental concerns? What indications does it give regarding the nature and content of the right to a safe and healthy environment?

This research question has been answered on a multidisciplinary level, using sociological, legal and political angles. After showing the weaknesses of the concept of sustainable development in its current state of evolution, I argued that the disciplines of international environmental law and international human rights law are integrated. As environmental sociologists explain, societal and environmental concerns are to some extent merging when it comes to defending environmental human rights. Even though environmental concerns are still relatively new in most societies, they tend to gain more influence on the political sphere.

Given the advanced development of the international human rights law, I suggested that the RSHE should be defended within its structure.

After introducing conflicting approaches regarding the nature of the RSHE (respectively procedural, individual and collective visions), most debates regarding its content have been presented: individual and collective rights (2.2.2), substantive and procedural aspects (2.2.3), third generation of human rights (2.2.1 and 2.2.4).

Discussing those conflicting approaches was also an opportunity to get involved in general human rights debates. They are of special interest in the discussion of the RSHE, which is one of the rare human rights area to combine them all.

Initial choices have been made for the design of the RSHE. It has been concluded that this dissertation will defend a third generation human right to a safe and healthy environment, i.e. an individual and substantive fundamental right. This positioning within the current academic debate has allowed us to identify the legal and political implications (2.3) that the recognition of such right could have in terms of wording (2.3.1), responsibility and duty (2.3.3). They will be further developed in chapter 4, where a working definition of the RSHE will be introduced.

In the next chapter (chapter 3), the theoretical framework presented here will be used as an analytical tool for the case-study and confronted to the practical case-law from the European Court of Human Rights (ECtHR).



## CHAPTER

### **3 The case-study: An analysis of the European Court of Human Rights' case-law**

As explained in chapter 1, this case-study aims at analyzing a phenomenon (the RSHE) in the particular European context. The theories are systematically confronted here to empirical observations, in order to contextualize the conclusions that arose from chapter 2 and to be able later on to make choices regarding the formulation of a working definition of the right to a safe and healthy environment (chapter 4).

This case-study will focus on one of the international jurisdictional system dealing with environmental and human rights matters, i.e. the European Court of Human Rights (ECtHR). In order to do so, a selection of the case-law of the European Court of Human Rights will be analyzed, and used to describe the current state of the ECtHR's jurisprudence regarding environmental issues.

#### **3.1 The case-study in the European human rights system**

##### **3.1.1 The success of the ECtHR**

Even if “no comprehensive legally binding instrument for the protection of the environment exists globally” (CoE, 2012:12), the Council of Europe (CoE) recognizes that the environment is protected by numerous legally binding international agreements that have been ratified both at the regional and international level. It also states that environmental concerns are of growing importance for the individuals under its jurisdiction, despite the fact that the right to a safe and healthy environment is not present in the European Convention on Human Rights (ECvHR).

There are two main reasons explaining why individuals would turn themselves to the ECtHR. The first one is the absence within the international environmental law system of the same petition procedure allowing individuals to take their case directly to court (after having exhausted all domestic remedies). This procedure presents the advantage to initiate a dialogue to find a response to a global issue, by engaging all actors (individuals, states, international organizations).

The second one is related to the time frame. The international human rights instruments, and mainly the ECvHR, have been existing for a longer time. And while the international environmental law is still developing – and improving, human rights instruments have proven to be efficient in handling violations (Hayward, 2000). Because individuals are suffering *now*, they cannot wait for the opening of international environmental law to human rights accountability, especially when human rights instruments are available and functioning.

This explains the success of the ECtHR in the European context. It is a tool for individuals within the jurisdiction of the States of the Council of Europe (not only their nationals, but everyone on their territory) to claim their rights when they consider that they have been violated by States.

### 3.1.2 Historical overview of environmental cases handled by the Court

At the time when the European Convention on Human Rights and Fundamental Freedoms was signed (in Rome on November 4<sup>th</sup>, 1950), the environment was not a common societal concern, and no right to a safe and healthy environment was mentioned (see the discussion on environmental sociology, 2.1.2). In the 1970's and 1990's, environmental awareness grew stronger in Europe and more and more cases with an environmental component were submitted to the Court. Six cases were submitted in the period 1980-1989, 16 in 1990-1999 and 58 in 2000-2009. Since 2010, 9 cases have been brought before the Court. This shows a clear increase, probably due to a growing number of environmental issues occurring because of climate change, a stronger awareness among the general public, and the perception that the Court has a progressive position towards environmental cases and is less reluctant to admit those cases, despite the absence of a conventional right to a safe and healthy environment.

The first case with an environmental component brought before the Court was *X and Y v. Federal Republic of Germany* in 1976<sup>16</sup>. This individual application was made on the ground of

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<sup>16</sup> *X and Y v. Federal Republic of Germany*, case No. 6850/74, judgement of 18 May 1976.

Articles 2 (right to life), 3 (prohibition of torture) and 5 (right to liberty and security) of the ECvHR. It was rejected by the Commission (which does not exist any more) because of an incompatible *rationae materiae* with the content of the ECvHR, since no environmental right was recognized then (Fitzmaurice, 2009).

Cases with environmental aspects are now admitted by the Court, which means that it considers itself competent to judge them. More judgements and decisions are rendered by the Court, and Article 8 (private and family life) is the most used article (Fitzmaurice, 2009). Different environmental issues are raised to the attention of the Court, including noise pollution, air and water pollution, emissions, smells and other types of interferences<sup>17</sup> (CoE, 2012: 45).

More and more human rights cases with an environmental component are submitted before the Court. In fact, environmental factors are recognized to directly affect other rights present in the Convention – for instance, pollution has a direct impact on the right to health.

The ECvHR rights affected by environmental issues are both substantive and procedural rights. The substantive rights at stake are the right to life (Article 2), the right to respect for private and family life (Article 8) and the protection of property (Article 1 of Optional Protocol No. 1). Procedural rights are recognized by the ECtHR along the line of the Aarhus Convention. They are the right to a fair trial (Article 6), the freedom of expression (Article 10) and the right to an effective remedy (Article 13). When an interference with some of the rights of the ECvHR occurs, these might be limited to protect the environment.

### 3.1.3 Methodology of the case-study

I should recall here that the overarching goal of this chapter is to assess to what extent environmental protection is embedded in the ECtHR's case-law. As explained in chapter 1, the data used in this case-study are the judgements and decisions produced by the ECtHR. In order to extract their meaning and to understand them in the light of environmental concerns, an analysis of the context and content will be conducted, using the following tables:

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<sup>17</sup> *Deés v. Hungary*, judgement of 9 November 2010, § 21.

For the judgements:

State	Date of the judgement	Judgement conducted by	Rights at stake		Award
			Violation	Non-violation	
State accused of violation	Day, Month, Year	Either the Grand Chamber or the Chamber	References of the Article(s) which have found to be violated by the States' action(s) or inaction(s).	References of the Article(s) which have found not to be violated either by the States' action(s) or inaction(s).	Most of the time, pecuniary award, and adjustment of the States' policies. Any other form of award would be exceptional.

For the decisions:

State	Date of the decision	Decisions pronounced by	Rights at stake		Outcome of the decision
			Regarding the admissibility	Regarding the victim's claims	
State accused of violation	Day, Month, Year	Court's section	References of the Article(s) used to decide upon the admissibility of the request.	References of the Article(s) which are claimed to have been violated by the applicant.	Either admissible or inadmissible.

A systematic interpretation of the Court's decisions and judgements using those formal criteria will help analyzing the following points:

- *What are the rights at stake when dealing with cases that have an environmental component?*

It is interesting to determine what rights are most often found violated by the Court in environmental cases. This would indicate how the Court understands environmental human rights, and what components to this right it implies. This will then inspire the formulation of a working definition of the RSHE in chapter 4.

- *What trends can we identify over time in the Court's handling of environmental cases?*

Looking for trends in the Court's judgments is highly relevant in order to suggest what future development the RSHE might know. It will allow us to identify the evolution of the Court's position towards environmental issues and to contextualize environmental human rights in Europe.

It will be combined with a substantive interpretation of the cases. To do so, I will be looking for some key concepts such as “substantive”, “procedural”, “positive obligations”, which are essential features of the theoretical debates presented in chapter 2.2.

I will also be looking for principles of interpretation or international law principles (such as the margin of interpretation), which I see as the witnesses of the Court's cautious or progressive position.

I chose to focus on parts of several ground-breaking cases rather than to study one in depth. I aim at highlighting several aspects of the Court's interpretations, using the most relevant judgements to illustrate them. For each of them, I will reference the most meaningful paragraph(s) using the symbol “§”.

### **3.2 Discussion of the nature of the environmental component recognized by the jurisprudence of the ECtHR**

#### **3.2.1 “Dangerous activities” and “Natural disasters”**

In the previous chapter (2.3.2), I discussed the types of environmental events that could be covered by a right to a safe and healthy environment. In several judgements, the Court had to deal with the same debate. It came to the conclusion that environmental issues can be classified as either due to dangerous activities, or arising from natural disasters.

##### **a) Dangerous activities**

Only two cases related to dangerous activities were admitted by the Court: *L.C.B. v. the United Kingdom*<sup>18</sup> and *Öneriyıldız v. Turkey*<sup>19</sup>. Dangerous activities are human activities, “*a fortiori* industrial activities”<sup>20</sup>, “such as nuclear tests, the operation of chemical factories with toxic emissions or waste-collection sites, whether carried out by public authorities themselves or by private companies” (CoE, 2012:18).

In the most recent case, *Öneriyıldız v. Turkey*, a violation of the right to life (Article 2) was found. Two Turkish nationals submitted the case against the Republic of Turkey, arguing that:

the national authorities were responsible for the deaths of their close relatives and for the destruction of their property as a result of a methane explosion on 28 April 1993 at the municipal rubbish tip in Ümraniye (Istanbul). They further complained that the administrative proceedings conducted in their case had not complied with the requirements of fairness and promptness set forth in Article 6 § 1 of the Convention (§ 2).

<sup>18</sup> *L.C.B. v. the United Kingdom* and *McGinley and Egan v. the United Kingdom*, judgements of 9 June 1998.

<sup>19</sup> *Öneriyıldız v. Turkey* [GC], case No. 48939/99, judgement of 30 November 2004.

<sup>20</sup> *Öneriyıldız v. Turkey* [GC], § 71.

<i>Öneryıldız v. Turkey, case No. 48939/99</i>					
State	Date of the judgement	Judgement conducted by	Rights at stake		Award
			Violation	Non-violation	
Turkey	30 November 2004	Grand Chamber	Violation of Art. 2 (Right to life) in its substantive aspect, Violation of Art. 2 in its procedural aspect, Violation of P1-1 (Protection of property), Violation of Art. 13 (Effective remedy) +2, Violation of Art. 13+P1-1.	Not necessary to examine Art. 6 (Fair trial) and 8 (Private and family life).	Pecuniary damage - financial award, Non-pecuniary damage - financial award, Costs and expenses partial award - Convention proceedings.

In this case, it is interesting to note that a report from experts explaining the dangers that would arise from a methane explosion had been given to the attention of the public authorities beforehand. When the explosion actually happened, the Grand Chamber judged that

101. [...] the Turkish authorities at several levels **knew or ought to have known** that there was a real and immediate risk to a number of persons living near the Ümraniye municipal rubbish tip. They consequently had a positive obligation under Article 2 of the Convention to take such preventive operational measures as were necessary and sufficient to protect those individuals (...), especially as they themselves had set up the site and authorised its operation, which gave rise to the risk in question.<sup>21</sup>

States have positive obligations to protect the individuals within their jurisdiction from dangerous activities when operated by public authorities. And when operated by private entities, they have a positive obligation “to take appropriate steps to safeguard the lives of those within their jurisdiction” (*Öneryıldız v. Turkey*, § 65)<sup>22</sup>, such as conducting preliminary studies assessing risks and informing the population living nearby of the risks involved. However, the extent of the responsibility of the State is assessed case-by-case and depends upon “factors such as the harmfulness of the dangerous activities and the foreseeability of the risks”<sup>23</sup>.

### b) Natural disasters

The “doctrine of positive obligations” mentioned above (3.2.1.a) imposes on States “positive obligations to take reasonable and appropriate measures to protect people and property from the

<sup>21</sup> Emphasis from the author of this study.

<sup>22</sup> In line with previous judgements: *L.C.B. v. the United Kingdom*, § 36, and *Paul and Audrey Edwards v. the United Kingdom*, No. 46477/99, § 54.

<sup>23</sup> *Öneryıldız v. Turkey* [GC], § 73.

hazards to which the area was subject”<sup>24</sup>, “to take appropriate steps to safeguard the lives of those within their jurisdiction” (§ 128). However, those preventive obligations are not absolute and “[t]he scope of the positive obligations imputable to the State in the particular circumstances would depend on the origin of the threat and the extent to which one or the other risk is susceptible to mitigation” (§ 137).

In the *Budayeva and Others v. Russia* case (§ 3),

the applicants alleged that the national authorities were responsible for the death of Mr Budayeva, for putting their lives at risk and for the destruction of their property, as a result of the authorities' failure to mitigate the consequences of a mudslide (...), and that no effective domestic remedy was provided to them in this respect.

<i>Budayeva and Others v. Russia, case No. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02.</i>					
State	Date of the judgement	Judgement conducted by	Rights at stake		Award
			Violation	Non-violation	
Russia	20 March 2008, Final 29 September 2008.	Court (First section)	Preliminary objection dismissed (non-exhaustion of domestic remedies), Violation of Art. 2 (Right to life, substantive aspect), Violation of Art. 2 (procedural aspect).	No violation of P1-1 (Property), No violation of Art. 13 (Effective remedy) +P1-1.	Non-pecuniary damage – award, Pecuniary damage - claim dismissed.

The above *Budayeva and Others v. Russia* judgement is the most relevant illustration of the positive obligations imposed on States in cases of natural disasters.

Indeed, positive obligations make even more sense in the case of natural disasters, which differ from dangerous activities because they are not due to human activities, and thus not the direct responsibility of public authorities or private companies over which the State should have a control (see discussion on different types of environmental events, 2.3.2.). Indeed, the Court states that

natural disasters, which are as such beyond human control, do not call for the same extent of State involvement. Accordingly, its positive obligations as regards the protection of property from weather hazards do not necessarily extend as far as in the sphere of dangerous activities of a man-made nature (§ 174).

In cases of natural disasters, States are “required to hold ready appropriate warning and defense mechanisms” (CoE, 2012:37). However, it recognizes in this case that because of the unforeseeable nature of such events, the obligations imposed upon States “cannot extend further than what is reasonable in the circumstances” (§ 175).

<sup>24</sup> *Buyadeva and Other v. Russia*, judgement of 20 March 2008, § 127.

This case also shows the two important aspects of positive obligations, i.e. preventive measures (*a priori*) and reparative measures (*a posteriori*). Thus, States have a duty “to put in place a legislative and administrative framework designed to provide effective deterrence against threats” (§ 129), including regulations regarding “the licensing, setting up, operation, security and supervision of the activity [and,] [a]mong these preventive measures, particular emphasis should be placed on the public's right to information” (§ 132).

After the disaster, evacuation and emergency relief policies have to be implemented (CoE, 2012:37). Moreover, “identifying shortcomings in the processes concerned and any errors committed by those responsible at different levels”<sup>25</sup> is also part of the reparative measures, and it should be based on “an independent and impartial investigation” (CoE, 2012:39).

Even though positive obligations are relevant in cases of dangerous activities, they are even more essential in cases of natural disasters because they escape completely the human control. In *McGinley and Egan v. the United Kingdom*, the applicants alleged that their participation to the “nuclear tests conducted by the United Kingdom at Christmas Island in the Pacific Ocean in 1958” (§ 7) led to illnesses and cancers.

<i>McGinley and Egan v. the United Kingdom</i> , case No. 10/1997/794/995-996.					
State	Date of the judgement	Judgement conducted by	Rights at stake		Award
			Violation	Non-violation	
The United Kingdom	9 June 1998	Court (Chamber)	None.	Preliminary objection allowed (Non-exhaustion of domestic remedies), No violation of Art. 6-1 (Fair trial), No violation of Art. 8 (Private and family life), Not necessary to examine Art. 13 (Effective remedy).	None.

Indeed, the Court recalled in *McGinley and Egan v. the United Kingdom* (§ 97) that States have positive obligations to ensure the public access to information, which allow individuals to make enlightened choices and to assess rationally the risks involved, helping them to combat their fear that something might happen to them (CoE, 2012:83). In case of violation of a right recognized by the Convention, “an adequate response, judicial or otherwise” must be provided (CoE, 2012:39) for the same reasons.

<sup>25</sup> *Öneryıldız v. Turkey [GC]*, § 90 and *Buyadeva and Other v. Russia*, § 132.



In response to the debate over what types of environmental events should be covered by a right to a safe and healthy environment (2.3.2), the Court has admitted cases of both dangerous activities and natural disasters. It recognizes positive obligations on States, both *a priori* and *a posteriori*. Substantive and procedural aspects of the rights are found by the Court (2.2.3). Yet, cases with an environmental components handled under Article 2 are still rare. So far, there has been only four; two cases of dangerous activities and two cases of natural disasters.

### 3.2.2 Relevant rights from the European Convention on Human Rights

It seems relevant to present a definition of the 'environment' as interpreted by the Council of Europe. In all the documents produced by the Council of Europe, only one provides a clear definition. Article 2 (10) of the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (Lugano, 21 June 1993) states

Environment" includes:

natural resources both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors;

property which forms part of the cultural heritage;

and the characteristic aspects of the landscape.

Yet, the definition of “environment” is not essential for interpreting the Court's judgements and decisions, as the ECvHR's case-law concerns mainly other rights affected by environmental issues.

The Convention recognizes mainly civil and political rights, and even though new rights or freedoms have been added by optional protocols, there is no recognition of an explicit environmental right or of a right to nature preservation<sup>26</sup>. Even though “[t]he Court reiterates that there is no explicit right in the Convention to a clean and quiet environment”, it recognizes that “where an individual is directly and seriously affected by noise, smells or other pollution, an issue may arise under Article 8”<sup>27</sup> (private and family life). Other environmental issues may affect other rights recognized by the Convention.

As mentioned earlier, environmental concerns are cross-referenced with the following substantive rights: right to life (Article 2), right to respect for private and family life (Article 8),

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<sup>26</sup> *Fadeya v. Russia*, judgement of 9 June 2005, § 68.

<sup>27</sup> *Ioan Marchiş and Others v. Romania*, decision of 28 June 2011, § 28.

protection of property (Article 1 of Optional Protocol 1) and procedural rights: right to a fair trial (Article 6), freedom of expression (Article 10), right to an effective remedy (Article 13).

➤ *The right to life (Article 2):*

It has been interpreted that States have negative and positive obligations to guarantee the right to life. It covers situations in which this right is threatened by dangerous activities and natural disasters, including when conducted by non-State actors.

➤ *The right to respect for private and family life (Article 8):*

What is at stake here is the *quality* of private life. Hence the reference to a “certain threshold of harm”<sup>28</sup> that needs to be attained for the Court to conclude that there has been a violation. Public authorities have a duty to inform the general public of the environmental risks involved, and, in application of their *margin of appreciation*, they can sometimes restrict this right if they have a *legitimate aim*<sup>29</sup>.

➤ *The protection of property (Article 1 of Optional Protocol 1):*

In relation to environmental concerns, individual property rights can be restricted by public authorities for the sake of the general interest on the one hand; and on the other hand, public authorities may be required to ensure certain environmental standards (CoE, 2012:21).

➤ *The right to a fair trial (Article 6) and the right to effective remedy (Article 13):*

Along the line of procedural rights recognized in the Aarhus Convention, those two articles agree that individuals have the right to bring their case before the Court if they have not been heard enough during the decision-making process, or if the probability of the risks involved threatens their substantive rights recognized in the Convention (CoE, 2012:24).

Such cases can even lead to arrest and detention. Usually when there is loss of life, a criminal prosecution of the persons responsible should be conducted. However, in environmental cases, the loss of life is most likely to be unintentional and due to “human error or carelessness” (CoE, 2012:41). States are then not expected to launch a criminal prosecution. Yet, as showed in *Öneryıldız v. Turkey*<sup>30</sup>, it can be the case if it is proven that public authorities deliberately ignored the information they were given about potential risks.

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<sup>28</sup> *Fadeya v. Russia*, § 69.

<sup>29</sup> Those concepts will be presented in 3.3.2.

<sup>30</sup> *Öneryıldız v. Turkey* [GC], § 93.

➤ *Freedom of expression (Article 10):*

States have a “general obligation to collect and disseminate information relating to the environment”, i.e. to “ensure access to information” and “to provide information” (CoE, 2012:22).

### 3.2.3 Substantive and procedural aspects

The debate over substantive and procedural aspects of the right to a safe and healthy environment has been presented earlier (2.2.3). This dual aspect can also be found in the ECtHR's case-law.

As mentioned above (3.2.2), environmental issues are treated by the ECtHR in relation to substantive (Articles 2, 8 and 1 of the O.P. 1) and procedural rights (Articles 6, 10 and 13). Moreover, certain rights, such as the right to life (Article 2) are of particular interest, because the Court finds that there is both a procedural and substantive aspect to it in environmental cases.

In *Murillo Saldias and Others v. Spain*, following heavy rains upstream in the Pyrenees, a huge amount of water, mud and stone devastated a camping site, which was located on a land owned by the municipality of Biescas (Huesca), causing the death of eighty-seven people.

Decision <i>Murillo Saldias and Others v. Spain</i> , No. 76973/01					
State	Date of the decision	Decisions pronounced by	Rights at stake		Outcome of the decision
			Regarding the admissibility	Regarding the victim's claims	
Spain	28 November 2006	Court (4 <sup>th</sup> Section)	Article. 35 (Admissibility criteria), Article 35-1 (Exhaustion of domestic remedies, Efficient domestic remedy), Article 34 (Individual applications, victim).	Article 6 and 6(1) (Fair trial, impartial tribunal), Article 13 and 13(1) (Effective remedy), Article 2 and 2(1) (Right to life).	Inadmissible.

In this case, a reference to procedural rights (Articles 6 and 13) is made. The only substantive right mentioned is the right to life (Article 2), and both its procedural and substantive aspects are presented.

The procedural aspect relates to the duty of the State to identify the conditions that led to the loss of life, the actor(s) responsible for it and ensure that it will not happen again (CoE, 2012:40). Indeed, the Court recognizes that it is in the family's and public's interest to understand the chain of causes that led to the loss of life, in order to prevent it from happening again. This learning process benefits the society as a whole. Moreover, only public authorities are competent to prosecute those responsible, that is why they should voluntarily do it.

### **3.3 Conditions of application of environmental principles**

Certain principles apply to the Court when making judgements or decisions. Those principles are rules of international law and cannot be escaped. They are determinant for the Court's work, because they explain the current state of the ECtHR's case-law and might give indications for its future. Therefore, they must be taken into account when interpreting the Court's jurisprudence and when formulating a right to a safe and healthy environment (2.3.1).

#### 3.3.1 The territorial scope of the Court's jurisdiction

Environmental issues cross borders (2.2.1). Whether we are talking about natural disasters (due to climate change or not) or industrial/dangerous activities, it is obvious that their impact might be felt by people on different territories, and sometimes across different countries.

The Court's case-law related to extra-territorial jurisdiction is important and could be useful in environmental contexts. There are two approaches to the handling of cross-border environmental cases by the Court.

On the one hand, inter-states applications being allowed by the Court's status, we could imagine a situation where a State (A) is launching a case before the Court, accusing another State (B) of environmental degradation leading to the violation of its nationals' rights on the territory of the State B. Indeed, in theory the Convention only applies to the member States' territory, as it is in public international law. In the judgement *Assinidzé v. Georgia*, the Court stated that “as a general

rule, the notion of 'jurisdiction' within the meaning of Article 1 of the Convention must be considered as reflecting the position under public international law (...). That notion is 'primarily' or 'essentially' territorial"<sup>31</sup>.

On the other hand, it has been admitted that, the “acts of the Contracting States performed, or producing effects, outside their territories can constitute an exercise of jurisdiction within the meaning of Article 1 only in exceptional cases”<sup>32</sup>. In *Al-Skeini and Others v. the United Kingdom*, the Court is listing the “exceptional circumstances” that can lead to the application of an extra-territorial jurisdiction. The ECtHR has not yet admitted cases that have an environmental component and raise “extra-territorial or transboundary issues” (CoE, 2012:114). Yet, the principles mentioned above could theoretically apply to cases with an environmental component.

### 3.3.2 The main principles of interpretation

Because the Convention is an instrument of international human rights law (2.1), several principles of international law are used by the Court when interpreting it. Two will be presented in this study because of their relevance in environmental issues: the principle of subsidiarity (and the margin of appreciation) and the legitimate aim (with the balancing of interest test).

#### a) The subsidiarity principle and its practical application: the margin of appreciation

The principle of subsidiarity is a ground principle of the European human rights system. It has been recognized from the very beginning that

it should first and foremost be for national authorities to ensure that the rights enshrined in the Convention are not violated and to offer redress if ever they are. The Convention mechanisms should only be a last resort in cases where the national level has not offered the protection or redress needed (CoE, 2012:141).

Indeed, when they ratify the Convention, the Contracting Parties commit themselves to transposing the rights into their domestic system. They should then be armed to protect the right of the Convention and to provide redress when needed.

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<sup>31</sup> *Assanidzé v. Georgia* [GC], judgement of 8 April 2004, § 137.

<sup>32</sup> *Al-Skeini and Others v. the United Kingdom* [GC], judgement of 7 July 2011, § 131-150.

The practical applications of this principle are both the criteria of exhaustion of the domestic remedies (Article 35(1) on Admissibility Criteria), and the margin of appreciation. The latter was first developed in *Handyside v. the United Kingdom*<sup>33</sup> (1976). The Court recognizes that the public authorities are the most competent to take decisions in sensitive social or technical contexts, as in environmental cases. When rendering its judgements, the Court therefore allows a wide margin of discretion to the national body in the decision-making process. The scope of the margin of appreciation is especially wide in environmental cases. However, the Court still maintains its “critical assessment of the proportionality of the measures concerned” (CoE, 2012: 138). For instance, the main difference between situations of dangerous activities and natural disasters, by nature not foreseeable, is the extent of the margin of appreciation recognized to the State by the Court.

Furthermore, a margin of appreciation is also recognized to States in determining how they will implement their positive obligations, such as domestic remedies<sup>34</sup>.

b) The concept of “legitimate aim” and its practical application: the balancing of interest test

Not all rights of the Convention are absolute. Some of them can be restricted by States authorities, to such extent that they do not lead to a violation of the right in question. In order to ensure this, certain criteria have been developed. Restrictions should be “necessary in a democratic society” (Article 8(2)) and pursue a legitimate aim. Aims considered as legitimate are listed in Article 10(2) for instance. They include “national security, territorial integrity or public safety”.

In *Chapman v. the United Kingdom*, the applicant was a Gypsy by birth who lived in a caravan on a piece of land that she owned. She alleged that the public authorities' actions violated her rights. Indeed, she complained that their refusal of her construction permit on the ground that her land was on an environmentally protected area was in fact a discrimination because she was a Gypsy.

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<sup>33</sup> *Handyside v. The United Kingdom*, judgement of 7 December 1976.

<sup>34</sup> *Hatton and Others v. the United Kingdom* [GC], judgement of 8 July 2003.

<i>Chapman v. the United Kingdom</i> , case No. 27238/95					
State	Date of the judgement	Judgement conducted by	Rights at stake		Award
			Violation	Non-violation	
The United Kingdom	18 January 2001	Grand Chamber	None.	No violation of Art. 8 (Private and family life), No violation of P1-1 (Property), No violation of Art. 6-1 (Fair trial), No violation of Art. 14 (Prohibition of discrimination).	None.

In this case, the Court has recognized that the protection of the environment is a legitimate aim, potentially allowing restrictions over certain rights (the right to respect for private and family life in this case, § 82, i.e. to build and enjoy a house on an owned land). A legitimate aim, such as the preservation of nature, “will be considered “necessary in a democratic society” [...] if it answers a “pressing social need” and, in particular, if it is proportionate to the legitimate aim pursued” (§ 90). The Court also states that “national authorities, who by reason of their direct and continuous contact with the vital forces of their countries are in principle better placed than an international court to evaluate local needs and conditions” (§ 91).

In order to assess whether an interference with a particular right is proportionate and has a legitimate aim, a balance of interest test must be conducted, weighting the interests of an individual and those of the community. In *Vides Aizsardzības Klubs v. Latvia*<sup>35</sup>, an environmental NGO was acknowledged for its 'watchdog' role, “essential in a democratic society” (CoE, 2012:79). The Court concluded in a violation of Article 10 because the restrictions of the freedom of expression (of the NGO) were not justified by a legitimate aim.

### **3.4 Conclusion: a principle of interpretation more than a right**

The objectives of this chapter were to assess the level of embedment of environmental protection in the jurisprudence of the ECtHR. To do so, it was decided to analyze several judgements and decisions from the Court regarding cases with an environmental component. It was first expected to get an overview of the legal situation regarding environmental protection in the

<sup>35</sup> *Vides Aizsardzības Klubs v. Latvia*, judgement of 27 May 2004.

European context, and to determine if and how the ECtHR interprets environmental cases and what could be understood as the right to a safe and healthy environment. Secondly, this chapter aimed at confronting the theoretical debates presented in chapter 2 with the practice of international (European) human rights law, by making systematic parallels between both.

This sub-section is an opportunity for me to reflect on my work so far. To do so, I will answer the second research question presented in chapter 1, as well as the sub-questions presented in the methodology of the case-study (3.1.3):

B) The European Court of Human Rights' jurisprudence: how does the Court handle cases in which resorting to a right to safe and healthy environment could be relevant?

- *What are the rights at stake when dealing with cases that have an environmental component?*
- *What trends can we identify over time in the Court's handling of environmental cases?*

We noticed that the Court sees a safe and healthy environment as a prerequisite to the enjoyment of others rights, notably the right to life, to property, to the respect of private and family life, to a fair trial, to effective remedy and to the freedom of expression. The distinction between natural disasters and dangerous activities allowed us to solve the issue presented in 2.3.2 regarding the types of events falling under the State's responsibility. We observed that both substantive and procedural rights are used by the Court in handling environmental cases, and sometimes, a same right, such as the right to life, can have both procedural and substantive components.

Because the case-study was limited to the jurisprudence of the ECtHR and thus to the European context, the findings (3.4) are mainly relevant in this context. By focusing on the territorial scope of the Court's jurisdiction, and on the principles of international law used to interpret the Convention, we got a clearer understanding of what can be explained by the specificities of the European context (democracies, progressive positions, long history of human rights protection, etc.) and what are in fact the characteristics of general international law (margin of appreciation, legitimate aim).

A preliminary conclusion, before going deeper into the findings in chapter 4, could be that we are far from the crystallization of a right to a safe and healthy environment by the Court. It is obvious that environmental protection is never a right as such, but rather an interpretative principle for fundamental rights, or sometimes a ground justifying interferences with them for the sake of the



environment. It seems to be working both ways, in the sense that environmental protection is sometimes the necessary *means* in a particular case to protect one of the conventional rights, and sometimes the *end* that justifies the restriction of a non-absolute right for the sake of protecting the environment.

In line with Boyle's argument that a safe and healthy environment is a prerequisite for the enjoyment of existing human rights (Boyle, 2008), the ECtHR takes into consideration the environmental aspect by recognizing that several rights in the Convention have environmental components, especially the right to life, which can be extrapolated to the right to *health*, and thus to the right to live in a *healthy* environment (2.3.1). environmental rights seem to be “entitlement rather than rights” (Fitzmaurice, 2009).

The Court does not consider itself competent to create new rights (again, the States are the legislators, not the Court). Rather, in Garcia San José's words, we are witnessing a “process of complementing 'step by step' the content of some 'traditional' rights guaranteed in the Convention as a result of a growing awareness and concern for environmental issues” (CoE, 2005).

In my understanding, there seems to be a strong general interest in protecting the environment, but this does not lead to the recognition of an individual or collective environmental human right.

## CHAPTER

### **4 Building the formulation of the right to a safe and healthy environment (RSHE) on the case-study's findings**

The main objective of this chapter is to formulate a working definition of **an individual, substantive, third generation right to a safe and healthy environment** (as argued in 2.1.3), in the light of previous chapters' inputs. It is also the opportunity to answer the research questions C and D in a creative way.

- C) What formulation of a working definition of the right to a safe and healthy environment emerges when merging theoretical debates and the Court's ruling on the subject?
- D) What would be the scope of this right?

I suggest here a formulation of a working definition of the RSHE (1.4.2). To do so, I discuss the choices that need to be made regarding the content of this right, following the theoretical discussion presented in chapter 2 and the findings from chapter 3. This working definition is contextualized in the global field of human rights, and interpretative guidelines are provided to implement the right in the European context.

#### **4.1 Discussion of the choices to define the RSHE**

##### 4.1.1 A comprehensive right, combining substantive and procedural aspects

While I conducted the case-study (chapter 3), I realized that despite the absence of the RSHE in the Convention, the Court still takes into account the need to provide environmental protection, for the sake of both individuals and the environment. By doing so, the Court recognizes that States have positive obligations, for instance to ensure the public's access to information and its right to participation in the decision-making process regarding environmental concerns.

In 2.1.3, we concluded that, in theory, different approaches to the RSHE exist. The main conflict between those approaches concerns the substantive or procedural aspect that such a right could have. Yet, in the decision *Murillo Saldias and Others v. Spain*, we discovered that certain rights, such as the right to life, have both procedural and substantive aspects. We could then imagine a right to a safe and healthy environment that would have the procedural aspects defended in the Aarhus convention (participation, information, access to justice), as well as substantive aspects. This is the first choice that I am making regarding the content of the RSHE.

Positive and negative obligations have been extensively discussed earlier on (2.3.3 and 3.2.1). One might think at first sight that positive obligations are mainly preventive, and have then a procedural overtone (obligation to inform about the risks for instance), whereas negative obligations (not to violate a certain right) will lead to the recognition of a substantive right. It seems interesting to me to cross-reference the dichotomy substantive/procedural aspects with the positive/negative obligations one. It shows how a *substantive* right, such as the RSHE, can also have procedural aspects and can combine positive and negative obligations for the State, becoming a comprehensive right allowing a stronger protection of individuals.

*Table 1: The interconnections between these two pairs*

	Substantive rights	Procedural rights
Positive obligations	Preventive measures to ensure that threats to the right will not occur.	Duty of the State to ensure information and to assess the risks involved. Administrative and legal framework in place for seeking information, participation and legal redress.
Negative obligations	No violation by public authorities of the right.	Obligation not to deny access to the information available, not to minimize or ignore the risks involved, or to deny individuals legal redress.

#### 4.1.2 Summary of my main choices regarding the working definition

I have faced several obstacles during my working process. I struggled at first with the interaction between the human and environmental aspects of the RSHE. I wondered for a long time whether I was *personally* in favor of an anthropocentric RSHE that would be drafted for the sake of human beings, as a fundamental right, or if I thought that the environment should be protected independently of human beings' livelihood. I finally realized that those approaches could, to a certain extent, be reconciled within the broader field of sustainable development for instance. I chose to underline the concept of inter-generational equity as an interpretative principle of the working definition in order to find a balance between protecting the human well-being and the environment.

I also had a hard time identifying the conceptual shift between climate change issues and environmental issues. I wondered about the inherent causal link, the human responsibility in both types of degradation, etc. I finally found a solution when I realized that the ECtHR handles both types of events: “dangerous activities” and “natural disasters”, among which climate change-related events. I chose a solution in line with the Court's work, respectively recognizing the States' obligations to avoid and control risks due to dangerous activities and to monitor climate change and provide redress regarding the consequences of natural disasters (in the form of administrative and judicial institutions and policies for instance).

#### **4.2 Formulation of the working definition**

My analysis of the European human rights system led me to think that the most likely scenario regarding the recognition of the RSHE would be its addition as an optional protocol to the European Convention. This is a long shot, but that is the context I have chosen when designing the following working definition. It would also mean a progressive realization of the right according to the States' resources.

In this context, individuals would be the right holders of the RSHE, and the States of the Council of Europe the duty bearers. Once again, I situate this definition in the European context because of the in-depth study conducted beforehand. However, I believe that it could be a relevant tool for further academic general debates on the topic.

*Considering the Stockholm Declaration on the Human Environment adopted on 16 June 1972,*

*Considering the Rio Declaration on Environment and Development, adopted on 14 June 1992,*

*Considering the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, adopted on 25 June 1998,*

*Considering the European Convention on Human Rights, adopted in Rome on 4 November 1950,*

*Recognizing the importance of the environment on which rely human livelihoods,*

*Recognizing the protection of the environment as a general interest for present and future generations,*

*Recognizing that a safe and healthy environment is a prerequisite to the enjoyment of other fundamental rights,*

*Considering that this text aims at ensuring the effective and universal respect, protection and promotion of the following human right:*

### ***Article 1 – Right to a safe and healthy environment***

- 1. Everyone has the right to a safe and healthy environment.*
- 2. This right should be interpreted as composed of both substantive and procedural aspects. States have the positive and negative obligations to ensure this right a priori and a posteriori. States should, according to the means available to them, ensure a sufficient level of collection and dissemination of information regarding environmental risks, allow citizens to participate in the decision-making process and to have access to justice regarding environmental matters. States should also restrain from violating this right and ensure its respect, protection and promotion.*
- 3. States have the responsibility to ensure this right both in the context of dangerous activities, whether they are conducted by public authorities or other actors, and natural disasters.*
- 4. The interpretation of other fundamental rights has to bear in mind the right to a safe and healthy environment.*

5. *There should be no interference with this right, except as prescribed by law, necessary in a democratic society and in the interests of public safety, or for the protection of the rights and freedoms of others.*

### **4.3 Guidelines on how to interpret the RSHE**

#### 4.3.1 Contribution of the concept of intergenerational equity as a principle of interpretation

We have proven already that the recognition of an individual right is compatible with the respect of a long term protection of the environment as a support for human livelihood.

The two concepts of human rights and environment merge within the notion of intergenerational equity. Indeed, this conceptual approach recognizes the human kind as beneficiary of the rights (not only individuals or groups) (Fitzmaurice, 2009). It is based on the idea that a “partnership between generations” would add the recognition of past responsibilities (such as environmental protection) to contemporaneous measures of inter-generational solidarity (such as the pensions system) (Brown Weiss, 1992).

For Brown Weiss, intergenerational justice has three components: the conservation of options, of quality and of access (Brown Weiss, 1992). It is rather a “moral standing” (Beckerman and Pasek, 2001) based on the concept of trust (Brown Weiss, 1992) between present, past and future generations, than a principle of international law. Yet, it allows to understand the *moral implications* of the right to a safe and healthy environment. However, “even if we accept the view that the general constitutional right to a safe and healthy environment has an intergenerational component, its application by the courts refers only to the individual environmental (human) right which were the subject of the court's proceedings” (Fitzmaurice, 2009:150).

I believe the contribution of inter-generational equity is highly relevant to the formulation of the RSHE. Indeed, I have mentioned earlier that I am in favor of an *individual* RSHE (2.1.3, 2.2.2, 2.3.3, 2.4). The concept of inter-generational equity allows to defend an individual RSHE while still taking into account a collective perspective. Indeed, it is based on a long term project in which each

generation would not only protect the environment for the sake of protecting their fundamental rights, but also as a duty towards future generations.

Thus, it recognizes environmental protection as a general interest, and acknowledges that each individual can have at the same time the **right** to a safe and healthy environment and a **moral** duty to protect the environment. The concept of inter-generational equity is an inspiration for the development of implementation policies of the RSHE.

#### 4.3.2 Respect, promotion and protection: the human rights triad for the implementation of the RSHE

The respect, promotion and protection of human rights is the guiding triad for States when dealing with human rights and designing implementation measures and policies (UNODC, 2012).

The table below aims at illustrating what the RSHE (as formulated in the working definition) could mean in the European context and how it could be implemented. Moreover, the environmental provisions that numerous Council of Europe States have in their domestic legal system could help fulfilling this right in regard to preventive/proactive implementation measures.

The left side column explains the legal implications of the triad. The right side column helps visualizing the practice of the right, i.e. the policies that could be implemented in order to realize this right at the domestic level, in line with the conceptual triad of respect, promotion and protection that applies conjointly to any fundamental right.

The domestic implementation should be completed by the efficient respect, promotion and protection at the European level. It is the ECtHR's duty to ensure that if a violation occurs and the State fails to provide a legal redress for the victim, the latter will be able to bring the case before the Court and see his/her rights eventually recognized.

	<i>What does this mean in (legal) theory?</i>	<i>What are the implications in practice?</i>
RESPECT	Recognition of the right, no violation by public authorities (negative obligation) or non-State actors.	Ratification of the international document(s) recognizing the right, translation into domestic law.
PROMOTION	Procedural aspect, preventive measures, positive obligations aiming at promoting the right both for individuals to know they have a RSHE and for private or public entities to know that they have the responsibility to ensure it.	Public's needs assessment, Access to information, public's right to know: obligations to “ensure access to information” and “to provide information” (3.2.2) at the same time. Proactive implementation.
(Monitoring)	Monitoring measures: domestic laws, administrative policies in place and specific institutions to handle those cases.	Monitoring of dangerous activities and natural disasters (including climate change).
PROTECTION	Positive obligation to guarantee its recognition in national law and to ensure the existence of administrative (institutions) and legal remedies and fair trial in case of violation.	Implementation of effective domestic laws and remedies, ensuring an independent and fair trial, guaranteeing individuals' access to justice.

*Table 2: Implementation Guidelines (legal theories and practice of the right)*

This definition covers both situations of “dangerous activities” and “natural disasters” (Article 1-3). The consequences of climate change are integrated in the broader definition of natural disasters (2.3.2). Those three types of events have different implications in terms of States' responsibilities. The State has the responsibility to hold the actor(s) responsible for violations due to dangerous activities. It implies the existence of laws, administrative and judicial remedies, etc. In case of natural disasters and climate change-related events, there is no responsible actor. However, the scope of the working definition I suggested recognizes the State's responsibility to *monitor* climate change. Its role is to be proactive and assess the risks, and to protect the citizens according to its knowledge of the probability of climate change-related events. Moreover, as mentioned in table 2, States have to implement laws, policies and institutions able to handle the consequences of those events. That is why recognizing the RSHE is so essential. It would ensure a stronger protection of citizens and fill in the gap left by the absence of laws regarding climate change issues.



## CHAPTER

### 5 Final conclusions and recommendations

In this chapter, I would like to come back to the aim of this dissertation, on the basis of the answers I provided to each research question at the end of chapters 2, 3 and 4.

Then, I reflect on my work, and provide general recommendations regarding the recognition of the RSHE. Building on the analysis of this dissertation limits, I provide recommendations for further research on that topic. I also elevate the debate from the right to a safe and healthy environment by concluding on general human rights issues.

#### 5.1 Update on the aim of this dissertation

This dissertation has been handled from a multidisciplinary angle. In chapter 2, I discussed the integration of international environmental law and international human rights law, in order to justify why I would be in favor of integrating the RSHE within the most advanced human rights structure. I presented different theoretical approaches to the nature and content of the RSHE, in relation to broader human rights debates (individual/collective rights, substantive/ procedural aspects, etc.).

In chapter 3, I assessed the level of embedment of environmental protection in the ECtHR's work. I demonstrated that the Court, in handling cases in which resorting to a right to safe and healthy environment could be relevant, has found a way to go around the absence of such right. It has progressively produced several groundbreaking judgements regarding environmental matters. As I mentioned, the Court first recognized that environmental degradation such as pollution could lead to the violation of fundamental rights as early as in the 1990s<sup>36</sup>. Later on, it recognized environmental protection as a matter of general interest and accepted to restrict some fundamental rights for the sake of environmental protection.

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<sup>36</sup> Two first cases recognizing environmental pollution as interfering with human rights (*Powel and Rayner v. the United Kingdom* in 1990 and *López Ostra v. Spain* in 1994).

In chapter 4, I used the formulation of a working definition of the RSHE as a pedagogical tool to further discuss what this right could be like in the European context. I defend an individual, substantive, third generation RSHE. In order to give substance to my working definition, I presented the inspirational principles for its implementation in the European context, such as the principles of respect, promotion and protection common to all fundamental rights.

I believe I have met the ambitions of this dissertation, which aimed at **formulating a working definition of the right to a safe and healthy environment (RSHE), by discussing the nature of this right and the different options regarding its content, and to analyze the feasibility and the relevance of its legal recognition in the European context (1.3).**

## **5.2 A reflection on my work**

As I have already mentioned, my findings and conclusions have to be understood in the light of the current state of my knowledge, of the academic debate, the material I used and the time I was allocated to pursue this study. I chose to develop a certain angle on the topic of environmental human rights, and I am aware that my choices have consequences on my findings, and furthermore on the working definition I am suggesting (4.2). Thus, the working definition is only my humble contribution to the *theoretical* discussion on the RSHE. It is mainly applicable in the context of European human rights law, even though it could feed the intellectual debate on the RSHE in general.

Whereas I do see that a right to a safe and health environment is relevant in the European context and would help improving the protection of human rights, I would personally advise not to impose the RSHE to States that are not ready to implement it. The current situation regarding the interpretation of environmental concerns by the ECtHR could go on for a long time, and it might even be a medium-term solution for the States of the Council of Europe. Environmental human rights are still highly controversial, and even their defenders have troubles agreeing on the definition and the scope of such rights.

However, the Court's judgements and the dissenting opinions published by several judges<sup>37</sup>, as well as the progressive positions of some Council of Europe States, encourage me to think that the situation is slowly moving towards the recognition of the right to a safe and healthy environment. As I mentioned in 2.2.4, the objective is not to give the RSHE a superior aura, but to set it on equal footing with the existing fundamental rights, recognized in international human rights law, while considering the constraints of real politics in international affairs, such as the States' political will.

### 5.3 Recommendations for further research

In the course of my work, several questions arose, among which: from a methodological point of view, how should I use the formulation of a working definition of the RSHE? What should the limits of the case-studies be, to show both a trend and the current state of the jurisprudence? What parts of the case-studies findings can be generalized to the European context? And to general human rights issues?

I have managed to answer some of them and to move forward in my work (4.1, 5.2), but some remain unanswered. They could inspire further research on environmental human rights or on the general development of human rights. If someone in the future was willing to move the debate on environmental human rights further, I would like to stress several aspects that have (voluntarily) been excluded here – because I focused on the European context, but could still be highly interesting in other contexts or as general debates.

- If I had to choose one angle for a future study, I would suggest to go deeper into how the ECtHR's judgements are implemented by States, and to analyze what solutions are found **in practice** in order to implement policies with an environmental component. This could be done using the working definition I provided to see how it could be integrated within domestic laws and policies.
  
- One of my main concerns when I started working on this topic was that, because there are insufficient incentives for States to implement preventive measures regarding environmental protection, people suffering from environmental degradation would only be heard once a

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<sup>37</sup> See for instance the dissenting opinion from judges Costa, Ress, Türmen, Zupančič and Steiner, 2003.

violation had occurred. Therefore, the recognition of the right to a safe and healthy environment was for me the only way to balance **preventive and reparative policies**.

Indeed, human rights are not only about punishing and compensating for violations, but also about preventing violations and suffering from happening. That is why I would suggest further research to focus on *preventive* measures resulting from the recognition of environmental human rights.

- This could also allow a discussion of the political or social implications of the interactions between human rights and the environment within the field of (sustainable) development, completing the legal approach defended here, and potentially developing **new theories regarding climate change** issues, in line with what was discussed in 2.3.2 and 4.3.2.
- I believe that the international community often finds the European human rights model inspiring. Therefore, some of the conclusions from my study could be relevant in other systems. It could then be highly interesting to conduct **further research on the RSHE** in other human rights contexts. I am thinking especially about the Inter-American Court of Human Rights and the African Court of Human and People's Rights. Such analysis could lead to a contextualization in the broader debate on the *universality* of human rights.
- The Court has been handling cases for more than 60 years now. This is a long period, especially given the social, technical and environmental developments that have occurred since 1950. The Convention adopted in 1950 was a reflection of the concerns and priorities at that time. While protocols recognizing new rights have been added to the Convention, the interpretation of the Convention by the Court evolved a lot, taking into account the societal evolutions in Europe. The Court stressed several times that “the Convention is a **living instrument**, to be interpreted in the light of present-day conditions”<sup>38</sup>. Further research could be conducted on the sociological role and power of law. Indeed, the Court did not only validate social evolutions, but it also defended a **progressive** approach towards many societal concerns, and it is most likely to go on this way, potentially towards the recognition of the working definition suggested earlier.

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<sup>38</sup> *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, pp. 14-16, § 26, and *Loizidou v. Turkey* (preliminary objections), judgment of 23 March 1995, Series A no. 310, pp. 26-27, § 71. Emphasis from the other of this study.

## 5.4 Concluding remarks

Over the last forty years, we have been witnessing a growing focus on human rights violations due to environmental degradation. Environmental concerns are now taken seriously by the Court. And despite the fact that it alternates “judicial activism and judicial self-restraint” on the topic (CoE, 2005: 67), its position is evolving. We might not witness an environmental human right yet, but the environmental component of fundamental rights is not denied either. However, human rights are a very long term goal, and one must be very careful when crystallizing any new right, because it would be so much harder to undo a right that has been recognized in inopportune conditions than to let the European human rights system mature into recognizing a substantive right providing an efficient environmental protection in the future.

The right to a safe and healthy environment is an emerging field, which shows that human rights are a dynamic concept in constant evolution. This subject allowed a reflection on inherent debates within the human rights discipline such as the substantive/procedural or negative/positive obligations dichotomies. The conflict between individual and collective rights was profusely covered in this dissertation, because the RSHE is one of the few areas where collective rights are so intensively debated.

The opposition between expanding (adding new rights) and contracting (strengthening the existing rights) human rights is a key issue, because human rights situations are very different across the world and a lot remains to be done to strengthen basic human rights. The analysis of the RSHE in other regional contexts could also be an opportunity to discuss the universality of human rights, after touching upon the indivisibility of human rights, by showing that the RSHE borrows to both civil and political rights (right to life) and economic, social and cultural rights (right to health).

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Even if “the environment is not going to be better protected thanks to a rights-based approach” (Handl, 1992), human rights are likely to be better protected if the international human rights law covers the consequences of environmental degradation on human beings.

The ultimate goal remains the protection of the human dignity and livelihoods, and the international community has to be extremely careful while designing human rights instruments not to hasten itself into utopian theories that would not survive the reality test.

WORDS: 16.714

*Because I used the Harvard referencing system, and referred constantly to my main concept which happened to have a long wording, “the right to a safe and healthy environment”, I had to go slightly over the words limit, as allowed by the dissertation guidelines.*

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# Appendices

## Appendix 1: Glossary

This glossary attempts at presenting and defining the key terms and documents used in this dissertation. It mainly presents the Council of Europe's interpretations of those terms, because the objective is to contextualize the understanding of the link between human rights and the environment in the work of the ECtHR, whose Parties are the Council of Europe member states.

### **Aarhus Convention**

The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters was adopted in Aarhus, in Denmark, in 1998. It is therefore commonly referred to as “the Aarhus Convention”.

It aims at reinforcing the global environmental governance. This multilateral agreement has been warmly welcomed because it was designed in strong collaboration with numerous NGOs. Moreover, it is legally binding for the States that have ratified it. It is the core document in Europe regarding procedural environmental rights. Despite the fact that it does not mention substantive rights, it is considered that the Aarhus Convention “assumes their existence” (CoE, 2012:131). 37 of the 45 current Parties to the Convention are member states of the Council of Europe. There is an additional protocol on Pollutant Release and Transfer Registers (2009), as well as a GMO amendment “on public participation in decisions on deliberate release into the environment and placing on the market of genetically modified organisms”.

### **Environment**

As mentioned in 3.2.2, there is no framework convention agreeing on a definition of the environment in international law. Moreover, the Court has never attempted to define it in a judgement. Within the Council of Europe documents, only one defines the environment, the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment. It states that “the environment includes natural resources both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors, property which forms part of the cultural heritage; and the characteristic aspects of the landscape” (CoE, 2012:134). Indeed, “it appears to be commonly accepted that the environment (...) is to be protected as part of the more global goal of ensuring sustainable development (CoE, 2012:134).

### **European Convention on Human Rights, “the Convention”**

“The full title is the “Convention for the Protection of Human Rights and Fundamental Freedoms”, usually referred to as “the Convention”. It was adopted in 1950 and entered into force in 1953. The full text of the Convention and its additional Protocols is available in 29 languages at [www.echr.coe.int](http://www.echr.coe.int). The chart of signatures and ratifications as well as the text of declarations and reservations made by states parties can be consulted at <http://conventions.coe.int>. Currently, it has 47 members” (CoE, 2012:135).

### **European Court of Human Rights, “the Court”**

“The European Court of Human Rights was set up in Strasbourg by the Council of Europe member states in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the High Contracting Parties to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in a single-judge formation, in committees of three judges, in Chambers of seven judges and in exceptional cases as Grand Chamber of seventeen judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court’s judgments” (CoE, 2012:135).

### **Rio Declaration**

The Rio Declaration on Environment and Development was adopted following the United Nations “Conference on Environment and Development” that took place in Rio de Janeiro from 3-14 June 1992. It lists 27 principles aiming at guiding the implementation of sustainable development worldwide (principles 4 and 8 mention “sustainable development”). Indeed, it has the “goal of establishing a new and equitable global partnership through the creation of new levels of co-operation among States, key sectors of societies and people”.

### **Stockholm Declaration**

The Stockholm Declaration was adopted following “the first UN conference on the environment” that took place in Stockholm from 5-16 June 1972 (CoE, 2012:141). This United Nations Conference on the Human Environment proclaimed for the first time a right to a healthy environment (CoE, 2012:141).

### **Sustainable Development Concept**

This concept was introduced by the Brundtland Report in 1987 “Our Common Future” (World Commission on Environment and Development, 1987). It defines sustainable development

as "development which meets the needs of current generations without compromising the ability of future generations to meet their own needs" (World Commission on Environment and Development, 1987). According to the UNEP, "The concept supports strong economic and social development, in particular for people with a low standard of living. At the same time it underlines the importance of protecting the natural resource base and the environment. Economic and social well-being cannot be improved with measures that destroy the environment. Intergenerational solidarity is also crucial: all development has to take into account its impact on the opportunities for future generations" (UNEP, 2004-2005).

## **Appendix 2: A selection of relevant rights**

### **Convention for the protection of Human Rights and Fundamental Freedoms, 4 November 1950**

#### **Section 1 Rights and Freedoms**

##### **Article 2 The Right to life**

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
  - (a) in defence of any person from unlawful violence;
  - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

##### **Article 6 Right to a fair trial**

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
  - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - (b) to have adequate time and facilities for the preparation of his defence;
  - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;



- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

### **Article 8 Right to respect for private and family life**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

### **Article 10 Freedom of expression**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions and penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

### **Article 13 Right to an effective remedy**

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

# **Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March 1952**

## **Article 1 Protection of property**

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

### Appendix 3:

## List of relevant judgements and decisions of the European Court of Human Rights with an environmental component

*Airey v. Ireland*, case No. 6289/73, judgment of 9 October 1979,

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57420> (23.04.2013)

*Al-Skeini and Others v. the United Kingdom* [GC], case No. 55721/07, judgement of 7 July 2011,

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-105606> (23/04/2013)

*Assanidzé v. Georgia* [GC], case No. 71503/01, judgement of 8 April 2004:

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61875> (24.04.2013)

*Budayeva and Others v. Russia*, cases No. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02,

judgement 20 March 2008, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-85436>  
(23.04.13)

*Chapman v. The United Kingdom* [GC], case No. 27238/95, judgement of 18 January 2001:

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59154> (24.04.2013)

*Deés v. Hungary*, case No. 2345/06, judgement of 9 November 2010,

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-101647> (09.05.2013)

*Fadeya v. Russia*, case No. 55723/00, judgement of 9 June 2005:

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-69315> (23.04.2013)

*Handyside v. the United Kingdom*, case No. 5493/72, judgement of 7 December 1976:

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57499> (24.04.2013)

*Hatton and Others v. the United Kingdom* [GC], case No. 36022/97, judgement of 8 July 2003,

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61188> (23.04.2013)

*Ioan Marchiș and Others v. Romania*, decision of 28 June 2011, application No. 38197/03,

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-105728> (23.04.13)

Judges Costa, Ress, Türmen, Zupančič and Steiner (2003), Joint dissenting opinion on *Hatton and Others v. the United Kingdom*, 8 July 2003.

*L.C.B. v. the United Kingdom*, case No. 23413/94, judgement of 9 June 1998,

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58176> (09.05.2013)

*Loizidou v. Turkey* (preliminary objections), case No. 15318/89, judgment of 23 March 1995,

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57920> (23.04.2013)

*López Ostra v. Spain*, case No. 16798/90, judgement of 9 December 1994,

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57905> (23.04.2013)

*McGinley and Egan v. the United Kingdom*, case No. 10/1997/794/995-996, judgement of 9 June 1998, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58175> (09.05.2013)

*Murillo Saldias et autres v. Espagne*, case No. 76973/01, judgement of 28 November 2006: <http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-78694> (23.04.2013) (In French only)

*Öneryıldız v. Turkey [GC]*, case No. 48939/99, judgement of 30 November 2004, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-67614> (23.04.13)

*Paul and Audrey Edwards v. the United Kingdom*, case No. 46477/99, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60323> (09.05.2013)

*Powel and Rayner v. the United Kingdom*, case No. 9310/81, judgement of 21 February 1990

*Vides Aizsardzības Klubs v. Latvia*, case No. 57829/00, judgement of 27 May 2004, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-66349> (24.04.2013, in French)

*X and Y v. Federal Republic of Germany*, case No. 6850/74, judgement of 18 May 1976. [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["6850/74"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER","DECISIONS"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{) (23.04.13)