

To

The Norwegian PACE delegates

Oslo, 19 November 2024

## **COUNCIL OF EUROPE: FURTHERING THE RECOGNITION OF THE RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT**

We are writing you to encourage you to take action to ensure the recognition of the right to a clean, healthy and sustainable environment in the upcoming meeting of the Council of Europe's (CoE) Steering Committee for Human Rights (CDDH) from 25 to 29 November 2024 where member states will be asked to express their position on the need for a further instrument or instruments in the field of human rights and the environment and on the feasibility of options for a further instrument.

We urge Norway to support the drafting of an additional Protocol to the European Convention on Human Rights (ECHR) on the Right to a Healthy Environment and the operationalization of the Reykjavik Committee on Environment and Human Rights, composed of independent experts. Your contribution can be decisive in galvanising wider support for the effective protection of the right to a healthy environment.

As you will be aware, the CDDH will discuss a revised version of the study on the need for and feasibility of a further instrument or instruments on human rights and the environment drafted by the CDDH's Drafting Group on Human Rights and Environment (CDDH-ENV). This first draft by the CDDH-ENV has since been revised to take account of the April 2024 European Court of Human Rights (ECtHR) rulings in the Climate Change cases, most notably in the case of Verein KlimaSeniorinnen Schweiz and Others v. Switzerland. This landmark judgment set a vital and historic precedent by finding that the Swiss government had failed to comply with its duties under the European Convention concerning climate change, including failing to set clear limits on greenhouse gas emissions and not meeting its past greenhouse gas emission reduction targets.

Additionally, in July 2024, the CoE's Committee of Ministers set up an Ad hoc Multidisciplinary Group on the Environment (GME) and instructed it to prepare, by the end of March 2025, a draft Council of Europe Strategy on the Environment and a related Action Plan for its implementation in accordance with the Reykjavik Declaration, focusing on areas where the CoE has a comparative advantage and/or unique legal instruments and expertise, ensuring an inclusive consultation process, and leveraging synergies with partners and stakeholders with a view to providing added value. This important and timely process provides an opportunity to ensure that the CoE delivers a strategy on the environment, with human rights at its core, including the right to a healthy environment.

We Norwegian NGOs, along with over 450 other civil society organisations also campaigning for the legal recognition of the right to a healthy environment, follow these processes closely with the expectation that they will lead to the necessary and ambitious solutions required from the

CoE. This is why we urge you to play a leadership role to ensure the legal recognition of the right to a healthy environment through the works of the CDDH and of the GME.

In our view, the most effective option would be a combination of instruments, specifically an additional Protocol to the ECHR and the operationalization of the Reykjavik Committee on Environment and Human Rights. An additional Protocol to the ECHR is the most effective instrument to ensure, as a binding legal obligation, the right to a clean, healthy and sustainable environment by CoE member states, while an “ECRI-style” Reykjavik Committee on Environment, composed of independent experts, would deliver policy guidance to member states on such critical matters.

### **Adoption of an Additional Protocol to the European Convention on Human Rights**

An additional Protocol would reinforce existing obligations to respect, protect, and fulfil the human right to a clean, healthy, and sustainable environment and would bring the European human rights framework in line with that of other regions. The Protocol would also inspire further and more progressive legislative and policy standards at national level. It would encourage those CoE member states that have not yet legally recognized the right at the national level to affirm its recognition, promoting an equitable and shared responsibility among member states in protecting a healthy environment.

The triple planetary crisis of climate change, biodiversity loss, and pollution, and the increasing impact of environmental degradation on human rights have led to an increase in related cases at the European Court of Human Rights (ECtHR), a trend that is expected to continue. While the ECtHR has already affirmed states’ obligations to protect existing human rights - such as the right to life (article 2 ECHR) and to private and family life (article 8) - against environmental hazards, thereby creating a growing body of environmental human rights case law, an additional Protocol would consolidate the ECtHR's jurisprudence and make it more coherent, contributing to greater legal certainty.

The explicit protection of the right to a clean, healthy, and sustainable environment under the ECHR would clarify member states’ obligations to undertake protection measures and policies. The protection of this right is especially crucial for those who face the greatest risk of environmental harm, such as children, young people, women, Indigenous peoples, national minorities, racialized individuals, individuals living in poverty, persons living with disabilities, older persons, refugees and migrants, displaced people, and other disproportionately impacted groups.

Recognizing this overarching right would complement and reinforce the existing legal framework, affirming the fundamental importance of a clean, healthy, and sustainable environment to all aspects of human dignity, equality, and freedom. In line with the subsidiary nature of the ECHR’s protection system, it would provide the ECtHR with an additional legal basis in cases involving states that ratify the additional Protocol.

The 9 April 2024 ECtHR decision in the Verein KlimaSeniorinnen Schweiz and Others v. Switzerland case was the first substantive ruling of the ECtHR to outline states’ duty to safeguard human rights, as guaranteed in the ECHR, in the context of a climate crisis worsening at a rapid pace. The ECtHR found that “In line with the international commitments undertaken by the member States, most notably under the UNFCCC and the Paris Agreement, and the cogent

scientific evidence provided, in particular, by the IPCC (...), the Contracting States need to put in place the necessary regulations and measures aimed at preventing an increase in GHG concentrations in the Earth's atmosphere and a rise in global average temperature beyond levels capable of producing serious and irreversible adverse effects on human rights, notably the right to private and family life and home under Article 8 of the Convention." The KlimaSeniorinnen ruling adds to an increasing body of international jurisprudence on states' obligations to respect, protect and fulfil human rights eroded by the climate crisis.

While the ECtHR explicitly acknowledged the relevance of the increasing international recognition of the right to a clean, healthy and sustainable environment<sup>6</sup> it was not within the ECtHR's remit "to determine whether the general trends regarding the recognition of such a right give rise to a specific legal obligation". This reinforces the need for the Council of Europe to urgently move from a political to a formal legal recognition of the right to a healthy environment by enshrining this right in the Convention.

Under a legally binding Protocol, the protection of the right to a clean, healthy, and sustainable environment would send a powerful message, both at national and international level, reaffirming member states' commitment to address the triple planetary crisis. It would also send an unequivocal message of solidarity to environmental human rights defenders who face threats and reprisals in connection with their work, and all too often, risk their lives.

### **Establishment of the Reykjavik Committee with the inclusion of independent experts**

While an additional Protocol to the ECHR is negotiated and adopted, there are other important steps that can be taken in conjunction, to begin strengthening the recognition of the right to a healthy environment at the national and regional levels. Amnesty International has been calling for the establishment of the Reykjavik Committee on Environment and Human Rights announced by the Council of Europe Heads of State and Government in the Reykjavik Declaration in May 2023. The Reykjavik Committee should begin the process of integrating "the political recognition of the right to a clean, healthy and sustainable environment as a human right" that was made in Reykjavik into policy recommendations for member states.

The Reykjavik Committee on environment and human rights should be part of the "Reykjavik Process", in which CoE member states committed to "reflecting on the nature, content and implications of the right to a clean, healthy and sustainable environment. Worryingly, little is still known of any plans to establish it. The Reykjavik Committee should begin the process of integrating "the political recognition of the right to a clean, healthy and sustainable environment as a human right" that was made in Reykjavik into policy recommendations for member states.

The Reykjavik Committee could be established, as an "ECRI-style" committee with independent experts, by a Resolution of the Committee of Ministers, similarly to previous resolutions establishing the European Commission against Racism and Intolerance (ECRI) and the Commissioner for Human Rights. This committee should be mandated to issue general policy recommendations on the environment and human rights to member states and to perform cyclical reviews of their implementation by all member states alike. Amnesty International urges member states to include the operationalization of such a committee, with a composition that necessarily includes independent experts, in the environment strategy and work plan.

The magnitude of the challenge that lies ahead requires immediate and unwavering commitment from the CoE and its member states to deliver urgent and ambitious solutions.

In the light of the urgency of the triple planetary crisis, the Council of Europe and its member states are now called to provide political leadership at the CoE's GME and CDDH by supporting the adoption of a legally binding protocol to the ECHR and the establishment of the Reykjavik Committee on Environment and Human rights, with independent experts. Only by taking these steps can the CoE and its member states begin to address the greatest challenge facing our planet, for the sake of humanity.

We thank you for your consideration and look forward to hearing from you and remain at your disposal should you wish to discuss this matter further.

Sincerely Yours,

Amnesty International Norway

The Norwegian Helsinki Committee

The Norwegian Bar Association

Jussbuss

Menneskerettighetsakademiet

FIAN Norge